

Burgos, Alexander N

Subject: FW: [External] Re: Return of 12 NCAC 09F .0103, .0104, and .0105

From: Schilling, Michelle <mschilling@ncdoj.gov>

Sent: Wednesday, May 29, 2024 4:19 PM

To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: MALLETT, KRISTEN M <kmallett@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>

Subject: Re: [External] Re: Return of 12 NCAC 09F .0103, .0104, and .0105

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Thank you.



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

Office: (919) 779-8205

MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

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Burgos, Alexander N

Subject: FW: [External] Re: Return of 12 NCAC 09F .0103, .0104, and .0105
Attachments: 12 NCAC 09F .0103.docx; 12 NCAC 09F .0104.docx; 12 NCAC 09F .0105.docx

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Wednesday, May 29, 2024 2:58 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: MALLET, KRISTEN M <kmallett@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: RE: [External] Re: Return of 12 NCAC 09F .0103, .0104, and .0105

All,

Please find attached proofs reflecting the return of 12 NCAC 09F .0103, .0104, and .0105.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

12 NCAC 09F .0103 APPROVAL OF COURSES

*History Note: Authority G.S. 14-415.12;
Temporary Adoption Eff. November 1, 1995;
Eff. May 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
RRC Objection February 22, 2024 and rule returned to the agency on May 29, 2024.*

12 NCAC 09F .0104 INSTRUCTOR QUALIFICATIONS

History Note: *Authority G.S. 14-415.12;*
Temporary Adoption Eff. November 1, 1995;
Eff. May 1, 1996;
Amended Eff. November 1, 2015; September 1, 2005; May 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019;
RRC Objection February 22, 2024 and rule returned to agency on May 29, 2024.

12 NCAC 09F .0105 INSTRUCTOR RESPONSIBILITIES

History Note: *Authority G.S. 14-415.12; 14-415.13;*
Temporary Adoption Eff. November 1, 1995;
Eff. May 1, 1996;
Amended Eff. April 1, 2018; May 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019;
Amended Eff. January 1, 2020; August 1, 2019;
RRC Objection February 22, 2024 and rule returned to agency on May 29, 2024.

Burgos, Alexander N

Subject: FW: [External] Re: Return of 12 NCAC 09F .0103, .0104, and .0105

From: Schilling, Michelle <mschilling@ncdoj.gov>

Sent: Wednesday, May 29, 2024 1:11 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: MALLETT, KRISTEN M <kmallett@NCDOJ.GOV>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] Re: Return of 12 NCAC 09F .0103, .0104, and .0105

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Thank you.

Michelle



MICHELLE SCHILLING

Deputy Director

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MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, May 29, 2024 1:04 PM

To: Schilling, Michelle <mschilling@ncdoj.gov>

Cc: Mallett, Kristen <kmallett@NCDOJ.GOV>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Return of 12 NCAC 09F .0103, .0104, and .0105

Good afternoon,

Please find a letter returning the above captioned rules.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Rules, Oah
Sent: Monday, May 13, 2024 8:10 AM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: FW: [External] Response to Notices of Objection to 12 NCAC 09F .0103, .0104, and .0105 pursuant to N.C. Gen. Stat. §150B-21.12(a)(2) and (b) & Request for Oral Presentation
Attachments: CJETS Response to RRC 12 NCAC 09F .0103 .0104 .0105.pdf

From: Mallett, Kristen <kmallett@NCDOJ.GOV>
Sent: Saturday, May 11, 2024 12:27 PM
To: Rules, Oah <oah.rules@oah.nc.gov>
Cc: Schilling, Michelle <mschilling@ncdoj.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Zellinger, Benjamin O <bzellinger@ncdoj.gov>
Subject: [External] Response to Notices of Objection to 12 NCAC 09F .0103, .0104, and .0105 pursuant to N.C. Gen. Stat. §150B-21.12(a)(2) and (b) & Request for Oral Presentation

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Good afternoon,

I am counsel for the Criminal Justice Education and Training Standards Commission. Please see the attached response from the Criminal Justice Education and Training Standards Commission regarding the Notices of Objection to 12 NCAC 09F .0103, .0104, and .0105 pursuant to N.C. Gen. Stat. §150B-21.12(a)(2) and (b). Pursuant to Rule 26 NCAC 05 .0105, I would like to address the Rules Review Commission at its May 29, 2024, meeting regarding this follow-up matter for Rules 12 NCAC 09F .0103, .0104, and .0105. As set forth in the attached letter, the Criminal Justice Education and Training Standards Commission respectfully disagrees with the objections and will be seeking a reconsideration of the same. My contact information is:

Name: Kristen Mallett
Address: 114 W. Edenton St, Raleigh, NC 27603
Telephone Number: 919-716-6564
Fax Number - N/A
Email Address: kmallett@ncdoj.gov

The Commission's rulemaking coordinator, Michelle Schilling, is copied on this email.

Sincerely,



Kristen Mallett
Assistant Attorney General
Special Prosecutions and Law Enforcement
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
919-716-6564 (office)



JOSH STEIN
ATTORNEY GENERAL

NORTH CAROLINA DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE STANDARDS DIVISION

JEFFREY SMYTHE
DIRECTOR

PO DRAWER 149
RALEIGH, NC 27062-0149
PHONE: (919) 661-5980 • FAX: (919) 779-8210

REPLY TO:
KRISTEN MALLET
KMALLET@NCDOJ.GOV
919-716-6564

May 10, 2024

Jeanette Doran, Chair
Rules Review Commission
Sent via email: oah.rules@oah.nc.gov

Re: Objection Response to Rules 12 NCAC 09F .0103, .0104, and .0105.

Dear Ms. Doran:

The North Carolina Criminal Justice Education and Training Standards Commission (CJETS) received from the Rules Review Commission (RRC) the Objection to 12 NCAC 09F .0103, .0104, and .0105 pursuant to N.C. Gen. Stat. §150B-21.12(a) on February 22, 2024. Pursuant to N.C. Gen. Stat. §150B-21.12(a)(2), this letter serves as a written response to the Commission indicating that CJETS has decided not to change rules 12 NCAC 09F .0103, .0104, and .0105. CJETS disagrees with the RRC that it lacks the statutory authority to adopt rules regulating the courses and instructors on the topic of concealed carry and respectfully asks that the RRC reconsider.

The rules at issue are 12 NCAC 09F .0103, .0104, and .0105. Under 12 NCAC 09F .0103, CJETS must first review and approve concealed-carry training courses to ensure that the courses meet minimum educational standards. 12 NCAC 09F .0104 sets forth the instructor qualifications for those delivering concealed carry courses. Instructor responsibilities are outlined in 12 NCAC 09F .0105.

