

Burgos, Alexander N

From: Carpenter, Beth P
Sent: Friday, September 9, 2022 5:07 PM
To: Burgos, Alexander N
Cc: Strong, Donya M
Subject: NC Department of Administration's Comment Regarding Possible Elimination of Rule Review Commission (RRC) Staff Pre-reviews
Attachments: DOA comment on RRC elimination of staff pre-reviews.pdf

Dear Mr. Burgos,

Attached to this message please find the NC Department of Administration's comment regarding the possible elimination of Rules Review Commission staff attorneys' pre-review of draft rules.

Thank you,

Beth



Beth Carpenter

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September 9, 2022

Ms. Jeanette Doran, Chair
Mr. Andrew P. Atkins, First Vice Chair
Mr. Robert A. Bryan, Jr., Second Vice Chair
Rules Review Commission
1711 New Hope Church Road
Raleigh, NC 27609

RE: **NC Department of Administration's Comment Regarding Possible Elimination of Rule Review Commission (RRC) Staff Pre-reviews**

Dear Rules Review Commission Leaders,

The Department of Administration strongly opposes the elimination of pre-reviews of proposed rules since this process has been extremely beneficial in our rulemaking efforts. At the NC Department of Administration, we have found pre-reviews by RRC staff attorneys an indispensable part of the rulemaking process. Effective rule drafting is a difficult task, requiring a unique skill set. Most agency staff have little or no prior experience in drafting rules. RRC staff attorney pre-reviews give the agencies important feedback to improve proposed rules and avoid needless delay due to technical drafting errors.

The level of expertise exercised by RRC staff attorneys increases the efficiency of the rulemaking process by identifying non-substantive issues and technical mistakes ahead of publication. Additionally, RRC staff attorneys' pre-reviews bring a high-level, global perspective to proposed rules. When agencies draft rules, it is often from the point of view of a subject matter expert on a technical topic. Drafters who are immersed in the details of the material daily can take terms of art for granted and may not realize their draft rule is unclear. RRC staff attorneys are in a unique position to uncover ambiguities, which serves not only the drafting agency, but also the affected public. Furthermore, staff attorneys have the knowledge and expertise to consider how a proposed rule fits into the larger context of all the agency's rules. Staff attorneys not only perform a valuable service to the drafting agency, but also ultimately benefit the public the rules were created to serve.

Additional training of agency staff engaged in rulemaking would also improve the rulemaking process. While RRC staff attorneys are well-versed in the art of rulemaking, this is often a new undertaking for agency staff who are expected to engage in rulemaking; additional training would benefit all involved in the rulemaking process.

It is my hope that the RRC will continue providing the excellent service to customers who are in the rulemaking process by providing pre-reviews. Thank you for the opportunity to submit feedback.

Sincerely,



Pamela B. Cashwell
Secretary



Burgos, Alexander N

Subject: FW: [External] One more thought re pre-review

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Friday, September 9, 2022 8:34 AM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: [External] One more thought re pre-review

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

From: Ann Wall <awall@sosnc.gov>
Sent: Thursday, September 8, 2022 5:26 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: [External] One more thought re pre-review

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Before you all ever refuse to do pre-review for an agency, somebody - you or someone from OAH or RRC - needs to communicate directly with the agency head, commission chair, or equivalent.

Sometimes this stuff gets done at a lower level and at the pre-review stage of things when drafting is still in process, that leader may not be aware at all that there are any issues. It may be that an agency head who is unaware of the issues can take steps to fix it and should definitely have that opportunity.

Ann

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DHHS/DHSR Pre-reviews Input
(Rule Authorities: MCC, RPC, DHHS/Secretary, DHHS/DHSR, Director)

These questions were sent to all DHSR agency staff assigned with the additional task of rulemaking functions and responsible for developing the rule text for their respective Sections. The following is the feedback received from these staff members for each of the questions posed by Ms. Snyder on 7/25/22.

Question 1: Whether and why we find pre-reviews helpful?

