

**RULES REVIEW COMMISSION MEETING  
MINUTES  
February 20, 2014**

The Rules Review Commission met on Thursday, February 20, 2014, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Anna Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jay Hemphill, Stephanie Simpson, Faylene Whitaker and Ralph Walker.

Staff members present were: Commission Counsels Amanda Reeder, Abigail Hammond and Joe DeLuca; and Molly Masich, Dana Vojtko, Julie Brincefield, and Tammara Chalmers.

The meeting was called to order at 10:03 a.m. with Chairman Currin presiding. She read the notice required by NCGS 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts.

**APPROVAL OF MINUTES**

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the January 16, 2014 meeting. There were none and the minutes were approved as distributed.

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the January 31, 2014 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

**NC Rural Electrification Authority**

04 NCAC 08 .0101, .0102, .0107, .0108, .0109, .0110, .0111, .0112, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0301, .0302, .0303, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0401, .0404.

The Commission unanimously approved all rules except Rules .0101 and .0109. The Commission continued its objection to both rules finding the agency lacks statutory authority to investigate member complaints against Telephone Membership Corporations.

The Commission additionally objected to Rule .0109, finding the agency has no authority to set the process for arbitration outside of rulemaking as proposed in Item (6).

Frances Liles with the agency and Lareena Phillips with the NC DOJ, agency counsel, addressed the Commission.

The agency presented a new rule, proposed 04 NCAC 08 .0313, to satisfy the Commission's objection to Item (6) in Rule .0109. Citing to Rule 26 NCAC 05 .0108(a), the Commission declined to review 04 NCAC 08 .0313 at the February meeting, but will review it at the March meeting.

**Child Care Commission**

All rules were unanimously approved.

Alexi Gruber with the NC DOJ, agency counsel, addressed the Commission.

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27G .0504 - The Commission for MH/DD/SAS is required to respond within ten days of its next regularly scheduled meeting, which is February 27, 2014. There was no action for the Commission to take at the meeting.

**Commission for Mental Health, Developmental Disabilities and Substance Abuse Services**

10A NCAC 27G .6702; 27H .0201, .0202, .0203, .0204, .0205, .0206 and .0207: The Commission for MH/DD/SAS has not responded. There was no action for the Commission to take at the meeting.

**Sheriffs' Education and Training Standards Commission**

12 NCAC 10B .1901 was unanimously approved.

**Hearing Aid Dealers and Fitters Board**

21 NCAC 22J .0116 was unanimously approved as a temporary rule based upon the revised findings of need provided by the Board pursuant to G.S. 150B-21.1(b1).

Pursuant to G.S. 150B-21.1(b2) and at the request of the Board, the following rules are to be returned to the Board: Rules 21 NCAC 22F .0113, .0114, .0115, .0116, .0301, .0302, .0303, .0304, .0305, and .0306.

Catherine Jorgenson with the agency addressed the Commission.

**Board of Speech and Language Pathologists**

All rules were unanimously approved.

**State Human Resources Commission**

The agency has not submitted any rewritten rules and there is no action for the Commission to take at the meeting.

**LOG OF FILINGS**

Chairman Currin presided over the review of the log of permanent rules.

**State Board of Education**

16 NCAC 06D .0508 and 06G .0504 were withdrawn at the request of the agency. Therefore, there was no action for the Commission to take.

Katie Cornetto with the agency addressed the Commission.

Commissioner Simpson asked staff about the process agencies use to withdraw rules. Staff referred to Rule 26 NCAC 05 .0107. Commissioner Simpson asked to add a discussion about that process to the business portion of the agenda.

**Cemetery Commission**

The Commission objected to all rules based on ambiguity and based on failure to complete the technical corrections as requested to clarify ambiguous language.

