



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

July 22, 2022

Sirena Jones, NCDOJ
North Carolina Sheriffs' Education and Training Standards Commission (NC SETSC)
Sent via email only to: scjones@ncdoj.gov

Re: Objection to 12 NCAC 10B .0704

Dear Ms. Jones:

At its meeting on July 21, 2022, the Rules Review Commission (RRC) objected to 12 NCAC 10B .0704 finding that: the Rule was not within the statutory authority delegated to the NC SETSC pursuant to G.S. 150B-21.9(a)(1), the Rule was not clear and unambiguous pursuant to G.S. 150B-21.9(a)(2), and the Rule was not adopted in accordance with the Administrative Procedures Act pursuant to G.S. 150B-21.9(a)(4).

Specifically, the RRC adopted the opinion of counsel attached hereto and incorporated by reference regarding the issue of the agency exceeding its authority, and clarity and ambiguousness. (See Parts 1 & 3 of the RRC Staff Opinion).

The RRC found that, notwithstanding the agency's second amendment to the Rule¹, the Rule did not prescribe the contents or substantive requirements of the forms identified in the Rule. Rather, the agency left the contents or substantive requirements of the forms open-ended by its employ of the word "includes".

Pursuant to G.S. 150B-2(8a) d., a form does not fall under the definition of a "Rule" if the contents and substantive requirements of the form are prescribed by rule or statute. 12 NCAC 10B .0704 does not prescribe all of the contents or substantive requirements of Form F-7A or Form 7-B. A review of Subchapter 10A fails to reveal the contents or substantive requirements of these forms. 12 NCAC 10B .0704 does not reference any other subchapter or statute which prescribes the contents or substantive requirements of these forms.

¹ The NC SETSC filed a second revision of the Rule after staff counsel had issued the staff opinion.

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

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Accordingly, the agency has failed to comply with the Administrative Procures Act by requiring the regulated public to use forms without adopting the forms or adopting a rule prescribing the complete contents or substantive requirements thereof.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,
/s/ William W. Peaslee
William W. Peaslee
Commission Counsel

cc: Robert Pickett, Esq., NCDOJ