The consensus of the DHSR agency staff is that the pre-reviews have been very helpful.

- The staff attorney who helped me was wonderful. I especially appreciated the attorney having a new perspective when reviewing the language because she was not affiliated or impacted by the change. By the time the review gets to the staff attorney, the owner of the language sometimes can no longer be impartial to how the public may interpret the change because they have been working on several drafts for months beforehand. One word really does make all the difference. In addition, the staff attorney's questions are very helpful because the context may not have been something that was thought of as a concern beforehand.
- By allowing the pre-review, it likely makes the committee (stakeholder) meetings more efficient in developing the rule text.
- They've provided tips that focused text in the draft rule, helped remove superfluous language, and given us the opportunity to explain "why" we're making a rule change when that reason is not often carried forward during the rule making process. The advice from the staff attorneys has been really helpful in improving a rule that already meets our needs as the regulatory agency, and in streamlining the rule adoption process once we've gotten to the RRC.
- All feedback on rules is helpful. Everyone seems to have a slightly different perspective and the vetting is helpful to put us in the best possible position when we present to the Commission for the Notice of Text.
- Pre-reviews identify issues of concern or unclear items in rules that might potentially rise to the level of a staff opinion when the rules are later submitted as a permanent rule for the RRC. By having these items identified while the rules are in the rule draft infancy stage, it allows the opportunity to fix all the concerns identified by the pre-review prior to the Notice of Text submission, rather than be surprised following the Permanent Rule submission by the receipt of numerous pages of staff attorney technical changes and objections that has the potential for a negative effect by delaying the rules' effective date and requiring a copious amount of staff time equating to an unplanned state cost.
- In the past, pre-reviews have allowed the opportunity for additional consultation, in-person or by teleconference, with the RRC staff attorneys to discuss the comments and concerns received if feedback is unclear and to assist with developing rule text to satisfy the concern identified. This has helped to develop the best rule possible for the citizens of NC. Oftentimes staff drafting rules are not attorneys and they draft rule text infrequently. They also have other duties besides that of rulemaking tasks. There is a certain lingo and finesse for writing rules and although someone can use the Rules Style Guide for

assistance, it helps immensely to have the opportunity to consult with the expert RRC staff attorneys for guidance in writing rules.

- For agencies working with stakeholder groups and committees drafting rules, the helpful feedback is shared so they are aware of RRC's concerns to develop clear and concise rules to promote the health and safety of the regulated entities. Receiving a review of the rules at the end of the process could cause confusion and distrust amongst our stakeholder groups.
- Pre-reviews are necessary at beginning of the re-adoption process as it helps to ensure statutory authority. Ensuring authority at the beginning of the process alleviates any unforeseen obstacles before an enormous amount of work is done to get the rule re-adopted. Knowing statutory authority is lacking from the beginning allows us to make adjustments early on to prevent loss of a rule. Receiving an objection for statutory authority requires a lot more work on our section on the backend.
- The feedback provided ensures that our rule language is acceptable by the RRC by having clear and unambiguous rules.
- We agree with the RRC's mission to review the rule for authority, clarity, and necessity and feel that this process of pre-review that was initiated years ago should remain to promote a supportive and effective rulemaking process.

Question 2: What factors should the staff attorney consider when not accepting poor quality pre-reviews?

- Poor spelling, the draft language is not in the appropriate format, the deadline to submit for pre-review is not met.
- It's understood the staff attorneys do not write the rules for us so maybe that's something that they need to emphasize for submissions for pre-reviews.
- Require agencies to review rules according to the Style Guide and submit an attestation this has been done before submission. Reject those that have not done this.
- If the rule looks like it did not have any input from within the Agency, for revisions according to the Style Guide, no need for them to waste their time.
- Cannot assume the rule was not looked at if little to no changes were made to the rule. In our agency, the rules are always looked at. Sometimes we propose no changes to a readoption. Oftentimes staff drafting rules are not attorneys and they draft rule text infrequently so they may not know what to change. They also have other duties besides that of rulemaking tasks. What they think looks like a "good" rule is not according to RRC standards. Perhaps some attestation that the rule was looked at before submission for the pre-review with reasons for the pre-review, and when the pre-review is needed back (like when it is anticipated the rule is going to the rule making authority for approval).
- Set minimum requirements for things to be amended in a rule before it is submitted such as: set up correctly with correct intro statement, all "which" changed to "that," all GS & addresses and websites checked to make sure they are still valid and update if needed, Hx note statute GS for accuracy, any rules cited in rule check if still valid and if not change and same with any agency names etc, and the biggest: commas. Please don't say the "Oxford comma." Many people are not familiar with that term, or if you do say it put an