**Board of Pharmacy**

21 NCAC 46 .3501 was approved unanimously.

**Examiners of Board of Plumbing, Heating and Fire Sprinkler Contractors**

All rules were approved unanimously except for Rule 21 NCAC 50 .0301. The Commission objected based on lack of statutory authority. The Commission found that the Board has no authority to waive the requirement that applicants for licensure take an exam as set forth in Paragraph (l) of the Rule.

**Board of Licensed Professional Counselors**

All rules were withdrawn at the request of the agency. Therefore, there was no action for the Commission to take at the meeting.

### **Building Code Council**

The amendments to the N.C. Fire, Plumbing, and Residential codes were unanimously approved and the repeals of two of the N.C. Residential Code provisions were unanimously approved.

The Commission extended the period of review on the 2015 N.C. Existing Building Code adoption in order to give the agency time to respond to the comments it received from RRC counsel concerning the adoption of this code.

The Commission recessed at 12 p.m. and reconvened at 12:10 p.m.

Commissioner Doran was not present during the discussion or vote for the remaining rules.

### **TEMPORARY RULES**

Chairman Currin presided over the review of the log of temporary rules

### **Department of Environment and Natural Resources**

Commissioner Walker was not present during the discussion or vote for this rule.

15A NCAC 28 .0302 was approved unanimously.

### **State Board of Education**

Commissioner Walker was not present during the discussion or vote for this rule.

The Commission declined to approve Rule 16 NCAC 06C .0701 based on failure to comply with the Administrative Procedure Act (APA) in accordance with G.S. 150B-21.1(a) and 150B-21.9.

The findings of need for the rule states that the temporary rule was required by the Session Law 2013-360, Section 9.6(e) that states the following:

**SECTION 9.6.(e)** The State Board of Education shall develop by rule as provided in Article 2A of Chapter 150B of the General Statutes a model contract for use by local boards of education in awarding teacher contracts. The State Board may adopt a temporary rule for a model contract as provided in G.S. 150B-21.1 to provide a contract to local boards of education no later than January 1, 2014, but shall replace the temporary rule with a permanent rule as soon as practicable.

The Commission declined to approve Rule 16 NCAC 06C .0701 because the adoption date was after January 1, 2014 and therefore, the N.C. State Board of Education lacked the statutory authority for temporary rule making. Furthermore, the Commission expressed concerns that the temporary rule did not contain a model contract for use by local boards of education.

Jason Weber with the agency addressed the Commission.

### **State Human Resources Commission**

Commissioner Hemphill was not present for the discussion or vote for this and remaining rules.

The Commission unanimously objected to Rule 25 NCAC 01J .1310 based on ambiguity. The agency asserted that it is not the intent of the agency to dictate to an Administrative Law Judge what an ALJ may do in terms of the relief an ALJ may order but does intend to state what it believes is the available relief concerning the interest an agency may pay in settling a grievance. The Commission believes it is unclear whether the rule actually makes that distinction.

The Commission unanimously approved the temporary repeal of Rule 25 NCAC 01C .0202; the temporary amendment of 25 NCAC 01H .1103; and the temporary adoptions of 25 NCAC 01J .0617, .1308, .1309, and .1311.

#### **Office of Administrative Hearings**

Rule 26 NCAC 03 .0118 was approved unanimously.

Judge Julian Mann with the agency addressed the Commission.

#### **G.S. 150B-19.1(h) RRC CERTIFICATION**

Chairman Currin presided over the review of the log of RRC Certification.

#### **Commissioner of Agriculture**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 02 NCAC 52K .0301, .0401, and .0501.

#### **Criminal Justice Education and Training Standards Commission**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09B .0403 and 09E .0105.

#### **COMMISSION BUSINESS**

Chairman Currin opened the meeting for a public hearing on the proposed amendment to Rules 26 NCAC 05 .0105 and .0106 and the adoption of Rule 26 NCAC 05 .0211 at 2:20 p.m. Chairman Currin called on anyone present who wished to comment on or object to the rule actions as they were noticed in the NC Register. No one present offered a comment. The period to receive comments for Rules 26 NCAC 05 .0105 and .0106 will expire at 5:00 p.m., March 17, 2014. The period to receive comments for Rule 26 NCAC 05 .0211 will expire at 10 a.m., March 20, 2014. The Commission may vote on the adoption of all three rules at its regularly scheduled meeting in March.