The source of CJETS's authority to adopt these rules is N.C. Gen. Stat. §14-415.12, which requires an applicant for a concealed handgun permit to successfully complete "an approved firearms safety and training course." N.C. Gen. Stat. §14-415.12(a)(4). According to the statute, an "approved course" must meet two requirements.

First, the course must "satisf[y] the requirements of this subdivision." *Id.* The "requirements of this subdivision" are that the course must "involve[] the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force." *Id.* The statute provides that the Commission "shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision." *Id.*

Second, the course must be “certified or sponsored by any of the following”: (1) CJETS, (2) the National Rifle Association (NRA), (3) the Concealed Carry Association (CCA), or (4) a “law enforcement agency, college, private or public institution or organization, or firearms training school” taught by an instructor certified by CJETS, the NRA, or the CCA. *Id.*

The notices of objection argue that N.C. Gen. Stat. §14-415.12(a)(4) only gives CJETS the power to “prepare and publish general guidelines” and not rules and regulations. The Administrative Procedure Act (APA) defines “rule” as “[a]ny agency regulation, standard, or statement of general applicability.” N.C. Gen. Stat. § 150B-2(8a). A “standard” is “[a] criterion for measuring acceptability, quality, or accuracy.” Black’s Law Dictionary (11th ed. 2019). The power to make guidelines to ensure that courses meet minimum educational criteria and that instructors have adequate qualifications is therefore the power to make “standards.”

By statutory definition, a “standard” must have “general applicability.” N.C. Gen. Stat. § 150B-2(8a). Although “general applicability” is not defined by statute, our courts have determined the common meaning of the phrase. See *Wal-mart Stores East v. Hinton*, 197 N.C. App. 30, 676 S.E.2d 634 (2009). A rule is “generally applicable if it is not exceptional and is allowed without specific requirements.” *N.C. Dep’t of Env’t Quality v. N.C. Farm Bureau Fed’n, Inc.*, 895 S.E.2d 437, 443, 2023 N.C. App. LEXIS 705, 11-12 (2023). Better stated, “A rule is generally applicable if it applies to most situations.” *Id.* Here, the “standards” required by the statute are not exceptional and apply in most situations. Therefore, the power to make “standards” of general applicability is the power to make rules.

Additionally, the notices of objection ignore recent case law expressly holding that a statute does not need to contain a key phrase of “adopt rules” to trigger the requirement for an agency to adopt rules to apply generally applicable guidelines to its regulated public. Specifically, see the 2020 holding in *Cabarrus County Board of Education v. Department of State Treasurer*, where the Supreme Court held that a statute using the language of “adopt” as opposed to “adopt a rule” does not negate the necessity of rulemaking procedures in the APA. *Cabarrus Cty. Bd. of Educ. v. Dep’t of State Treasurer*, 374 N.C. 3, 839 S.E.2d 814 (2020) In that decision, the Court opined that the procedural requirements of rulemaking, which ensure public scrutiny, are important, and that if the General Assembly intended to exempt agencies from the requirements under the APA, it would state the same. *Id.*

The notices of objection state that the General Assembly specifically used the words “rule” and “regulation” in giving CJETS rulemaking power under a different statute, N.C. Gen. Stat. § 17C-6. However, that statute authorizes CJETS to “[p]romulgate rules and regulations *for the administration of this Article*”—rules that concern the education and training of criminal-justice officers. N.C. Gen. Stat. § 17C-6(a)(1) (emphasis added). CJETS’s authority here, by contrast, arises under a different statute that, as part of the state’s criminal laws, regulates an entirely different topic: concealed handgun permits. The fact that the General Assembly used the term “rules and regulations” in giving CJETS rulemaking authority under section 17C-6(a)(1) therefore does not show that CJETS lacks rulemaking authority under section 14-415.12(a)(4) merely because the statute uses a different term, “general guidelines.” Only when the legislature “includes particular language in one section of a statute but omits it in another section *of the same Act*” do courts presume that the legislature acted “intentionally and purposely in the disparate inclusion or

exclusion.” *Russello v. United States*, 464 U.S. 16, 23, (1983) (emphasis added). Here, sections 14-415.12 and 17C-6 are different statutes on different topics in different parts of the General Statutes. It was not necessary for the General Assembly to use identical language in both statutes to confer rulemaking authority on CJETS.

The notices of objection also argue that CJETS lacks the authority to regulate and approve courses offered by the NRA or the CCA. However, the statute requires courses to be “approved,” and it does not purport to give the NRA or the CCA that authority. N.C. Gen. Stat. § 14-415.12(a)(4). Rather, the statute recognizes that those organizations may only “certify” or “sponsor” a course. *Id.* By contrast, the statute gives CJETS the power to decide whether a course is “approved.” Specifically, an “approved course” under section 14-415.12(a)(4) must “satisf[y] the requirements of this subdivision,” and it is CJETS—not any private organization—that has the authority to issue guidelines for the types of courses that meet “the requirements of this subdivision.” *Id.*

This conclusion is further supported by two additional statutory provisions. First, N.C. Gen. Stat. § 14-415.12(a)(4) also requires that instructors file a copy of the course description, outline, and proof of certification annually with CJETS. *Id.* A requirement that instructors submit course descriptions and outlines on a regular basis would be futile if CJETS lacked the authority to approve and regulate courses. Second, to be issued a permit, an applicant must submit a certificate of completion of “an approved course, *adopted and distributed* by the North Carolina Criminal Justice Education and Training Standards Commission.” N.C. Gen. Stat. § 14-415.13(a)(4) (emphasis added). The requirement that an approved course be “adopted and distributed” by CJETS would also be futile if private organizations, rather than CJETS, could exercise ultimate approval authority.

The notices of objection further argue that CJETS lacks the power to set qualifications and responsibilities for NRA and CCA course instructors. The statute, however, is clear on this point. It states that CJETS “shall prepare and publish general guidelines for...*qualifications of instructors* which would satisfy the requirements of this subdivision.” N.C. Gen. Stat. § 14-415.12(a)(4) (emphasis added). Accordingly, the statute gives CJETS the power to publish guidelines for all instructor qualifications, regardless of the instructor’s affiliation. The notices of objection therefore incorrectly state that CJETS lacks a statutory basis for these rules as they apply to NRA and CCA instructors. The notices of objection focus on the role that these private organizations play in certifying or sponsoring courses. While it is true that the NRA and the CCA may certify or sponsor their own courses, one cannot overlook the additional statutory prerequisite that those courses also satisfy “the requirements of this subdivision”—requirements that CJETS must set by preparing and publishing guidelines, including guidelines for the “qualifications of instructors.” *Id.*

