

1 14B NCAC 09 .0303 is readopted as published in 34:14 NCR 1300 but is now being repealed as follows:

2
3 **14B NCAC 09 .0303 MEETINGS OF THE COMMISSION**

4 ~~(a) The Chairman of the commission shall preside at all meetings. In the absence of the Chairman, the vice chairman~~
5 ~~shall preside.~~

6 ~~(b) At the direction of the Chairman, the Director may poll the members of the Commission by telephone regarding~~
7 ~~any matter requiring the Commission's attention at such times as it is not practicable for the members to meet as a~~
8 ~~body.~~

9 ~~(c) Public notice of a meeting of the Commission shall be provided as required by law. Any matter to be considered~~
10 ~~by the Commission shall be docketed not less than 15 days prior to the date the Commission is scheduled to meet.~~

11 ~~(d) Any member of the Commission may be represented by proxy at any meeting of the Commission, having first~~
12 ~~notified the Chairman of such representation.~~

13
14 *History Note: Authority G.S. 15B-3; 15B-6; S.L. 1987, c. 819, s. 35;*

15 *Transferred from 14A NCAC 11 .0504 Eff. June 1, 2013.*

16 *Repealed Eff. November 1, 2020.*

1 14B NCAC 09 .0304 is readopted as published in 34:14 NCR 1300 but is now being repealed as follows:

2
3 **14B NCAC 09 .0304 CONTESTED CASES**

4 ~~(a) A claimant who is not satisfied with a decision by the Director or the Commission may appeal that decision by~~
5 ~~writing to the Office of Administrative Hearings. A copy of the appeal should be sent to the Commission.~~

6 ~~(b) After the Director or the Commission receives the recommended decision from the Office of Administrative~~
7 ~~Hearings, each party shall be mailed a notice providing at least 15 days to file exceptions to the recommended decision~~
8 ~~and to present written arguments to the Director or to the Commission.~~

9 ~~(c) A written statement of the final decision of the Director shall be mailed to each party within 15 days of the time for~~
10 ~~receiving the written exceptions. A written statement of the final decision of the Commission shall be mailed by the~~
11 ~~Director within 15 days of the Commission meeting during which the contested case is considered.~~

12
13 *History Note: Authority G.S. 15B-6; 15B-12; 150B, Article 3; S.L. 1987, c. 819, s. 35;*
14 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*
15 *ARRC Objection Eff. January 21, 1988;*
16 *Eff. April 1, 1988;*
17 *Transferred from 14A NCAC 11 .0505 Eff. June 1, 2013;*
18 *Repealed Eff. November 1, 2020.*
19



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

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 18, 2020

Will Polk
Rulemaking Coordinator, Crime Victims Compensation Commission
Sent via email only: will.polk@ncdps.gov

Re: Objection to Rules 14B NCAC 09 .0303 and .0304; Extension of the Period of Review for Rules 14B NCAC 09 .0301, .0302, and .0305

Dear Mr. Polk:

At its June meeting, the Rules Review Commission objected to 14B NCAC 09 .0303 and .0304 in accordance with G.S. 150B-21.10.

The Commission objected to 14B NCAC 09 .0303 for lack of statutory authority, clarity, and necessity. The agency did not provide authority for Paragraph (b), which allows the Director to “poll the members of the Commission regarding any matter requiring the Commission’s attention.” (emphasis added). G.S. 15B-3(e) states “a majority of the Commission constitutes a quorum to transact business.” Further, North Carolina’s Open Meetings Laws provide “. . . each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.” G.S. 143-318.10(a). As a result, the agency lacks statutory authority to make decisions regarding “any matter” without a quorum present at an open meeting.

Paragraph (b) allows the Director to poll Commission members “at such times as it is not practicable for the members to meet as a body.” The Rule does not clarify under what circumstances it is considered “not practicable” for the Commission to meet. Paragraph (b) is therefore ambiguous as written.

Paragraphs (a) and (d) govern conduct of Commission members at meetings. These statements concern only the internal management of the agency and do not meet the definition of a “Rule.” G.S. 150B-2(8a)(a). Therefore, Paragraphs (a) and (d) are unnecessary. The first sentence of Paragraph (c) refers to public notice requirements established in statute for Commission meetings and is also unnecessary.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
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Judges and
Assistants
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fax: 919/431-3100

Clerk’s Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
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Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

The Commission objected to 14B NCAC 09 .0304 for lack of statutory authority and necessity. Paragraphs (b) and (c) follow a process that allowed agencies to issue a “final decision” after a “recommended decision” from the Office of Administrative Hearings in contested cases. This process of appealing agency decisions was changed in 2012 by S.L. 2012-187. The Administrative Procedure Act no longer allows the Crime Victims Compensation Commission to review decisions from Administrative Law Judges. Additionally, the Commission objected for lack of necessity because G.S. 15B-10(d) and G.S. 150B, Article 3 provide the process for commencing a contested case.

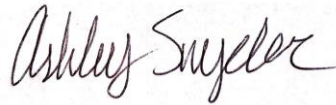
Please respond to these objections in accordance with the provisions of G.S. 150B-21.12.

At its meeting, the Rules Review Commission also extended the period of review for Rules 14B NCAC 09 .0301, .0302, and .0305. The Commission did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rule or call a public hearing on the same within 70 days.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Ashley Snyder", is written over a light blue rectangular background.

