**RULES REVIEW COMMISSION**

**October 20, 2011**

**MINUTES**

The Rules Review Commission met on Thursday, October 20, 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, Bob Rippy, Stephanie Simpson, Ralph Walker.

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

The meeting was called to order at 10:02 a.m. with Judge 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 September 15, 2011 meeting. There were none and the minutes were approved as distributed.

**FOLLOW-UP MATTERS**

02 NCAC 38 .0701 – Board of Agriculture. The Commission approved the rewritten rule submitted by the agency.

02 NCAC 43L .0309 – Board of Agriculture. The Commission approved the rewritten rule submitted by the agency. David McLeod from the Board addressed the Commission.

04 NCAC 03C .0807, .1001; 16A .0101, .0105, .0201, .0202, .0401, .0402, .0403, .0405, .0407, .0409; 16C .0102, .0103, .0202, .0203, .0304, .0305; 16D .0103, .0301, .0407, .0901, .0902; 16E .0104, .0301, .0405, .0702; 16F .0105, .0108, .0109, .0111, .0112, .0113 – Office of the Commissioner of Banks. No rewritten rules were submitted by the agency and no action was taken.

04 NCAC 16A .0301, .0302 – Office of Commissioner of Banks. No rewritten rules were submitted by the agency and no action was taken.

21 NCAC 25 .0209 – Interpreter and Transliterator Licensing Board. No rewritten rule was submitted by the agency and no action was taken.

21 NCAC 39 .0801 – Onsite Wastewater Contractors and Inspectors Certification Board. The Commission approved the rewritten rule submitted by the agency.

**LOG OF FILINGS**

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

**Alcoholic Beverage Control Commission**

Prior to the review of the rules from the Alcoholic Beverage Control Commission, Commissioner Rippy, recused himself and did not participate in any discussion or vote concerning these rules because his business has an ABC Permit.

All rules were approved unanimously with the following exception:

04 NCAC 02R .1711 –- The Commission extended its period of review on this rule.

**Social Services Commission**

Anna Carter from the Child Care Commission addressed the Commission.

All rules were approved unanimously with the following exceptions:

10A NCAC 10 .0102 - The Commission objected to this Rule based on ambiguity. There are terms in Chapter 10 that are not defined and it is therefore not clear what they mean. It is not clear what is meant by "private agency" and it is not clear if a "decision" includes a statement of reasons. Those terms should be defined in the rule.

10A NCAC 10 .0203 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (b), it is not clear what the "net cost study rates" are or how they are determined. There is also no authority cited for them to be established by an oversight committee. The cited authority is for the Social Services Commission to establish rates. This objection applies to existing language in this rule.

10A NCAC 10 .0308 - The Commission objected to this Rule based on ambiguity. In (b)(1), (2) and (4), it is not clear what standards the local purchasing agency is to use in determining that a recipient or provider is not capable of paying in full.

10A NCAC 10 .0309 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (d), it is not clear what standards the Division of Child Development and Early Education will use in requiring the correction of an underpayment or overpayment. Pursuant to G.S. 150B-19(6), there is no authority to adopt this modification provision without setting out the specific guidelines to be used.

10A NCAC 10 .0310 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (a), there is no authority cited to set requirements in a records retention schedule rather than by rule. In (c), it is not clear what standards the Division is to use in determining whether to require an agency to pay back funds improperly spent. This objection applies to existing language in this rule.

10A NCAC 10 .0311 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. The review process established in this Rule is unclear. If a provider is entitled to a contested case hearing based on a decision of a local purchasing agency, there is no authority cited for the Commission to add in additional steps. If a provider is only entitled to a contested case hearing after a decision by the Review Panel mentioned in (g), that is unclear. Notice in accordance with G.S. 150B-23 is only relevant to filing a contested case with the Office of Administrative Hearings. There is no authority to establish by rule if a person is entitled to a contested case hearing. In (c), it is not clear what standards a local purchasing agency is to use in granting a delay. In (d), and other places it is not clear if a "statement of decision" must include the reasons for the decision.

10A NCAC 10 .0312 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (b), it is not clear who appoints any alternates. In (e), there is no authority cited for the Panel to convene in closed session. This would appear to be a public meeting. In (m), it is not clear what standards the Secretary is to use in setting the time for the Panel to make its decision. As with Rule .0311, this rule is ambiguous on who is the agency making the decision subject to a contested case hearing. The last sentence in (n) implies it is the Local purchasing agency immediately after saying it is the Panel.

10A NCAC 10 .0506 - The Commission objected to this Rule based on lack of statutory authority. In (b), there is no authority cited to set requirements in a records retention schedule rather than by rule. It is also not clear what is meant by "private agency." This objection applies to existing language in the rule.

**HHS/Division of Services for the Deaf and Hard of Hearing**

10A NCAC 17D .0217 was approved unanimously.

**Commission for Mental Health**

All rules were approved unanimously with the following exception:

10A NCAC 26E .0603 was withdrawn by the agency.

**Department of Insurance**

11 NCAC 17 .0103 was approved unanimously.

**Medical Board**

All rules were approved unanimously with the following exceptions:

The rules in 21 NCAC 32C were withdrawn by the agency and refiled for the November meeting.

21 NCAC 32R .0106 - The Commission objected to this Rule based on ambiguity. In (3), it is not clear how to determine if a member of the General Assembly is engaged in activities requiring the study and analysis of issues related to the practice of medicine in North Carolina.

**Medical Board/Perfusion Advisory Committee**

All rules were approved unanimously.

**Board of Podiatry Examiners**

21 NCAC 52 .0208 was approved unanimously.

**State Personnel Commission**

All rules were approved unanimously.

**Building Code Council**

All rules were approved unanimously with the following exceptions:

2012 Fuel Gas Code – 311, 2012 Mechanical Code – 313, 2012 Plumbing Code – 315, 2009 Residential Code – 313.1, 2012 Residential Code – 315 - The commission voted to extend the period of review on these rules. It did so in order for Commission and agency staff to discuss the effects an objection to those rules, based on the recommendations in counsel’s October staff opinion, would have on the existing rules. It is anticipated that the Commission will take action to approve or object to those rules at its November meeting. Counsel was instructed to present an updated staff opinion based on that discussion.

**TEMPORARY RULES**

There were no temporary rules filed for review.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

Joe DeLuca discussed the amendments to RRC Rule 26 NCAC 05 .0108 and adoption of 26 NCAC 05 .0114. Two options of rule 26 NCAC 05 .0108 were discussed and the Commission voted to proceed with option #2.

The Commission will hold a public hearing on the proposed rules at 10:00 a.m., November 17, 2011, prior to the Commission meeting.

Molly Masich discussed upcoming rulemaking training that the Office of Administrative Hearing will be having.

The meeting adjourned at 11:53 p.m.

The next scheduled meeting of the Commission is Thursday, November 17 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