For the foregoing reasons, CJETS does not believe that it lacks the statutory authority to implement Rules 12 NCAC 09F .0103, .0104, and .0105, and asks that the RRC reconsider its Objection issued on February 22, 2024. Accordingly, pursuant to 26 NCAC 05 .0105, CJETS would like to address the RRC at its May 29, 2024, meeting regarding Rules 12 NCAC 09F .0103, .0104, and .0105.

cc: William W. Peaslee, Rules Review Commission Counsel

kmallett@ncdoj.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, May 7, 2024 11:03 AM
To: Schilling, Michelle
Cc: Dismukes, Leslie; Burgos, Alexander N
Subject: RE: [External] Re: 12 NCAC 09F .0103, .0104, and .0105

Thank you for the clarification.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Monday, May 6, 2024 5:08 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Dismukes, Leslie <ldismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: 12 NCAC 09F .0103, .0104, and .0105

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Good afternoon,

The meeting held on April 15, 2024 was not a regularly scheduled meeting of our Commission. This meeting was a special meeting called to discuss one agenda item - the Model Law Enforcement Agency Protest and Engagement Policy that was required by Session Law 2023-6.

The May 3, 2024 meeting was the regularly scheduled meeting of our Commission.

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

Office: (919) 779-8205

MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, May 6, 2024 5:00 PM

To: Schilling, Michelle <mschilling@ncdoj.gov>

Cc: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: 12 NCAC 09F .0103, .0104, and .0105

Good afternoon,

Pursuant to G.S. 150B-21.12(b) a board or commission must take one of the options provided for in G.S. 150B-21.12(a) "within 30 days of receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later."

While the CJETS website shows that the next meeting following the notice of objection was May 3, 2024, the Secretary of State's website shows that there was a regularly scheduled meeting for April 15, 2024 at 10:00 am.

Can you explain this discrepancy?

Thank you.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

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(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, March 21, 2024 4:16 PM
To: MALLETT, KRISTEN M <kmallett@NCDOJ.GOV>
Cc: Zellinger, Benjamin O <bzellinger@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

Good afternoon,

We checked with the Secretary of State's office and have confirmed that the officially posted CJETS meeting began on February 21st as you averred.

I will advise my client accordingly and recommend that this item on the RRC agenda is a "no action item" at this time.

Have a good weekend.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, March 21, 2024 4:06 PM

To: MALLETT, KRISTEN M <kmallett@NCDOJ.GOV>

Cc: Zellinger, Benjamin O <bzellinger@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

Good afternoon,

Thank you for your email.

As it is a question of fact whether the CJETS Commission started on February 21st as you aver or February 23rd, the RRC will decide. However, the statement on the CJETS agenda that "The Commission meeting and the meetings of the respective Committees will convene at the stated times" does not lend itself well to your averment in my opinion. But you can make that argument to the RRC if you choose.

The basis of the RRC objection is to lack of authority pursuant to G.S. 150B-21.9(a)(1). It is unclear to me how CJETS could make rule revisions which would satisfy the objections without regard to the time permitted to respond. However, it appears to me that CJETS could create a written response in favor of authority before March 25th.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

From: Mallett, Kristen <kmallett@NCDOJ.GOV>
Sent: Thursday, March 21, 2024 3:17 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Zellinger, Benjamin O <bzellinger@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

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Good afternoon,

Thank you for your response. I appreciate your view, and I would like to provide some insight into how CJETS operates, which may differ from other commissions.

The CJETS quarterly meeting is a culmination of multiple sessions held over the span of several days. As you may have viewed on our website, we state that, "The Commission meeting and the meetings of the respective Committees will convene at the stated times and will remain in session until the adjournment of the full commission meeting on February 23, 2024." CJETS February Commission meeting began on February 21, 2024, at 9:00 am when the first session of the Probable Cause Committee convened and ended at the adjournment of the full commission session on February 23, 2024. Therefore, the objection that was received on February 22, 2024, was received during the February meeting. The full commission meeting the following day was the last session of the February Commission meeting currently being held and not a separately scheduled or "next" meeting.

While I am aware of the changes recently made to G.S. 150B-21.12(d), the purpose of the law is to provide agencies with the opportunity to meaningfully respond to the Rules Review Commission's objection. As this objection was received during a meeting that was already in progress, that was not possible.

The next regularly scheduled CJETS meeting will occur May 1-3, 2024. Based on the information above, we would respectfully request the opportunity to respond to the statement of objection within 10 days of that meeting, pursuant to G.S. 150B-21.12(b).

Best regards,



Kristen Mallett
Assistant Attorney General
Special Prosecutions and Law Enforcement
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
919-716-6564 (office)
kmallett@ncdoj.gov

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, March 20, 2024 4:54 PM
To: MALLETT, KRISTEN M
Cc: Zellinger, Benjamin O; Burgos, Alexander N
Subject: RE: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

Good afternoon,

Thank you for your email.

Respectfully it appears to me the CJETS response is due on or before March 25, 2024.

Pursuant to G.S. 150B-21.12(b), "An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later."

Here, the Rules Review Commission objected to the rules under consideration at its February 22, 2024 Special Meeting. The statement of objection pursuant to G.S. 150B-21.12(a) was sent on February 22, 2024 and received, according to your letter, the same day.

According to the CJETS website, the next meeting of the "full commission" following receipt of the statement of objection on February 22, 2024 was February 23, 2024.

Accordingly, the CJETS response is due on or before 30 days from receipt of the statement of objection, March 25, 2024.

Please be aware of the revisions to G.S. 150B-21.12 in Session Law 2023-134, in particular (d).

If you disagree with my reading of G.S. 150B-21.12, please let me know.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

From: Mallett, Kristen <kmallett@NCDOJ.GOV>
Sent: Wednesday, March 20, 2024 3:40 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Zellinger, Benjamin O <bzellinger@ncdoj.gov>
Subject: [External] Receipt of Objection to 12 NCAC 09F .0103, .0104, and .0105

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Good afternoon, Mr. Peaslee,

I hope this correspondence finds you well. I represent the Criminal Justice Education and Training Standards Commission (CJETS). Attached is a letter acknowledging receipt of your objection to 12 NCAC 09F .0103, .0104, and .0105. Please confirm receipt.

Please contact me if you have any questions or concerns. I look forward to hearing from you soon.