explanation what it is. And of course, it must be formatted with the strikethrough and underline. And an attestation it has been reviewed. If those things not checked, send the rule back. As humans, we all miss things from time to time, so you'll have to accept a few omissions of items; however, if an agency is repeatedly submitting rules without these basic things, then refuse to accept the rules.

- Perhaps dedicate one staff attorney to conduct pre-reviews per month. And either rotate it every so often or keep that person on pre-reviews as their predominate job duty and lighten their RRC load. Years ago, comments were received from only one staff attorney, either Bobby or Joe, they were not conducted by a team approach. This lessened the time it took for an agency to get the pre-review comments back. Yes, sometimes there was a discrepancy between what one of them said and the technical change received with the permanent rule submission but that same risk can happen now.
- Staff attorneys that continue to receive rules of poor quality, should consider whether or not the rule follows the requirements as required by the APA as found in 150B-19.1(a) Requirements for agencies in the rule-making process.
- It would be helpful for the RCC to outline rule examples submitted of poor quality or possibly provide a training of various requirements that must be met to avoid completely removing the pre-review process.

Burgos, Alexander N

From: Anna Choi <Anna@ncl-law.com>
Sent: Thursday, July 28, 2022 12:06 PM
To: Burgos, Alexander N
Subject: [External] FW: Rules Review Commission - Seeking Comments on Pre-Reviews
Attachments: ATT00001.txt

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Alex,
Thank you – and thanks to Ashley and the RRC – for the opportunity to respond. I serve as the rulemaking coordinator for one occupational licensing board and counsel to several more who regularly engage my services regarding rule drafting and the rulemaking process. As you are also aware, I also served as a member of the RRC for nine years. The opinions expressed below are my own.

The pre-review process is vital to me and my clients for several reasons:

- It gives us an opportunity to identify, discuss and fix issues identified by RRC counsel in a relaxed way (without any impending deadline), rather than scrambling at the end of the process when rules have been filed with RRC and are awaiting review at the next RRC meeting. Although I am aware of rulemaking requirements (formatting, etc.), often what is “clear and unambiguous” to me and the agency is not as clear to RRC counsel. Thus, pre-review provides for an opportunity to address counsel’s concerns at the beginning of the process, rather than at the end.
- By addressing concerns before filing a notice of text, rules that have gone through the pre-review process often require very few technical corrections at the end of the process. This is extremely helpful with workload management, both for myself and Board staff whose expertise is required when there are questions related to subject matter of the rules.
- I acknowledge that if technical corrections cannot be resolved prior to the scheduled RRC meeting, rulemaking agencies can request extensions of time. However, the chosen effective date for many rules that I draft and file is often significant (and one that the rulemaking agency doesn’t want to extend) due to issues related to continuing education deadlines license renewal deadlines, etc. Thus, when the agency starts the rulemaking process with a specific effective date, they often want to stick with that date whenever possible. As such, pre-review gives my clients the opportunity to file a rule that will have very few technical corrections at the end of the rulemaking process.
- Though I have been involved with rulemaking for many years, many of the appointed board members of my licensing board clients are less familiar with the process and requirements. Thus, pre-review provides the opportunity for these rules to be reviewed ahead of time and provides an opportunity to educate board members regarding the rule drafting process and the requirements set forth in Art. 2A, G.S. 150B.

