

**RULES REVIEW COMMISSION
SPECIAL MEETING
MINUTES
*January 31, 2014***

The Rules Review Commission held a special meeting on Friday, January 31, 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, and Faylene Whitaker. Commissioner Walker was present by conference call.

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

Chairman Currin welcomed and introduced OAH's current extern, Rory Fleming.

The meeting was called to order at 9:02 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.

TEMPORARY RULE LOG OF FILINGS

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

Commission for Mental Health, Developmental Disabilities and Substance Abuse Services

The Rules Review Commission found the Commission for MH/DD/SAS did not meet the requirements for temporary rules as set forth in G.S. 150B-21.1(a2). This is based upon the fact that the Commission for MH/DD/SAS took six weeks after adoption of the temporary rules to file them with the Office of Administrative Hearings for Rules Review Commission review.

In addition, the Rules Review Commission objected to Rules 10A NCAC 27H .0202, .0203, .0204 and .0207, finding the Commission for MH/DD/SAS lacks authority to set employment requirements for individuals and set the requirements of the evaluation report.

The Rules Review Commission further objected to Rule 10A NCAC 27H .0204 based upon ambiguity. The Rule does not give any guidance as to what body grants the certification, the initial training topics, that an examination will be required for the certification, the hours required for both initial certification, and the continuing education requirements.

W. Denise Baker with the agency and forensic psychologist, Mark Hazelrigg, with Central Regional Hospital, addressed the Commission.

Commissioner Dunklin moved to accept staff's recommendation to object to the temporary rules from the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, and the motion was approved with Commissioners Currin, Doran, Dunklin, Walker and Whitaker voting for the motion and Commissioner Choi voting against the motion.

Hearing Aid Dealers and Fitters Board

21 NCAC 22F .0104 and .0105 were approved by the Commission.

The Commission declined to approve Rules 21 NCAC 22F .0113, .0114, .0115, .0116, .0301, .0302, .0303, .0304, .0305, .0306 and Rule 21 NCAC 22J .0116 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 these rules states that the temporary rules were required by the effective date of a recent act of the General Assembly. The Commission disapproved the above-captioned rules because the adopted text exceeds the statutory authority to justify temporary rule-making.

Commissioner Choi moved to substitute staff's recommendation and to approve 21 NCAC 22F .0104 and .0105, and to disapprove the remainder of the rules. The motion was approved with Commissioners Choi, Currin, Doran, Walker, and Whitaker voting for the motion and Commissioner Dunklin voting against the motion.

Peyton Maynard from the North Carolina Speech, Hearing & Language Association, Curtis Venable from Ott Cone and Redpath, and Nahale Kalfas from the Board of Examiners for Speech and Language Pathologists and Audiologists, addressed the Commission in opposition to these rules.

Catherine Jorgenson with the agency, Tina Simpson with the Attorney General's Office on behalf of the agency, and Mark Stuemke, a member of the Board, addressed the Commission.

The meeting recessed at 11:51 a.m. and reconvened at 12:01 p.m.

State Human Resources Commission

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself because of the possibility of an appearance of self-interest or an actual self-interest due to her current employment.

Commissioner Doran was not present during the discussion or vote concerning these rules.

Commissioner Dunklin moved to object to the rules. This motion was approved unanimously.

The Commission objected to Rules 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, .1304, .1305, .1306, .1307, .1312, .1313, .1314, .1315, .1316, .1317, .1318, .1319, .1320, .1321, .1322, .1401, .1402, .1403, .1404, .1405, .1406, .1407, .1408, .1409, .1410, .1411, .1412 based on ambiguity. The Commission objected to the packet of rules based on ambiguity in that they are not clearly formatted and suitable for review, that there are multiple versions of several rules, and that the agency was not responsive to the requests for technical changes.

COMMISSION BUSINESS

The meeting adjourned at 12:34 p.m.

The next regularly scheduled meeting of the Commission is Thursday, February 20th 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,

Dana Vojtko
Publications Coordinator

Minutes approved by the Rules Review Commission:

Margaret Currin, Chair

Meeting

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Friday January 31

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