Best regards,



Kristen Mallett
Assistant Attorney General
Special Prosecutions and Law Enforcement
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603
919-716-6564 (office)
kmallett@ncdoj.gov



**NORTH CAROLINA DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE STANDARDS DIVISION**

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ATTORNEY GENERAL**

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27602-0149
PHONE: (919) 661-5980 • FAX: (919) 779-8210**

**JEFFREY SMYTHE
DIRECTOR**

March 18, 2024

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Sent via email: Bill.Peaslee@oah.nc.gov

Re: Objection to 12 NCAC 09F .0103, .0104, and .0105

Dear Mr. Peaslee:

The North Carolina Criminal Justice Education and Training Standards Commission (CJETS) received the notice of objection to 12 NCAC 09F .0103, .0104, and .0105 pursuant to N.C. Gen. Stat. §150B-21.12(a) on February 22, 2024. The next CJETS regularly scheduled meeting will take place May 1-3, 2024. Pursuant to §150B-21.12(b), CJETS will take action within 10 days after this meeting. If your understanding of the time period is different, please let me know.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

/s/ Kristen Mallett
Kristen Mallett
Assistant Attorney General
N.C. Department of Justice
Attorney for the Commission

Burgos, Alexander N

Subject: FW: [External] I'd like to speak this morning

From: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>
Sent: Friday, February 23, 2024 2:56 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] I'd like to speak this morning

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Thanks Bill -

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, February 23, 2024 12:21 PM
To: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] I'd like to speak this morning

Thank you for your email. The answers to your questions are in GS 105B-21.3.

In short, the rules are only subject to legislative disapproval if the RRC approves the rules, which it has, to date, not.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>
Sent: Thursday, February 22, 2024 10:48 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] I'd like to speak this morning

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Thanks for your help, Bill. We do hope that the legislature will take this up and make things more clear to everyone.

Can you help me with a procedural point? Because you have received 10 letters for .0105 (and are likely to receive the 10th for the other two today) it will go to legislative review, correct? Does that mean that the decision of the RRC to overturn our rules is stayed while it is reviewed by the legislature?

I am trying to figure out, practically, whether we are operating under the existing rule ***until*** we hear from the legislature, or whether we are to assume we are operating without all three rules as of today's vote.

Many thanks,
Leslie

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, February 19, 2024 5:07 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09F .0105

Good afternoon,

Please be advised that the RRC has received more than 10 letters requesting legislative review of the above captioned rule pursuant to G.S. 150B-21.3. They can be found at [open \(nc.gov\)](#) or by going to the RRC agenda on the RRC website.

As always, if you have any questions please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: Updated Responses to Rules 12 NCAC 09B .0235 and 09B .0236

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Tuesday, February 13, 2024 2:38 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: Updated Responses to Rules 12 NCAC 09B .0235 and 09B .0236

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Thank you, sir. I appreciate your assistance.

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

Office: (919) 779-8205

MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, February 13, 2024 2:30 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] Re: Updated Responses to Rules 12 NCAC 09B .0235 and 09B .0236

Thank you for your email and bringing this to our attention. The recommends for objection are being removed as the final revised rules resolved the issue upon which the recommendation was made.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Schilling, Michelle <mschilling@ncdoj.gov>

Sent: Tuesday, February 13, 2024 1:37 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] Re: Updated Responses to Rules 12 NCAC 09B .0235 and 09B .0236

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Good afternoon, sir:

I saw that the objections to both of these rules were still on the agenda. Were the amended rules I sent you on January 30, 2024, not acceptable?

Thank you for your continued guidance and support.

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

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MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

Subject: FW: [External] Re: 12 NCAC 09F .0103

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Tuesday, February 6, 2024 3:18 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: 12 NCAC 09F .0103

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Thank you. I will provide to the CJETS Commission for their review and action.

Regards,

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

Office: (919) 779-8205

MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, February 6, 2024 9:09 AM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09F .0103
Attachments: 2024.02 - CJETS Staff Opinion 12 NCAC 09F .0103.doc

Good morning,

Attached please find the staff opinion concerning the above captioned rule which will be considered at the February 22nd meeting of the RRC.

As always if you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Friday, February 2, 2024 5:17 PM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: Re: [External] Re: 12 NCAC 09F .0104 and .0105

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Thank you. Have a good weekend!

Michelle



MICHELLE SCHILLING
Deputy Director
Criminal Justice Standards Division
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MSchilling@ncdoj.gov
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Raleigh, NC 27602-0149
ncdoj.gov

Please note messages to or from this address may be public records.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, February 2, 2024 5:10 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: 12 NCAC 09F .0104 and .0105

Yes. Along the same lines.
Have a good weekend.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Friday, February 2, 2024 4:24 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: 12 NCAC 09F .0104 and .0105

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Thank you.

Will there be an objection to 12 NCAC 09F .0103?

Michelle



MICHELLE SCHILLING
Deputy Director
Criminal Justice Standards Division
Office: (919) 779-8205
MSchilling@ncdoj.gov
1700 Tryon Park Drive
Raleigh, NC 27602-0149
ncdoj.gov

Please note messages to or from this address may be public records.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Friday, February 2, 2024 4:05 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 12 NCAC 09F .0104 and .0105

Good afternoon,

Attached please find a staff opinion on the above captioned rules.

As always if you have any questions or concerns please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Updated Rules

From: Schilling, Michelle <mschilling@ncdoj.gov>

Sent: Thursday, February 1, 2024 2:50 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Updated Rules

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Excellent. Thank you.

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

Office: (919) 779-8205

MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, February 1, 2024 2:42 PM
To: Rules, Oah
Cc: Burgos, Alexander N; Schilling, Michelle
Subject: FW: [External] Updated Rules
Attachments: 12 ncac 09e .0103.docx; Response - 12 NCAC 09E .0103.docx; 12 NCAC 09B .0301.docx; Response - 12 NCAC 09B .0301.docx

Good afternoon,

It is my intention to recommend approval of the attached rules.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Wednesday, January 31, 2024 9:40 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Updated Rules

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Good morning, sir:

Rules 12 NCAC 09E .0103 and 12 NCAC 09B .0301 have been updated with clarifying language for the February RRC.

