

**RULES REVIEW COMMISSION MEETING  
MINUTES  
May 15, 2014**

The Rules Review Commission met on Thursday, May 15, 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, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

Staff members present were: Commission counsels Joe DeLuca, Abigail Hammond, Amber Cronk May and Amanda Reeder; and Julie Brincefield, Tammara Chalmers, Dana Vojtko.

The meeting was called to order at 10:01 a.m. with Chairman Currin presiding.

Chief Administrative Law Judge Julian Mann presented Commission Counsel Joe DeLuca with his retirement certificate and The Old North State certificate and acknowledged his years of service to the state.

Commissioner Currin read a resolution honoring Commission Counsel Joe DeLuca. It was adopted by acclamation and a copy is attached.

Chairman Currin 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. The Chairman reminded the Commission members that the audio of the meeting was being broadcast.

**APPROVAL OF MINUTES**

Chairman Currin asked for any discussion, comments, or corrections concerning the minutes of the April 17, 2014 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

**NC Rural Electrification Authority**

Rule 04 NCAC 08 .0313 was unanimously approved.

**Department of Justice, Division of Criminal Information**

12 NCAC 04H .0101, .0102, .0103, .0201, .0202, .0203, .0301, .0302, .0303, .0304, .0401, .0402, .0403; 04I .0101, .0102, .0103, .0104, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0408, .0409, .0410, .0501, .0601, .0602, .0603, .0701, .0801; 04J .0101, .0102, .0103, .0201, .0301. The agency has not responded in accordance with G.S. 150B-21.12. There was no action for the Commission to take at the meeting.

**Wildlife Resources Commission**

15A NCAC 10K .0101 was unanimously approved.

Kate Pipkin from the agency addressed the Commission.

**State Board of Education**

16 NCAC 06C .0701 was withdrawn at request of the agency.

**Cemetery Commission**

21 NCAC 07A .0101, .0103, .0104, .0106, .0201, .0202, .0203, .0204, .0205; 07B .0103, .0104, .0105; 07C .0103, .0104, .0105; 07D .0101, .0102, .0104, .0105, .0201, .0202, .0203. The Commission approved Rules 07A .0103, .0104, .0106, .0201, .0202, .0203, .0204, .0205; 07C .0103, .0104, .0105, .0202, and .0203 unanimously.

Rules 21 NCAC 07A .0101; 07B .0103, .0104, .0105; 07C .0105; 07D .0101, .0102, .0104 and .0201 were withdrawn by the agency.

### **Board of Examiners in Optometry**

Rules 21 NCAC 42B .0107 and .0114 were approved unanimously.

### **State Human Resources Commission**

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because of she is a state employee and supervises other state employees.

Valerie Bateman from the agency addressed the Commission.

Tom Harris from SEANC addressed the Commission.

25 NCAC 01B .0350, .0413, .0414, .0429, .0430; 01C .0311, .0403, .0404, .0411, .0412; 01D .0201; 01E .0901; 01H .0901, .0902, .0904, .0905, .1001, .1003, .1004, .1005; 01I .2002; 01J .0603, .0610, .0615, .0616, .1101, .1201, .1202, .1203, .1204, .1205, .1206, .1207, .1208, .1301, .1302, .1303, .1304, .1305, .1306, .1307, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1321, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409, .1410, .1411, .1412. All rules were unanimously approved with the following exceptions:

25 NCAC 01H .1003, .1004, .1005; .01I .2002; 01J .0615, .0616 were withdrawn at the request of the agency.

25 NCAC 01J .1321 - The Commission objected to this rule based on ambiguity, lack of clear authority and based on its considerations and reasoning in extending the period of review on OAH's similar proposed rule last month. The Commission noted that the phrase "reasonable hourly rate based upon prevailing market rate" in (1)(a) is ambiguous as a standard standing alone without consideration of other factors. Further, the Commission noted that there are well settled criteria for the determination of reasonable attorney's fees, use of which (by statement or reference) might eliminate the ambiguity and avoid possible concerns with anti-trust issues were attorneys required to argue that there is a prevailing rate to establish their fees. The Commission noted that while G.S. 126-4(11) does provide authority to award reasonable attorney's fees, it is not clear whether that authority applies to the cases contemplated by the proposed rule. Commissioner Dunklin suggested forming an *ad hoc* committee to work with OSHR to clarify circumstances in which the rule would apply and to address the ambiguity considerations as to this Rule.

### **State Human Resources Commission**

25 NCAC 01J .1310 was unanimously approved.

### **Office of Administrative Hearings**

Commissioner presided over the review of the rules from the Office of Administrative Hearings

Commissioner Walker was not present and did not participate in the discussion and vote.

26 NCAC 03 .0103 was unanimously approved.

26 NCAC 03 .0132 was withdrawn at the request of the agency.

### **Building Code Council**

2015 NC Existing Building Code – All rules were unanimously approved.

Commissioner Walker was not present and did not participate in the discussion and vote.

### **LOG OF FILINGS**

#### **Board of Agriculture**

All rules were unanimously approved.

