**RULES REVIEW COMMISSION**

**January 17, 2013**

**MINUTES**

The Rules Review Commission met on Thursday, January 17, 2013, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Jeanette Doran, Bob Rippy, Stephanie Simpson, Ralph Walker and Faylene Whitaker. Commissioner Garth Dunklin joined via Skype.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Dana Vojtko; Julie Edwards and Molly Masich.

The meeting was called to order at 10:07 a.m. with Chairman Walker presiding. 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 December 20, 2012 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

10A NCAC 09 .3004, .3008 – Child Care Commission. There has been no response from the agency and no action was taken.

10A NCAC 13D .2105, .2210, .2301 – Medical Care Commission. The Commission approved re-written rules .2210 and .2301. There was no response from the agency for rule .2105 and no action was taken.

19A NCAC 01C .0201 – Department of Transportation – There has been no response from the agency and no action was taken.

19A NCAC 02D .0414 – Department of Transportation – There has been no response from the agency and no action was taken.

21 NCAC 64 .0903 – Board of Examiners for Speech and Language Pathologists and Audiologists. There was no response from the agency and no action was taken.

**LOG OF FILINGS**

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

**Office of the Commissioner of Banks**

All rules and repeals were approved unanimously.

**Commission for Public Health**

Chris Hoke from the agency addressed the Commission.

All rules were approved unanimously with the following exception:

21 NCAC 43D .0708 - The Commission objected to this Rule based on ambiguity. In Item (36), page 5 it is unclear what is meant by “vendor location” in lines 13, 14 and 17 and “store” in line 18.

This rule refers to a “change in location” as triggering termination of the WIC Vendor Agreement. But it also adds the proviso that the change in location must be more than three miles from the vendor’s previous location. This seems to indicate that if the vendor changes locations and the change is less than three miles, the vendor’s agreement is not terminated.

It now becomes important to note that the rule appears to be referring to the “vendor[’s]” location rather than the “store[’s]” location although this is not explicit. In the definitions rule 43D .0202 “store” means “the physical building located at a permanent and fixed site” (emphasis added).

That leaves open the possibility that this rule could (and should?) be interpreted to mean that if a vendor, whose store is subject to a disqualification period, changes locations and the change is less than three miles, that the vendor’s agreement remains in place, the original store is still subject to the disqualification, while the new location is not subject to any disqualification.

If that illogical outcome is the intent, then that should be made abundantly clear. If that is not the intent, then the rule is unclear.

**Criminal Justice Education and Training Standards Commission**

All rules were approved unanimously except for 12 NCAC 09E .0105 which was withdrawn by the agency.

**Coastal Resources Commission**

15A NCAC 07H .0304 was approved unanimously.

**Department of Secretary of State**

18 NCAC 12 .0904 was approved unanimously.

Prior to the discussion of this rule, Commissioner Doran recused herself and did not participate in any discussion or vote concerning this rule because she is a registered lobbyist.

Prior to the discussion of this rule, Commissioner Simpson recused herself and did not participate in any discussion or vote concerning this rule because her husband is a registered lobbyist.

**Board of Examiners for Engineers and Surveyors**

All rules were approved unanimously.

**RRC CERTIFICATION**

**Private Protective Services Board**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 07D .0104, .0115, .0203, .0301, .0302, .0401, .0501, .0601, .0807, .0901 and .0909.

**2013 STATE MEDICAL FACILITIES PLAN**

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council had complied with G.S. 131E-176(25) in the adoption of the 2013 Plan.

**OTHER BUSINESS**

The Commission unanimously approved supporting the two bills, AN ACT TO MAKE CERTAIN RULES SUBJECT TO LEGISLATIVE REVIEW UPON REQUEST OF THE RULES REVIEW COMMISSION and AN ACT TO ALLOW THE RULES REVIEW COMMISSION TO RETURN A RULE TO AN AGENCY IF A FISCAL NOTE DOES NOT SUFFICIENTLY ADDRESS ADDITIONAL COSTS, prepared by staff at the direction of the Commission.

The Commission unanimously agreed to initiate rulemaking to amend its Rule 05 .0110 on filing objection letters to prohibit the Commission from counting objection letters dated before the date of the last change to the rule other than a change made in response to a request for a technical change.

The Proposed amendment is as follows:

26 NCAC 05 .0110 FILING OBJECTION LETTERS

(a) The RRC shall not consider any ~~objection~~ letter objecting to a rule as set out in G.S. 150B-21.3(b2) which is dated prior to the time the agency adopts the rule.

(b) For purposes of this Rule, a rule that is changed other than as a response to a request for a technical change is considered to be a newly adopted rule. The Commission shall not consider objection letters dated prior to the time of the change.

History Note: Authority G.S. 143B-30.1;

Eff. August 1, 2008.

Amended eff. May 1, 2013.

The Commission elected officers. The Commission’s Bylaws require that elections be held at the January meeting.

Judge Walker was re-elected Chairman.

Margaret Currin was re-elected 1st Vice-Chairman.

Garth Dunklin was elected 2nd Vice-Chairman.

The meeting adjourned at 11:25 p.m.

The next scheduled meeting of the Commission is Thursday, February 21st 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 Edwards

Editorial Assistant

Minutes approved by the Rules Review Commission.

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Judge Ralph A. Walker/Chair