Thank you,

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

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MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

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12 NCAC 09B .0301 amended, with changes, as published in 38:05 NCR 258-267

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and .0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accordance with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form: Application for Instructor or Professional Lecturer Certification, F-12. The Application for Instructor or Professional Lecturer F-12 shall contain:

(1) name of applicant/instructor;

(2) address, phone, email address, date of birth, age, last 4 of Social Security Number, and Acadis number;

(3) current agency/firm, status (Retired, Civilian, Sworn), agency address, and business phone number;

(4) type of instructor certification applying for;

(5) supporting documents for specific certification sought;

(6) highest education level, school attended, school location, and graduation date;

(7) criminal justice experience;

(8) signature of applicant/instructor;

(9) school, course title, hours taught, course date(s) and whether course was a requirement of Mandatory In-Service Training; and

(10) signature of certifying School Director or In-Service Training Coordinator, school or agency, phone number, and email address.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and completing all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have has knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including: recur. The following action shall be taken by the Commission:

(1) issuing issue an oral warning and request for compliance; or

(2) issuing issue a written warning and request for compliance; or

(3) issuing issue an official written reprimand; or

(4) suspending suspend the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and no more than three years; and or

(5) ~~revoking~~ **revoke** the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification when the Commission finds that the person:

(1) has failed to meet and maintain any of the requirements for qualification;

(2) has failed to remain competent in the person's areas of expertise;

(3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the **"Instructor Training Manual" as found in** Rules .0209 and .0205 of this Subchapter;

~~(4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in Rule .0205 of this Subchapter;~~

~~(5)~~ **(4)** has demonstrated "unprofessional personal" conduct in the delivery of Commission approved or mandated training. For the purposes of this Subparagraph, unprofessional personal conduct is identified as:

(A) job-related conduct that constitutes a violation of state or federal law;

(B) a conviction or commission of a criminal offense, as set out in 12 NCAC 09A .0204;

(C) the willful violation of rules of this Chapter;

(D) conduct that is detrimental to instruction in the Commission's mandated courses. Conduct is "detrimental to instruction" if the conduct is demeaning or disruptive to the learning environment;

(E) the physical or verbal abuse of a client or student who the instructor is teaching or supervising; or

(F) falsification of an instructor application or other employment documentation;

~~(6)~~ **(5)** is an instructor, School Director, or Qualified Assistant and is involved in the instruction of (for instructors) or oversight of (for School Directors and Qualified Assistants) a student with whom the instructor, School Director, or Qualified Assistant has a close personal relationship such as, familial, financial, dating, or sexual, even if consensual; and fails to take immediate and appropriate corrective action. Appropriate corrective action requires the instructor, School Director, or Qualified Assistant to notify his or her managing personnel in writing of the relationship and requires the instructor, School Director, or Qualified Assistant to stop instructing or overseeing the student with whom the relationship ~~exists~~ **exists**. **The written notice to managing personnel shall be submitted to the Criminal Justice Standards Division within 10 days upon receipt and shall include:**

(A) school/agency name;

(B) name of course;

(C) name of instructor, School Director, or Qualified Assistant;

(D) name of student;

(E) name of managing personnel;

(F) nature of the relationship; and

(G) explanation of action taken to ensure the named instructor, School Director, or Qualified Assistant is not in violation of this Rule;

(A) the written notice to managing personnel shall include:

(i) school/agency name;

(ii) name of course;

(iii) name of the instructor, School Director, or Qualified Assistant;

(iv) name of student;

(v) name of managing personnel; and

(vi) nature of the relationship;

(vii) explanation of action taken to ensure the named instructor, School Director, or

Qualified Assistant is not in violation of this Rule;

(B) the written notice from the school/agency managing personnel to the Standards Division shall be submitted within 10 days of receipt of notice from the instructor, School Director, or Qualified Assistant and shall include:

(i) school/agency name;

(ii) name of course;

(iii) name of the instructor, School Director, or Qualified Assistant;

(iv) name of student;

(v) name of managing personnel;

(vi) nature of the relationship; and

(vii) explanation of action taken to ensure the named instructor, School Director, or

Qualified Assistant is not in violation of this Rule;

~~(7)~~ has demonstrated instructional incompetence;

~~(8)~~ ~~(6)~~ has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;

~~(9)~~ ~~(7)~~ has failed to meet or maintain good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771, appeal dismissed, 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647 (1983); and later court decisions that cite these cases as authority, and as required to discharge the duties of a criminal justice instructor;

~~(10)~~ ~~(8)~~ has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102;

~~(11)~~ ~~(9)~~ has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;

(12) (10) has committed or been convicted of an offense that could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 09G .0504; or

(13) (11) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement criminal justice officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission), Office of Emergency Medical Services or the North Carolina Company/Campus Police Program; Program, or a North Carolina, out of state or federal approving, certifying or licensing agency; has been denied certification or had his or her certification suspended or revoked by their respective Commission, or agency a North Carolina, out of state or federal approving, certifying or licensing agency, the State or local law enforcement certified criminal justice officer shall report the suspension or revocation to the Criminal Justice Standards Division within five days. The General Instructor Certification (if applicable) shall be automatically suspended or revoked for the same time period as his or her respective Commission certification in accordance with the following:

(1) this suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized specialized or additional instructor certification, as outlined in Rule .0304 of this Section;

(2) if the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, he or she shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of Rule .0302 of this Section before any instruction may be delivered in any Commission approved or mandated training, including the completion of a subsequent General Instructor's training Instructor Training course in its entirety; and

(3) if the term of suspension or revocation does not exceed the expiration date of the instructor's initial certification expiration date, the instructor shall be reinstated as a General Instructor only upon reinstatement of his or her law enforcement officer certification by the Commission. The terms of renewal for the existing General Instructor and Specialized Instructor certifications shall remain subject to all renewal requirements pursuant to Rule .0303(d) of this Section by the next expiration date.

(g) Any instructor whose criminal justice officer certification or power to make arrests is suspended or revoked by the federal government, State of North Carolina or any subdivisions thereof, or by any other State or any subdivisions thereof, shall report the suspension or revocation to the Commission within five days of the officer's receipt of notice of the revocation or suspension.

(h) Criminal justice officers certified as a General Instructor as outlined in 12 NCAC 09B .0301 shall have their general instructor certification automatically suspended or revoked for the same time period as his or her respective Commission criminal justice certification. The suspension or revocation of the general instructor certification shall

1 also include suspension or revocation to any Commission recognized specialized or additional instructor certification,
2 as outlined in Rule .0304 of this Section. ~~The General Instructor Certification (if applicable) shall be automatically~~
3 ~~suspended or revoked for the same time period as his or her respective Commission certification in accordance with~~
4 ~~the following:~~

5 ~~this suspension or revocation of the General Instructor certification shall also include suspension or revocation to any~~
6 ~~Commission recognized specialized or additional instructor certification, as outlined in Rule .0304 of this~~
7 ~~Section;~~

8 (i) Any applicant for instructor certification whose criminal justice officer certification or power to make arrests has
9 been denied, suspended, or revoked at any time by the federal government, State of North Carolina or any subdivisions
10 thereof, or by any other State or any subdivisions thereof, shall report the suspension or revocation to the Commission
11 at the time the application is submitted. This requirement is not withstanding any subsequent reinstatement of the
12 certification or power to make arrests.

