**RULES REVIEW COMMISSION**

**August 18, 2011**

**MINUTES**

The Rules Review Commission met on Thursday, August 18, 2011, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Garth K. Dunklin, George Lucier, Pete Osborne, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel, Dana Vojtko, Julie Edwards and Tammara Chalmers

The following people were among those attending the meeting:

David Tuttle Board of Engineers and Surveyors

Don Garbrick Roxboro/PEASE Association

Jonathan Womer Office of State Budget and Management

Norman Young Wildlife Resources Commission

Lynda Elliot Board of Cosmetic Arts

Ann Wall Secretary of State

Nancy Pate Department of Environment and Natural Resources

Karen Waddell Department of Insurance

Elizabeth Kountis DENR/Division of Water Quality

Bob Hensley DHHS/Division of Social Services

Laura O'Donoghue DENR/Division of Coastal Resources

Deborah Gore DENR/Division of Water Quality

Barbara Williams Board of Massage and Bodywork Therapy

Charles Wilkins Board of Massage and Bodywork Therapy

Jason Robinson DENR/Division of Water Quality

Laura Leslie WRAL

Joelle Burleson DENR/Division of Air Quality

W.H. Potter, Jr Physical Therapy Authority

William Creech Department of Administration

Betsy Foard Wildlife Resources Commission

Chris Evans Blue Cross Blue Shield of North Carolina

Mary Maclean Asbill Southern Environmental Law Center

The meeting was called to order at 10:00 a.m. Judge Walker, as senior member present presided over the meeting. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

**APPROVAL OF MINUTES**

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the July 21, 2011 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

10A NCAC 70G .0403 – Social Services Commission. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 70H .0114 – Social Services Commission. The Commission approved the rewritten rule submitted by the agency.

10A NCAC 70J .0106 – Social Services Commission. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 30 .0624 – Massage and Bodywork Therapy. Charles Wilkins answered questions from the Commission. The Commission approved the rewritten rule submitted by the agency contingent up receiving a technical change. The technical change was received after the meeting.

21 NCAC 56 .0201, .0501, .0801 – Marriage and Family Therapy Licensure Board. No rewritten rules were submitted by the agency and no action was taken.

21 NCAC 56 .0701, .1602 – David Tuttle answered questions from the Commission. The Commission approved the rewritten rule submitted by the agency.

21 NCAC 64 .0307 –Board of Examiners for Speech and Language Pathologists and Audiologists. This rule has been withdrawn by the agency.

**LOG OF FILINGS**

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

**Public Librarian Certification Commission**

All rules were approved unanimously. Laura O'Donoghue representing the agency addressed the Commission.

**Home Inspector Licensure Board**

All rules were approved unanimously with the following exception:

11 NCAC 08 .1006 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. G.S. 143-151.51(b)(2)(c) requires the Board to establish coverage parameters for errors and omissions insurance if used to meet licensure requirements. Apparently the Board has not done so and has thus not complied with the statute. It is therefore not clear what the coverage parameters are.

**Private Protective Services Board**

12 NCAC 07D .1303 – The Commission objected to this Rule based on lack of statutory authority and ambiguity. In Paragraph (f), it is not clear what is meant by the requirement that a course be "appropriate to the licensee." It is not clear what the standards are for approving the courses "on a case-by-case basis." There is no authority cited to approve them based on standards not adopted as rules.

**Environmental Management Commission**

All rules were approved unanimously with the following exceptions.

Elizabeth Kountis from the Division of Water Quality and Joelle Burleson from the Division of Air Quality addressed the Commission

15A NCAC 02B .0311 – This rule was withdrawn by the agency.

15A NCAC 02B .0313 – The Commission voted against a motion to approve the rule as submitted. Commissioners Walker and Lucier voted in favor of the motion. Commissioners Currin, Bell, Dunklin, Osborne, Rippy, Simpson, Whitaker voted against the motion. The Commission voted in favor of Commissioner Dunklin's motion to extend the period of review for this rule. The Commission did this to determine whether there was a better way of expressing the amendment dates and their current effectiveness. The rule also has the potential to be confusing by having amendment dates in (c) and then repeating those dates in subsequent paragraphs that apply to individual portions of waters within the Roanoke River Basin.

**Wildlife Resources Commission**

All rules were approved unanimously with the following exceptions.

15A NCAC 10G .0403 – The Commission objected based on lack of statutory authority. There is no authority cited for the agency to require Wildlife Services Agents to comply with administrative requirements that have not been adopted as rules.

15A NCAC 10G .0405 – The Commission objected based on ambiguity. In this Rule, it is not clear what standards the Commission uses in determining whether to temporarily suspend or to terminate an agent's appointment. Most of the items listed in (7) and (8) would result in either and it is not clear what the distinction is.

The Commission granted the Agency's Request for Waiver of Rule 26 NCAC 05 .0108 and approved the re-written rules 15A NCAC 10G .0403 and .0405.

The meeting recessed at 12:03 p.m. and reconvened at 12:13 p.m.

**Department of Environment and Natural Resources**

15A NCAC 28 .0302 was approved unanimously.

**Board of Cosmetic Arts**

Lynda Elliot from the Board addressed the Commission.

All rules were approved unanimously.

**Board of Refrigeration Examiners**

21 NCAC 60 .0102 was approved unanimously.

**TEMPORARY RULES**

There were no temporary rules filed for review.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

The Commission elected officers for the remainder of the calendar year. The Commission’s Bylaws require that elections be held at the January meeting.

Judge Walker was elected Chairman by acclamation.

Margaret Currin was elected Vice-Chairman by acclamation.

George Lucier was elected 2nd Vice-Chairman by acclamation.

The Commissioners discussed having ethics training after the September meeting.

The Commissioners discussed how they wanted their notebooks and materials given to them.

Commissioner Bell discussed having a complete review for obsolete rules. Jonathan Womer from the Office of State Budget and Management addressed the Commission and said that the Office of State Budget and Management is doing this now.

The meeting adjourned at 1:02 p.m.

The next scheduled meeting of the Commission is Thursday, September 15 at 10:00 a.m.

Respectfully Submitted,

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Julie Edwards

Editorial Assistant

Minutes approved by the Rules Review Commission.

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Judge Ralph A. Walker/Chair

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Date