Thank you again.

Anna Baird Choi
Nichols, Choi & Lee, PLLC
4700 Homewood Court, Suite 220
Raleigh, NC 27609
www.ncl-law.com

Burgos, Alexander N

Subject: FW: Updated Form and Pre-Review Comments
Attachments: Form 0500 for Temporary Rule August 2022.pdf; ATT00001.txt

From: Reagan, Walker <Walker.Reagan@abc.nc.gov>
Sent: Wednesday, September 7, 2022 3:32 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Metz, Renee <renee.metz@abc.nc.gov>; Carter-Coley, Stacey <Stacey.Carter-Coley@abc.nc.gov>
Subject: FW: Updated Form and Pre-Review Comments

Thank you for asking for comments from rulemaking coordinators about possible changes to the pre-review rules process.

Pre-reviews are very helpful.

I have found this process to be extremely helpful to me as a rulemaking coordinator, as well as the ABC Commission as a whole. I would be very sad if pre-review was no longer offered and believe it would make my job more time consuming and the ABC Commission's rulemaking process much more complicated, not just with regards to the substantive issues that need to be decided on and addressed, but for the drafting and adoption of technical corrections and changes that are non-substantive. Having the opportunity to get RRC staff feedback on rule drafts before proposal and publication is extremely helpful in making sure that the rules are drafted technically correct, that the language in the rule will be clear to the regulated or benefited public, and that the rules will likely satisfy the statutory criteria the RRC is charged with applying for its reviewing and approving.

The ABC Commission has traditionally preferred to have its rules worked out with interested parties and technically correct before the rules are proposed whenever possible. We diligently reach out to our interested parties for their comments and suggestions and try as much as possible to answer any issues or concerns they may have with the draft before we formally roll it out. On occasion we are not able to satisfy their requests because we are concerned that the language they proposed will not satisfy the RRC's statutory basis for review. It is helpful to have those issues flushed out in advance and explained to interested parties in order to draft language that will satisfy the statutory requirements as well as the interested party's concerns. Getting and addressing a RRC concern after the rules have been published and adopted makes the process much more complicated and time consuming, and possibly less transparent to the regulated parties when non-substantive changes are made after the rules have been adopted.

Another benefit to pre-review is that the RRC staff come at the rule drafts from with a clearer, broader, and more unbiased perspective and are better able to read draft rules from the perspective of how the rules will be read by the public. As part of my rulemaking process, I find myself focusing and concentrating on the changes that are needed to address the present issues at hand. I don't tend to focus on those parts of rules that are not directly related to the issues at hand. But the RRC staff may spot an issue that if I had looked at the entire rule from a less focused perspective I would have realized other parts of the rule needed to be addressed as well. I find myself focusing so much down in the weeds on the language in controversy that I am often blind to the broader issues that may need addressing that the RRC staff are so good at spotting and addressing. I also tend to focus on the rules directly at hand and am not as good as spotting collateral rules that may need to be addressed based on the primary rule being change. The RRC staff is better at spotting these issues as well.

For new rulemaking coordinators, or coordinators from smaller agencies who do rulemaking less frequently, there is a learning and relearning curve to drafting rules correctly. Having the opportunity to get feedback from the RRC legal staff is very helpful to these coordinators, both from a learning perspective as well as being updated and refreshed on the

process and standards. This opportunity for a more informal interaction with the RRC staff goes a long way to help make the rules better and the processes smoother, helps rulemaking coordinators improve their work, and makes the process operate more smoothly for everyone interested and involved.

I would think that pre-reviews also make the workload and process easier for the RRC staff, and maybe the Rules Review Commission as well, because it helps streamline the formal review and approval process which occurs over a much shorter period of time than the time available in the earlier stages of the rulemaking process, and allows RRC staff and the Rules Review Commission to focus on the substantive legal issues, not the technical and wording issues that can be addressed more efficiently at the staff level.

Factors for not accepting “poor quality” rules for pre-reviews.