13
14
15
16 History Note: Authority G.S. 17C-6;
17 Eff. January 1, 1981;
18 Amended Eff. December 1, 2018; October 1, 2017; October 1, 2009; August 1, 2004; April 1, 1999;
19 July 1, 1991; January 1, 1985;
20 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
21 2019;
22 Amended Eff. March 1, 2024; October 1, 2020; August 1, 2019.
23

Request for Changes Pursuant to N.C. Gen. Statute. 150B-21.10

12 NCAC 09B .0301

Recommended Change: *Page 1, Line 29: The Commission uses the phrase “shall include” which means that the criteria to be used to determine the maintenance of competence is not exclusive to “attending and completing all updated instructor training courses. Accordingly, the criteria to be used is ambiguous.*

Response: Page 1, Line 29: We have three Specialized Instructor certification that have two paths of certification. One path requires these instructors maintain certain technical or professional certifications issued by external agencies (see 12 NCAC 09B .0304(e), (h), and (k).

Recommended Change: *Page 1, Line 32: Found by whom? What is the process for which this determination shall be made?*

Response: Page 1, Line 32: Language clarified.

Recommended Change: *Page 1, Lines 34-39: and Page 2, Line 1: The Commission uses the word “including” which means that the actions listed in items (1) and (5) are not exclusive. Accordingly, as written, the Paragraph is ambiguous.*

Response: Page 1, Line 34-39: Language clarified.

Recommended Change: *Page 1, Lines 34-39, and Page 2, Line 1: As written, the Commission shall do items (1) through (5) as opposed to a menu of options. Is this what the Commission intended?*

Response: Page 1, Line 34-39: Yes. The Commission has several different courses of action to take.

Recommended Change: *Page 2, Lines 6-9: The Commission cannot adopt standards in manual or guides which have not been adopted pursuant to the APA. Please see G.S. 150B-21.6 Has the training manual or management guide been adopted pursuant to the APA? If so, where? If not, explain how the Commission cannot incorporate the curriculum in the reference.*

Response: Page 2, Lines 6-9: Language removed regarding “manual” and “course management guide”.

Recommended Change: *Page 2, Line 14 and Line 26: Explain the process by which the Commission will determine the “commission” of a criminal offense other than by a conviction in the Court of General Justice. Has a rule been adopted setting forth the process and criteria which will be used?*

Response: 12 NCAC 09A .0103(5) defines “commission of an offense” as a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

Recommended Change: *Page 3, Lines 1-11: Paragraph (e) lists the instances in which the Commission shall deny or revoke a certification when “finds that person” has done one or more of the listed acts. Part (B) of the paragraph however requires an act by “managing personnel”, not an instructor. There appears to be a disjunctive.*

Response: Page 3, Lines 1-11: Part B has been removed. Part A has been clarified.

Recommended Change: *Page 3, Line 12: This is an ambiguous standard.*

Response: Language clarified. Redundancy deleted.

Recommended Change: *Page 3, Lines 30-37: This paragraph lacks clarity and needs to be re-written.*

Response: Paragraph language clarified.

Recommended Change: *Page 3, Line 30: By what method does the Commission certify a person as a law enforcement officer”? Does the Commission mean “criminal justice officer” which is defined in GS 17C-2(3)?*

Response: Language clarified to reflect “criminal justice officer”.

Recommended Change: *Page 3, Lines 30-37: Rule .0301 regulates instructors. These lines are regulating “law enforcement officers” who may or may not be instructors. In short, why would a person who is not an instructor look at this rule to find this requirement?*

Response: Language clarified.

1 12 NCAC 09E .0103 is amended, with changes, as published in 38:05 NCR 258-267

2
3 **12 NCAC 09E .0103 DEPARTMENT HEAD RESPONSIBILITIES: ANNUAL IN-SERVICE TRAINING**

4 The Department state or local law enforcement agency head shall ensure that the annual in-service training is
5 conducted according to specifications as outlined in Rules 09E .0105 and 09E .0106. In addition, the Department state
6 or local law enforcement agency head or designated representative:

- 7 (1) shall review departmental policies regarding the use of force during the agency's annual in-service
8 training program; and program. The Department head or designated representative shall certify that
9 this review has been completed by submitting a Commission form to the Criminal Justice Standards
10 Division; and and
- 11 (2) shall report to the Criminal Justice Standards Division once each calendar year a roster of all law
12 enforcement officers who fail to successfully complete the annual in-service training and firearms
13 qualification qualification, pursuant to 12 NCAC 09E .0106, and shall certify that all law
14 enforcement officers in the agency not listed did successfully complete the training. This roster shall
15 reflect the annual in-service training and firearms qualification status of all law enforcement officers
16 employed by the agency as of December 31 of each calendar year and shall be received by the
17 Criminal Justice Standards Division no later than the following January 15th; and 15th. Officers
18 having completed Basic Law Enforcement Training and passed the comprehensive state final
19 examination in this same calendar year must complete the annual in-service training for the year if
20 they were sworn in between January 1st and June 30th of that year. Officers sworn in between July
21 1st and December 31st must complete the annual in-service training by June 30th of the following
22 year, and
- 23 (3) shall maintain in each officer's file documentation on a Commission form that the officer has
24 completed the annual in-service training requirement; and
- 25 (4) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 09E
26 .0106(a) and (b), prohibit access to such weapon(s) until such time as the officer obtains
27 qualification; and
- 28 (5) shall, where the officer fails to successfully qualify with any of the weapons specified in Rule 09E
29 .0106(d), prohibit the possession of such weapon(s) while on duty or when acting in the discharge
30 of that agency's official duties, and shall deny the officer authorization to carry such weapon(s)
31 concealed when off-duty, except when the officer is on his own premises; and
- 32 (6) shall, where the officer has access to any specialized or tactical weapon(s) not specifically covered
33 in Rule 09E .0106(a) and (b), use industry accepted practices and procedures to ensure that officers
34 authorized to use such weapon(s) are qualified. Where the officer fails to qualify, the agency head
35 or designated representative shall restrict access to such weapon(s). shall, where an officer has
36 access to any specialized or tactical weapon(s) not specifically covered in Rule 09E .0106(a) and
37 (b), prohibit the officer's use of the weapon(s) while engaged in the officer's official capacity unless

1 the agency head determines the officer is competent to use the weapon in a lawful and prudent
2 manner based upon the officer's experience, training, education, and disciplinary record.

3
4
5
6 *History Note: Authority G.S. 17C-6; 17C-10;*
7 *Eff. July 1, 1989;*
8 *Amended Eff. January 1, 2005; January 1, 1995;*
9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
10 *2019.*
11 *Amended Eff. March 1, 2024*

Request for Changes Pursuant to N.C. Gen. Statute. 150B-21.10

12 NCAC 09E .0103

Recommended Change:

Page 1, Line 4: Who is the "Department head"? The Secretary of DPS? Justice? Police? Why is "Department" capitalized?

Response:

Page 1, Line 4: Department head clarified.

