

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: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0203

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:

The Commission published this Rule in the June 1, 2016 Register. A 60-day comment period would've ended on August 1, 2016. However, the Commission filed a Notice of Text stating the comment period would end August 15, 2016. G.S. 150B-21.2(f) states that an agency must accept comments for a period of at least 60 days; however, the agency is allowed to lengthen the comment period. The agency did so here, and submitted notice of a 75-day comment period. As such, the North Carolina Register, following the notice submitted by the agency, stated the comment period would end August 15, 2016.

The Commission adopted the Rule at its August 12, 2016 meeting. Therefore, the Rule was adopted before the close of the comment period set by the Commission and published in the NC Register. G.S. 150B-21.2(g) states, "An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed[.]"

Staff recommends the Commission object to the Rule, as it was not adopted in compliance with the Administrative Procedure Act because it was adopted by the agency prior to the close of the comment period.

Amanda J. Reeder
Commission Counsel
Issued August 28, 2016