October 23, 2012

Abigail Hammond

Industrial Commission

4336 Mail Service Center

Raleigh, NC 27699-4336

Re: 04 NCAC 10B .0201, .0203, .0501

Dear Ms. Hammond:

At its October 18, 2012 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0201 due to lack of necessity. This rule repeats G.S. 143-300 and is thus unnecessary.

The Commission objected to Rule .0203 due to lack of statutory authority. G.S. 143-300 requires that the North Carolina Rules of Civil Procedure be followed in Tort Claim proceedings if they are not in conflict with the Tort Claims Act. Rule 17(b) of the Rules of Civil Procedure requires general and testamentary guardians to appear for infants and incompetents if they have any. By requiring the use of a guardian *ad litem*, the rule is not consistent with the statute and thus outside the authority of the agency.

The Commission objected to Rule .0501 due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement set by rule as required by G.S. 150B-19(6).

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,

Robert A. Bryan, Jr.

Commission Counsel

RAB:tdc