Having only had the perspective of my own work for my five years in rulemaking, I am not sure I am the best judge of what would be considered “poor quality” compared to “good or acceptable quality”. Obviously I would think the RRC staff would be in the best position to judge what this term might mean and what criteria should be applied. I have rarely had a rule, or set of rules, where the RRC staff did not suggest technical corrections or clearer language in a pre-review. The RRC staff has been so good at spotting things I miss that I am often concerned when I get a reviewed rule back without comment or suggestion because I feel sure the RRC staff must have missed some error I have made. I think my draft rules for pre-review are of pretty good quality but I have nothing to really compare my work against.

That said, I assume there are some minimum standards that should be met before even the RRC staff can make corrections vs. write the rule themselves. Here are some possible considerations:

1. Has the agency identified, analyzed, and included the statutory authority under which the rule is being proposed?
2. Is the rule written in sufficient detail that the regulated public could know how they might be affected and what they need to do to comply with the rule?
3. Are “ly” words avoided, defined, or the criteria for applying discretion in interpreting set out in the rule?
4. Have the tenets of the Administrative Rule Style Guide been substantially complied with as to formatting, style, word selection, terminology, and phrase usage? The Style Guide has been an extremely helpful tool, particularly for a novice or infrequent rulemaking coordinator. I treat it as my drafting bible to answer the questions I know I should know the answer to but can’t remember. It would not be unreasonable to expect minimum compliance with those standards that are clearly set out before a pre-review is conducted.

I believe that having some published criteria or minimum standards that the RRC staff would apply in determining whether or not to accept pre-review based on the quality of the rule draft would be very helpful in guiding the rulemaking coordinator to know what they are expected to do before requesting a pre-review. I would think that criteria alone would be helpful to improve the quality of the draft rules submitted for pre-review.

Summary.

I hope the Rule Review Commission will be able to find a way for pre-reviews to be continued. I would hate to think how much more complicated, difficult, and inefficient my work would be for the ABC Commission without the benefit of this feedback. In many ways, I consider the pre-review feedback one of the most important aspects of my attempt to make my rulemaking process as efficient and effective as possible. I have seen a real negative difference in the rulemaking processes I have been involved with during those times in the past when pre-reviews have been suspended due to staff vacancies and a larger number of rules that had to be processed for Commission consideration.

I am not asking to speak to the Rules Review Commission on this subject but would be happy to answer any additional questions or provide any other comments if asked.

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anna@ncl-law.com

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From: rulers-bounces@lists.ncmail.net <rulers-bounces@lists.ncmail.net> **On Behalf Of** Snyder, Ashley B
Sent: Monday, July 25, 2022 11:27 AM
To: OAH.rulers <rulers@lists.ncmail.net>
Subject: [Rulers] Rules Review Commission - Seeking Comments on Pre-Reviews

Good morning Rulemaking Coordinators,

At the July Rules Review Commission meeting, the Commission discussed updating the pre-review process. Pre-reviews are a voluntary service provided to agencies where RRC staff attorneys review draft rules prior to filing. Over time, staff attorneys have been receiving draft rules of a lesser quality, causing a drain on staff time and resources. The Commission discussed continuing pre-reviews, but suggested staff attorneys stop reviewing submissions of a poor quality. The Commission discussed setting parameters to guide staff attorneys on when to accept a pre-review submission. The Commission wants to be deliberate about any changes to the process and will be soliciting input and having discussions on this topic over the coming months.

The Commission is seeking input from agencies on (1) whether and why you find pre-reviews helpful and (2) if staff attorneys stop accepting pre-reviews of rules of poor quality, what factors should the staff attorney consider when not accepting a pre-review? Please direct all written comments and any requests to speak to Alex Burgos at alex.burgos@oah.nc.gov by Friday, September 9. The Commission will consider the comments and recognize any speakers at its September 15 meeting. The Commission will be discussing pre-reviews further in August but is kindly asking you hold requests to speak until the September meeting because we anticipate a lengthy agenda in August.