The public hearing portion of the meeting closed at 2:24.

Staff informed the Commission that it had not received comments on Rules .0105 and .0106. The Commission received one written comment for Rule .0211 before the meeting from DENR, asking to move a few rules within the schedule. Staff informed the Commission that the comment will become part of the rulemaking record. Staff requested permission from the Commission to make the proposed change after the meeting and send the revised rule to interested persons. Commissioner Dunklin moved to allow staff to make this change following the meeting. The motion was unanimously approved.

The period to receive comments for Rules 26 NCAC 05 .0105 and .0106 will expire at 5:00 p.m., Monday, March 17, 2014. The period to receive comments for Rule 26 NCAC 05 .0211 will expire at 10:00 a.m., Thursday March 20, 2014.

The Commission considered proposed Rules 26 NCAC 05 .0201 - .0210. The Commission decided to postpone final action on these Rules until its March meeting to ensure the members had adequate time to review all comments and staff's proposed changes to the rules.

The Commission discussed amending Rule 26 NCAC .0107 to state that once an agency has filed a rule for RRC review, it cannot withdraw the rule; instead, all rules filed by the deadline will be reviewed by the Commission.

The Commission also discussed ensuring the members have sufficient time to review all materials before a meeting. The members looked at Rule 26 NCAC 05 .0108, which governs when rewritten

rules with technical changes incorporated are due. The Commission acknowledged that the Rule includes a waiver provision in Paragraph (e), which allows staff to extend the deadline for receiving the properly completed rules. The members, citing concerns about the increasing workload in the coming G.S. 150B-21.3A existing rule review process, instructed staff to grant these waivers only when the agency meets the requirements of the Rule. The Commission indicated it will discuss amending the Rule to remove or restrict the waiver provision.

The meeting adjourned at 2:50 p.m.

The next regularly scheduled meeting of the Commission is Thursday, March 20<sup>th</sup> at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings / Rules Division.

Respectfully Submitted,

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Julie Brincefield  
Administrative Assistant

Minutes approved by the Rules Review Commission:

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Margaret Currin, Chair

Rules Review Commission  
 Meeting  
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FEBRUARY 20, 2014

Name	Agency
Margaret Thrany	NC Board of Examiners for Speech Language Pathology & Audiology
Makela Kellars	Please Print Legibly
Jay [unclear]	Please Print Legibly
David Blalock	Please Print Legibly
Cynthia Pook	Please Print Legibly
Sandra Cooper	"
Nadia Lipp	NCCN
Jack Nichols	Allen, Pinnix & Nichols
Ann Well	Sec of State
Janice Davidson	NC DOR
BRAD IVES	NC DENR
Lareena J. Phillips	Counsel, NCREA
Curtis Aldendifer	NC REC
PATRICK BUFFIN	NC REC
Jay Campbell	NC DOR
John Allen	DCDEE
Shari Smith	NC DOJ
Lorie Pugh	NC DHHS - DCDEE
Julia Lohman	DOJ - Sheriff's Stds
Trevor Allen	DOJ - CJETS
Frances Likes	NCREA

Rules Review Commission

Meeting

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FEBRUARY 20, 2014

Name	Agency
Tom Harris	SEANC
Jennifer Everett	NCDENR
Jonathan Jorda	NCGA
DAVID GRIFFIN	NCDENR
Katie Cornejo	NCSBE
Mauri Mauter	SBE
Jason Weber	SBE
Valerie Bateman	OSHR
CINT P. NYAN	NCBOP
Anca Grozav	OSBM
Catherine Jorgensen	HADFB
Chris Evans	BCBSNC
Ben Downing	OSHR
Tim Simpson	NCDOT
Meagan Langhorne	DHSS