September 15, 2011

Daniel E. Garner

316 W. Edenton Street

Raleigh, NC 27603

Re: 04 NCAC 16A .0301, .0302

Dear Mr. Garner:

At its September 15,2011 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0301 based on lack of statutory authority. In (a) the rule requires a petitioner to “possess such an interest in the question to be ruled on that the petitioner’s need to have such a ruling ... shall be apparent from the petition.”

G.S. 150B-4 sets out the only statutory requirement for the status of a person seeking a declaratory ruling. The person must be a “person aggrieved.” G.S. 150B-2(6) defines a “person aggrieved” as “any person ... directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.”

There is no authority cited for the agency’s changing this requirement. If that is not what is meant or intended by this rule, then the rule is unclear.

The Commission objected to Rule .0302 based on lack of statutory authority and ambiguity. There is no authority cited for the Commissioner to wait 60 days to deny a request for a declaratory ruling as set out in (a). G.S. 150B-4(a1) requires the Commissioner to grant or deny the request within 30 days of receiving the petition.

For the same reason as set out in the recommendation to object to Rule .0301 there is no authority to deny a request because the “petitioner does not ... possess sufficient interest in the question to be ruled on” as set out in (b)(4). If a petitioner is a “person aggrieved” under the APA then by definition they have “sufficient interest” to petition and the agency must deny the petition for some other reason.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s action, please let me know.

Sincerely,

Joseph J. DeLuca, Jr.

Commission Counsel

JJD:jbe