Recommended Change:

Page 1, Line 6: Which department?

Response:

Page 1, Line 6: Language clarified.

Recommended Change:

Page 1, Line 12: After "qualification" cite the rule which requires this. "Pursuant to rule____."

Response:

Page 1, Line 12: Rule added.

Recommended Change:

Page 1, Lines 16-20: The Rule lists items which the Department head must do. These lines are adding responsibilities to officers. In short, the Commission is fixing concepts.

Response:

Page 1, Lines 16-20: This provides clarification for state and local law enforcement agency heads in listing a law enforcement officer as non-compliant for not completing the annual mandatory in-service training in the same year the officer completed the Basic Law Enforcement Training program.

Recommended Change:

Page 1, Line 21-22: For how long?

Response:

Page 1, Line 21-22: From the effective date of this rule.

Recommended Change:

Page 1, Line 31: "Industry accepted practices and procedures" is ambiguous.

Response:

Page, 1, Line 31: Language clarified.

Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, January 30, 2024 4:00 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09E .0103

Hi Michelle,

On lines 32-36 of the above captioned rule, the standard is even less clear than in the original version. In essence the rule is telling agency heads, don't let officers use weapons for which they are not qualified. But there does not appear to be any clear standard for who is qualified. What is an "accepted strategy"? Whose experience is being considered, the officer's or the chief's experience.

Consider "(6) Shall, where an officer has access to any specialized or tactical weapon(s) not specifically covered in Rule 09E .0106(a) and (b), prohibit the officer's use of the weapons while engaged in the officer's official capacity unless the agency head determines the officer is competent to use the weapon in a lawful and prudent manner based upon the officer's experience, training, education, and disciplinary record."

William W. Peaslee
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Burgos, Alexander N

Subject: FW: 12 NCAC 09B .0301

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, January 30, 2024 3:13 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 12 NCAC 09B .0301

Good afternoon Michelle,

On page 2, Line 6-9 , Paragraph (e)(3) and (4)of the above captioned rule, CJETS has a similar issue that drew a recommendation for objection in 09B .0235 and .0236. It does not appear that either the Instructor Training Manual or the BLET Course Management Guide” has been adopted pursuant to the APA by the Criminal Justice Academy. Accordingly, it cannot be incorporated by reference.

Would you prefer that I draft a recommendation for objection or do you want to revise it to resolve the issue?

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Tuesday, January 30, 2024 9:04 AM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: [External] Updated Responses to Rules
Attachments: 12 NCAC 09B .0235.docx; 12 NCAC 09B .0236.docx; Response - 12 NCAC 09B .0235.docx; Response - 12 NCAC 09B .0236.docx

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good morning, Mr. Peaslee,

The attachments reflect updates to draft rules for the February RRC meeting. Please let me know if you have any questions.

Respectfully,

Michelle



MICHELLE SCHILLING
Deputy Director
Criminal Justice Standards Division
Office: (919) 779-8205
MSchilling@ncdoj.gov
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Raleigh, NC 27602-0149
ncdoj.gov

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12 NCAC 09B .0235 is amended, with changes, as published in 38:05 NCR 258-267

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

~~(a) The basic training course for Juvenile Court Counselors and Chief Court Counselors shall consist of a minimum of 151-121 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a Juvenile Court Counselor and a Chief Court Counselor.~~

(a) The Juvenile Court Counselors and Chief Court Counselors training course shall consist of a minimum of 119 hours of classroom and practical skills instruction.

(b) Each basic training course for Juvenile Court Counselors shall include training in the following topic areas:

(1) Juvenile Justice Common Core:

(A)	Basic Individual Counseling Skills	8 <u>6</u> hours
(B)	Interpersonal Communication Skills	8 <u>6</u> hours
(C)	Working with Families	3 hours
(D)	Characteristics of Delinquents	4 hours
(E)	Unlawful Workplace Harassment	2 hours
(F)	Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace	2 hours
(G) (E)	Staff and Juvenile Relationships <u>Relationships: Maintaining Professional Boundaries</u>	4 hours
(H) (F)	Gang Awareness	4 <u>2</u> hours
(I) (G)	Situational Awareness and Risk Assessment	4 hours
(J) (H)	Restraints, Controls, and Defensive Techniques	28 hours
(K) (I)	Mechanical Restraints	4 hours
(L) (J)	Mental Health Youth Mental Health First-Aid	8 hours
(M)	CPR	4 hours
(N)	First Aid	4 hours
(O)	Employee Fitness and Wellness	4 hours
(P) (K)	Trauma and Delinquents	6 hours
(Q) (L)	Driver and Secure Transport Safety	8 <u>4</u> hours
(R) (M)	DMC – Addressing DMC within the JJ System <u>Racial and Ethnic Disparities (RED) – Addressing RED within the Juvenile Justice System</u>	2 hours
(S) (N)	Verbal De-escalation for Juvenile Justice	4 <u>2</u> hours
	Total Hours	111 <u>83</u> hours

(2) Juvenile Court Counselor Specific:

(A) Roles and Responsibilities Statutory Responsibilities and

Requirements of Juvenile Court Counselors

86 hours

(B) Juvenile Law

8 hours

(C) Intake Intake, Supervision and Services

8 hours

(D) Assessing Risk and Needs

46 hours

(E) Report Writing and Documentation

128 hours

Total Hours

40 38 36 hours

Total Course Hours

151 121 119 hours

~~(c) The "Juvenile Court Counselor Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the curriculum for delivery of Juvenile Court Counselor basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency;~~

~~The Office of Staff Development and Training~~

~~[Division of Juvenile Justice and Delinquency Prevention]~~

~~North Carolina Department of Public Safety~~

~~2211 Schieffelin Road [3010 Hammond Business Place]~~

~~Apex, North Carolina 27502~~

~~[Raleigh, North Carolina 27603]~~

~~(d)(c) Upon completion of a Commission-certified training course for Juvenile Court Counselors and Chief Court Counselors, the Director of the school conducting the course shall notify the Commission of training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Course Completion, F-11, identifies the student, student's social security number, date of birth, employing agency, position, date of appointment, and course information, to include title of course, location course was conducted at, the dates the course began and ended, the hours the course was conducted, number of instructional contact hours, and name of certifying official regarding the successful completion of the training course. The Report of Training Completion Form is located on the agency's website: <http://www.ncdoj.gov/getattachment/fbf3480e-05a1-4e0e-a81a-04070dea6199/F-11-Form-10-2-14.pdf.aspx>.~~

~~(e)(d) Employees of the Division of Adult Correction and Juvenile Justice and Delinquency Prevention who have completed the minimum 151 121 119 hour training program accredited by the Commission pursuant to Rule .0236 of this Section after January 1, 2013 who transfer from a Juvenile Justice Officer position to a Juvenile Court Counselor position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Court Counselor under Subparagraph (b)(2) of this Rule.~~

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004;
Amended Eff. July 1, 2017; July 1, 2016; August 1, 2015; May 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Amended Eff. January 1, 2022.
Amended Eff. March 1, 2024*

Request for Changes Pursuant to N.C. Gen. Statute. 150B-21.10

12 NCAC 09B .0235

Recommended Change:

Page 1, Lines 5-7: This is an ambiguous standard.