Ashley Snyder
Commission Counsel

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0303

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☒ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of statutory authority, clarity, and necessity. The agency has not provided authority for Paragraph (b), which allows the Director to "poll the members of the Commission regarding any matter requiring the Commission's attention." (emphasis added). G.S. 15B-3(e) states "a majority of the Commission constitutes a quorum to transact business." Further, North Carolina's Open Meetings Laws provide ". . . each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting." G.S. 143-318.10(a). Staff has not found statutory authority for the Commission to make decisions regarding "any matter" without a quorum present at an open meeting.

Paragraph (b) allows the Director to poll Commission members "at such times as it is not practicable for the members to meet as a body." The Rule does not clarify under what circumstances it is considered "not practicable" for the Commission to meet. Paragraph (b) is ambiguous as written.

Paragraphs (a) and (d) govern conduct of Commission members at meetings. These statements concern only the internal management of the agency and do not meet the definition of a "Rule." G.S. 150B-2(8a)(a). Therefore, Paragraphs (a) and (d) are unnecessary.

The first sentence of Paragraph (c) refers to public notice requirements established in statute for Commission meetings and is therefore unnecessary.

Ashley Snyder
Commission Counsel

§ 15B-3. Crime Victims Compensation Commission.

(a) There is established the Crime Victims Compensation Commission of the Department of Public Safety, consisting of seven members as follows:

- (1) One member to be appointed by the Governor;
- (2) One member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate under G.S. 120-121;
- (3) One member to be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives under G.S. 120-121;
- (4) The Attorney General or the Attorney General's designee;
- (5) The Secretary of the Department of Public Safety or the Secretary's designee; and
- (6) Two members to be appointed by the Secretary of the Department of Public Safety.

...

(e) A majority of the Commission constitutes a quorum to transact business.

(f) Members shall receive compensation and reimbursement for expenses as provided in G.S. 138-5.

...

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly. (1979, c. 655, s. 1.)

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

...

1 14B NCAC 09 .0303 is readopted as published in xx:xx NCR:

2 **14B NCAC 09 .0303 MEETINGS OF THE COMMISSION**

3 (a) The Chairman of the commission shall preside at all meetings. In the absence of the Chairman, the vice-
4 chairman shall preside.

5 (b) At the direction of the Chairman, the Director may poll the members of the Commission by telephone regarding
6 any matter requiring the Commission's attention at such times as it is not practicable for the members to meet as a
7 body.

8 (c) Public notice of a meeting of the Commission shall be provided as required by law. Any matter to be considered
9 by the Commission shall be docketed not less than 15 days prior to the date the Commission is scheduled to meet.

10 (d) Any member of the Commission may be represented by proxy at any meeting of the Commission, having first
11 notified the Chairman of such representation.

12
13 *History Note: Authority G.S. 15B-3; 15B-6; S.L. 1987, c. 819, s. 35;*

14 *Temporary Rule Eff. November 24, 1987 For a Period of 171 Days to Expire on May 13, 1988;*
15 *Eff. April 1, 1988;*

16 *Transferred from 14A NCAC 11 .0504 Eff. June 1, 2013.*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Crime Victims Compensation Commission

RULE CITATION: 14B NCAC 09 .0304

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

Staff recommends objection for lack of statutory authority and necessity. Paragraphs (b) and (c) follow a process that allowed agencies to issue a "final decision" after a "recommended decision" from the Office of Administrative Hearings in contested cases. This process of appealing agency decisions was changed in 2012 by S.L. 2012-187. The Administrative Procedure Act no longer allows the Crime Victims Compensation Commission to review decisions from Administrative Law Judges. Staff therefore recommends objection for lack of statutory authority.

Staff also recommends objection for lack of necessity because G.S. 15B-10(d) and G.S. 150B, Article 3 provide the process for commencing a contested case.

§ 15B-10. Awarding claims.

...
(d) The Director shall send each claimant a written statement of a decision made under subsection (a) or (b) that gives the reasons for the decision. A claimant who is dissatisfied with a decision may commence a contested case under Article 3 of Chapter 150B of the General Statutes. (1983, c. 832, s. 1; 1987, c. 819, s. 16; 1991, c. 301, s. 1; 1999-269, s. 2; 2004-159, s. 1; 2009-354, s. 3.)

Ashley Snyder
Commission Counsel

1 14B NCAC 09 .0304 is readopted as published in xx:xx NCR:

2 **14B NCAC 09 .0304 CONTESTED CASES**

3 (a) A claimant who is not satisfied with a decision by the Director or the Commission may appeal that decision by
4 writing to the Office of Administrative Hearings. A copy of the appeal should be sent to the Commission.

5 (b) After the Director or the Commission receives the recommended decision from the Office of Administrative
6 Hearings, each party shall be mailed a notice providing at least 15 days to file exceptions to the recommended
7 decision and to present written arguments to the Director or to the Commission.

8 (c) A written statement of the final decision of the Director shall be mailed to each party within 15 days of the time
9 for receiving the written exceptions. A written statement of the final decision of the Commission shall be mailed by
10 the Director within 15 days of the Commission meeting during which the contested case is considered.

11
12 *History Note: Authority G.S. 15B-6; 15B-12; 150B, Article 3; S.L. 1987, c. 819, s. 35;*
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15 *Eff. April 1, 1988;*
16 *Transferred from 14A NCAC 11 .0505 Eff. June 1, 2013.*
17 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. April 1, 2020.*
18