**Historical Commission**

Sarah Koonts with the agency addressed the Commission.

All rules were unanimously approved.

**Commission for Mental Health**

Denise Baker with the agency addressed the Commission.

Dr. Susan Saik Peebles with the agency addressed the Commission.

10A NCAC 28C .0201 was unanimously approved.

**Home Inspector Licensure Board**

All rules were unanimously approved with the following exception:

11 NCAC 08 .1103 – The Commission extended the period of review to allow the Board additional time to review staff's Request for Technical Changes.

**Alarm Systems Licensing Board**

12 NCAC 11 .0105 was unanimously approved.

**Veterinary Medical Board**

21 NCAC 66 .0101 was unanimously approved.

**Building Code Council**

All rules were unanimously approved.

**G.S. 150B-19.1(h) RRC CERTIFICATION**  
**Commissioner of Insurance**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rule 11 NCAC 06A .0809.

**COMMISSION BUSINESS**

Staff gave the Commission a brief legislative update.

Staff gave the Commission an update of how many reports have been filed pursuant to G.S. 150B-21.3A and reminded the Commission that the first reports would be reviewed at the July 2014 meeting.

The meeting adjourned at 12:36 p.m.

The next regularly scheduled meeting of the Commission is Wednesday, June 18<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  
Please **Print** Legibly

MAY 15, 2014

Name	Agency
Denise Stanford	NC HILB
Denise Baker	DIHS, DMH/DOH/BA
Susan DeRee	DSOHE, DIHS
Karen Wadum	NCDO+
Mike Hodge	NCDOJ/NC HILB
Jonathan Owens	SEANC
Frances Liles	NCREA
Cellean Hudak-Weise	NC DATCS
Josh Davis	NC DCR
Sarah Koonts	NC DCR
Karen Blum	NC DOT
Carolyn Detmer	NC DOT
Tom Harris	SEANC
Jon Canier	NC DA
Kate Pipkin	NC WRC
Shari Howard	OSHR
Janice Davidson	NC DOR
Elizabeth "Beth" Blackwell	NC DOI
Valerie Bateman	OSHR

*RETIREMENT RESOLUTION  
IN APPRECIATION*

*WHEREAS, the Rules Review Commission has been officially advised of the retirement, effective May 30, 2014, of*

*Joseph J. DeLuca, Jr.*

*WHEREAS, Joseph (Joe) J. DeLuca, Jr. has served as counsel to the North Carolina Rules Review Commission since 1989;*

*WHEREAS, during his service to the Commission, Joe DeLuca has served as an agency head of the Rules Review Commission and then Senior Counsel, helping to shape the direction of the Commission through his leadership;*

*WHEREAS, Joe DeLuca has served as the historian for the Commission, sharing wisdom, wit, insight, and anecdotes with Commissioners, colleagues, agencies, and the public alike to ensure that the purpose and work of this Commission and rulemaking are understood and appreciated;*

*WHEREAS, during his tenure, Joe DeLuca has faithfully served to promote the best interests of this Commission and the citizens of the State of North Carolina;*

*WHEREAS, during his tenure, Joe DeLuca has revised more than 25,000 rules that are, or have been, in the North Carolina Administrative Code;*

*WHEREAS, during his tenure, Joe DeLuca has trained and counseled over sixty commissioners of different political backgrounds and beliefs;*

*WHEREAS, during his tenure, Joe DeLuca has given numerous presentations to groups such as legislators, lawyers, and students about rulemaking and the role of the Commission;*

*WHEREAS, during his tenure, Joe DeLuca has also trained and counseled numerous rule writers for various agencies and boards;*

*WHEREAS, Joe DeLuca's experiences with rulemaking extend from agencies governing the practice of acupuncture to running the state's zoo; rules with "deep public interests" including those concerning the placement of storm water and Jordan Lake; massage therapy and defining "body cavity"; and State employees and human resource management;*

*WHEREAS, during his tenure, Joe DeLuca has been a committed member of the legal counsel staff, in attendance at most of the monthly meetings since 1989;*


*WHEREAS, Joe DeLuca has been supported by Roberta, his wife; and his three loving children, daughter Sara, and sons Kaz and Raimis;*

*WHEREAS, Joe DeLuca has used his free time to devote attention to his skill of making his neckties and relaxing at his lake house; and*

*WHEREAS, Joe DeLuca now prepares for retirement and free time to spend with family and friends, cooking meals for his family, enjoying his lake house, and traveling;*

*NOW BE IT THEREFORE RESOLVED that the members of the North Carolina Rules Review Commission thank Joseph DeLuca for his dedicated service to the Commission, rulemaking bodies, and the citizens of the State of North Carolina; and*

*BE IT FURTHER RESOLVED that this Resolution be presented to Joe DeLuca and a copy of this document be placed in the official files of the Rules Review Commission as part of the permanent record of the Commission as a lasting tribute to his accomplishments and contributions.*

  
Margaret P. Currin  
Chairman of the Commission