Response:

Page 1, Lines 5-7: Rule language clarified.

Recommended Change:

Page 2, Lines 6-8: Has the training manual been adopted pursuant to the APA? If so, where? If not, explain how the Commission cannot incorporate the curriculum by reference.

Response:

Page 2, Line 6-8: Language removed.

12 NCAC 09B .0236 is amended, with changes, as published in 38:05 NCR 258-267

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

~~(a) The basic training course for Juvenile Justice Officers shall consist of a minimum of 151 117 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.~~

a) The Juvenile Justice Officer training course shall consist of a minimum of 117 hours of classroom and practical skills instruction.

(b) Each basic training course for Juvenile Justice Officers shall include training in the following identified topic areas:

(1) Juvenile Justice Common Core:

(A)	Basic Individual Counseling Skills	8 6 hours
(B)	Interpersonal Communication Skills	8 6 hours
(C)	Working with Families	3 hours
(D)	Characteristics of Delinquents	4 hours
(E)	Unlawful Workplace Harassment	2 hours
(F)	Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace	2 hours
(G) (E)	Staff and Juvenile Relationships <u>Relationships: Maintaining Professional Boundaries</u>	4 hours
(H) (F)	Gang Awareness	4 2 hours
(I) (G)	Situational Awareness and Risk Assessment	4 hours
(J) (H)	Restraints, Controls, and Defensive Techniques	28 hours
(K) (I)	Mechanical Restraints	4 hours
(L) (J)	Mental Health Youth Mental Health First-Aid	8 hours
(M)	CPR	4 hours
(N)	First Aid	4 hours
(O)	Employee Fitness and Wellness	4 hours
(P) (K)	Trauma and Delinquents	6 hours
(Q) (L)	Driver and Secure Transport Safety	8 4 hours
(R) (M)	DMC Addressing DMC within the JJ System <u>Racial and Ethnic Disparities (RED) – Addressing RED within the Juvenile Justice System</u>	2 hours
(S) (N)	Verbal De-escalation for Juvenile Justice	4 2 hours
	Total Hours	111 83 hours

(2) Juvenile Justice Officer Specific:

(A)	Treatment Program Operations	4 hours
-----	------------------------------	---------

(B)	Maintaining Documentation of Activities and Behaviors	8 hours
(C)	Basic Group Leadership Skills	8 4 hours
(D)	Effective Behavior Management	10 hours
(E)	Health Services Overview	2 hours
(F)	Contraband and Search Techniques	2 hours
(G)	Suicide Prevention and Response	6 4 hours
	Total Hours	40 34 hours
	Total Course Hours	151 117 hours

~~(e) The "Juvenile Justice Officer Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the curriculum for delivery of Juvenile Justice Officer basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:~~

~~The Office of Staff Development and Training~~

~~[Division of Juvenile Justice and Delinquency Prevention]~~

~~North Carolina Department of Public Safety~~

~~2211 Schieffelin Road [3010 Hammond Business Place]~~

~~Apex, North Carolina 27502 [Raleigh, North Carolina 27603]~~

~~(d) (c) Upon completion of a Commission-certified training course for Juvenile Justice Officers the Director of the school conducting the course shall notify the Commission of the training completion by submitting a Report of Training Course Completion for each trainee. The requirements for completion of the Report of Training Course Completion, F-11, is outlined in 12 NCAC 09B .0235. The Report of Training Completion Form is located on the agency's website: <http://www.ncdoj.gov/getattachment/fbf3480e-05a1-4e0e-a81a-04070dea6199/F-11-Form-10-2-14.pdf.aspx>.~~

~~(e) (d) Employees of the Division of Adult Correction and Juvenile Justice and Delinquency Prevention who have completed the minimum 151 117 hour training program accredited by the Commission under Rule .0235 of this Section after January 1, 2013 who transfer from a Juvenile Court Counselor position to a Juvenile Justice Officer position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Justice Officer pursuant to Subparagraph (b)(2) of this Rule.~~

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004;
Amended Eff. March 1, 2024; July 1, 2017; July 1, 2016; August 1, 2015; May 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019.*

Request for Changes Pursuant to N.C. Gen. Statute. 150B-21.10

12 NCAC 09B .0236

Recommended Change:

Page 1, Lines 4-6: This is an ambiguous standard.

Response:

Page 1, Lines 4-6: Rule language clarified.

Recommended Change:

Page 2, Lines 7-9: Has the training manual been adopted pursuant to the APA? If so, where? If not, explain how the Commission cannot incorporate the curriculum by reference.

Response:

Page 2, Line 7-9: Language removed.

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, January 29, 2024 2:15 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09B .0235 and .0236
Attachments: 2024.01 CJETS Staff Opinion 12 NCAC 09B .0235.doc

Good afternoon,

Attached please find the staff opinion on the above captioned rules which will be considered by the RRC at its January meeting.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Thursday, January 25, 2024 4:34 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Recommended Rule Changes

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Good afternoon, Mr. Peaslee,

Attached please find the recommended rule changes, responses, and updated draft rules for your review. Please let me know if you have any questions. If possible, would your schedule permit a Teams meeting to clarify any further questions you may have?

Respectfully,

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

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MSchilling@ncdoj.gov

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Raleigh, NC 27602-0149

ncdoj.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, January 16, 2024 3:42 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: CJETS RFC
Attachments: 2024.01 CJETS Request for Changes.docx

Good afternoon,

Attached please find the request for changes on the above captioned rules.

If you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Friday, December 15, 2023 10:42 AM
To: Peaslee, William W
Cc: Burgos, Alexander N
Subject: [External] Re: CJETS extension letter

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Received, thank you.

Michelle



MICHELLE SCHILLING
Deputy Director
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Office: (919) 779-8205
MSchilling@ncdoj.gov
1700 Tryon Park Drive
Raleigh, NC 27602-0149
ncdoj.gov

Please note messages to or from this address may be public records.

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Thursday, December 14, 2023 4:15 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: CJETS extension letter

Good afternoon,

Attached please find the notice of extension pursuant to G.S. 150B-21.13.

As always, if you have any questions please feel free to contact me.

William W. Peaslee
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