Thank you,

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

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Burgos, Alexander N

From: becky ncbrtl.org <becky@ncbrtl.org>
Sent: Tuesday, July 26, 2022 10:03 AM
To: Burgos, Alexander N
Subject: [External] Rules Process comments

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Alex,
I am sure that I am in the category of those “less than quality submissions” so perhaps my comments would be helpful.
-I would find the rule process helpful if it were listed in Step 1 Step 2 etc. RRC flow charts, dates are daunting and confusing at times.
-Our Board infrequently submit Rules so it is not an automatic process for us. RRC staff is incredibly helpful.
-Our Board does not have a staff attorney to assist in this process so perhaps if there were one identified to assist that would be helpful. I find that no matter what amendments are submitted, the staff attorney at that time, wants changes despite the Rule has been that way for years. So, RRC staff review will always catch and want changes for older Rules and as I stated earlier, our Rules are changed very infrequently.
Hopefully these may shed light from our perspective.
Becky

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Burgos, Alexander N

Subject: FW: [External] RE: [Rulers] Rules Review Commission - Seeking Comments on Pre-Reviews

From: cdiehl@ncalb.org <cdiehl@ncalb.org>

Sent: Monday, July 25, 2022 4:09 PM

To: alex.burgos@oah.nc.gov

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

Subject: [External] RE: [Rulers] Rules Review Commission - Seeking Comments on Pre-Reviews

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Good afternoon, Alex.

I am responding to the message below, sent today by Ms. Snyder.

1. Unequivocally, YES. Pre-reviews are critical and very much appreciated. I shudder to think how difficult this agency's recent complete rules overhaul (July 2020 readoption) would have been without the Pre-review assistance I was graciously afforded. I worked very hard throughout, but I needed help and am ever grateful to have received it. I am less concerned about future rules activity or even future readoptions because this agency's rules are in such great shape now, thanks in huge part to the assistance received from RRC staff.
2. As a voluntary service, Pre-reviews are a gift, so whatever standard the RRC and its staff want to set for submissions is reasonable. Just please at least continue to provide training and online guidelines for coordinators to use. Some affected agencies are large and thus are able to employ full-time or most-time rules coordinators, along with support staff. Other agencies have small staffs with very diverse areas of responsibility. The agency I work for has two full-time employees and no part-time employees. Though all rules coordinators should perform competently, the specialization disparity should be noted.

Thank you for providing training and resources. Thank you for voluntarily providing pre-review assistance. And thank you for soliciting my thoughts.

Be well,

Charlie

Charles F. Diehl
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State of North Carolina
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

ANN B. WALL
General Counsel

By Hand Delivery

Jeanette Doran, Chair
Andrew P. Atkins, Vice Chair
Robert A. Bryan, Second Vice Chair

Rules Review Commission
1711 New Hope Church Road
Raleigh, North Carolina 27609

July 19, 2022

Re: Pre-Review

Dear Chair Doran, Vice Chairs Atkins and Bryan:

The agenda for your July 21, 2022 RRC meeting suggests the possibility of elimination of pre-reviews of draft rules by your staff attorneys. I have been involved with the APA since 1977. I write to you from the perspective of someone who has almost always operated in the APA rulemaking process as a legal representative of small government agencies. I write to encourage you to continue pre-reviews, at least for the small agencies with limited access to legal expertise.

By way of background, I think I drafted my first administrative rule in the mid-1970s. At that time, I was a law student working with the NC Department of Labor. I later returned to State government after eight and a half years as a federal litigator. In the 1990s, I again drafted rules for the Department of Labor. As an attorney in the Department of Justice from 2001-2006, I advised another agency client with regard to drafts of rules for its oversight commission. And, subsequently, as General Counsel for the Department of the Secretary of State, I have drafted rules for significant, newly-enacted laws, as well as amended existing rules.

Most of my APA rulemaking career has been with small agencies. In my present position, our department operates with lean resources; I have neither a paralegal nor other clerical support assigned to assist me full-time.

I have also chaired both the North Carolina Bar Association Administrative Law and Government and Public Sector Sections, where rulemaking has been a frequent topic of discussion.

I have considerable first-hand knowledge of the quality of the attorneys employed by OAH to represent the RRC over the years. As far as I have observed, they have professionally advised agencies, the public, and the RRC itself, without bias. Based on my experience, they have strictly adhered to the requirements of the APA and associated OAH and RRC rules and procedures.

Pre-review comments by RRC staff attorneys have been a godsend over the years for me, my clients, and the public (even when I disagreed with their comments). On more than one occasion, immersed in days and months of drafting rules with departmental experts, I have drafted a proposed rule that we were sure was necessary and met APA requirements. Then, when I submitted it to the RRC attorneys for pre-review, their response did not support that conclusion. In those instances, their pre-review helped me more effectively identify a better path forward, saving both time and money. I have learned a great deal over the years from RRC attorney pre-review comments.

Pre-review by RRC staff attorneys adds real value to rulemaking for both sets of RRC customers – the agencies and the public we all serve:

- * Pre-review comments have helped me identify what people new to a regulated field may not initially recognize (and that we thought we had drafted clearly).
- * Pre-reviews have enabled revisions to draft proposed rules to address non-substantive issues before publication.
 - * This means that the public would not be distracted by those inadvertent mistakes, but can instead focus on the actual intended substance of a proposed rule. This saves them time, and positions them to more effectively articulate their bottom line interests.
 - * This means that with non-substantive and inadvertent mistakes fixed in draft rules pre-publication, the number of technical corrections in the published and later-adopted rules are fewer. This should mean that RRC staff attorneys' technical corrections review of rules submitted to RRC should be reduced, allowing everyone to instead focus on the RRC's other review responsibilities.

One might ask: Why do proposed rules need review before publication? The answers are, of course, going to vary. Here are but a few:

- * In the agencies for which I have done rulemaking, I have usually been the only person with any expertise on the rulemaking process. Sometimes, I needed the RRC attorney pre-review comments to educate agency employees unfamiliar with the process.
- * Generally, experts use words and phrases common to a field of endeavor or profession. As one example, our securities employees – and apparently the entire industry – regularly use the term “broker-dealer,” the term they asked me to use in a proposed rule draft. It was only through pre-review that I realized the term was not the one that should be used, and that I was able to make timely clarifications to the draft rules.

* Sometimes, we interpret jurisdiction differently. On one occasion, rules I was drafting impacted another agency's domain, but we thought we had clear authority for the draft rules. It was at a pre-review discussion that RRC attorneys said they would have to object to a particular rule as they disagreed with our conclusion regarding jurisdiction. It was that pre-review comment that enabled me to withdraw the proposed rule pre-publication. This avoided extra work for our staff, for the RRC staff attorneys who would have otherwise had to write the objection recommendation, for RRC Commissioners, and for the other agency.

* Having known many rulemaking coordinators for other departments, boards, and commissions, I am confident in saying that many are not attorneys. Smaller state government entities may not have attorneys available to review their rules or the attorneys may even lack APA expertise. And for many small agencies, employee turnover can lead to errors as new coordinators come in between the times when the Rulemaking 101 class is offered by OAH. And, lacking that formal instruction, they commit otherwise avoidable errors.

In sum, I value and rely on the expertise of RRC staff attorneys. I am self-aware enough to realize that they often recognize what I am too close to the process to see. Finally, in the context of smaller agencies with limited access to legal resources, their pre-reviews are an integral and important part of the rulemaking process that should not be eliminated.

I thank you for your consideration of my comments.

Regards,



Ann B. Wall
General Counsel

Cc: Wayne Ronald Boyles, III, Commissioner
Barbara A. Jackson, Commissioner
Jeffrey T. Hyde, Commissioner
Randy O. Overton, Commissioner
Robert A. Rucho, Commissioner
Wm. Paul Powell, Jr., Commissioner
Margaret Currin, Commissioner