



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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October 23, 2012

Abigail Hammond
Industrial Commission
4336 Mail Service Center
Raleigh, NC 27699-4336

Re: 04 NCAC 10G .0105, .0107, .0108, .0110

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 .0105 due to ambiguity. This rule references 04 NCAC 10A .0802. The Commission objected to that rule due to lack of statutory authority. The reference to that rule makes this rule unclear.

The Commission objected to Rule .0107 due to ambiguity. In (b)(3), it is not clear what constitutes "good cause." The comparable rule of the Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions contains a definition of "good cause." These rules are required by statute to be substantially similar to those rules. It is not clear if the agency intends the same definition to apply or if some other definition applies.

The Commission objected to Rule .0108 due to ambiguity. In (a), it is not clear what constitutes "good cause" for the Commission to bar any person from holding himself out as a mediator, etc. There does not appear to be a comparable provision in the Mediated Settlement Conference rules. In (c), it is not clear what constitutes "good cause" for the failure of a mediator to appear. There does not appear to be a comparable provision in the Mediated Settlement Conference rules.

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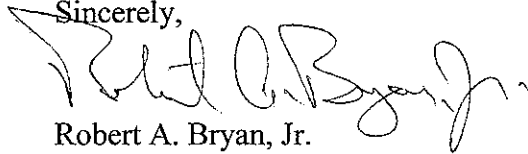
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The Commission objected to Rule .0110 due to lack of statutory authority. "In the interests of justice or to promote judicial economy" is not sufficient specific guideline for the agency to use in determining whether to waive or modify a requirement 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,

A handwritten signature in black ink, appearing to read "Robert A. Bryan, Jr.", written in a cursive style.

Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc