



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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April 19, 2012

Delores A. Joyner
State Personnel Commission
1331 Mail Service Center
Raleigh, NC 27699-1331

Re: 25 NCAC 01J .1101

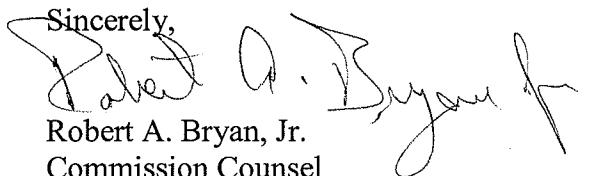
Dear Ms. Joyner:

At its April 19, 2012 meeting the Rules Review Commission objected to the above-captioned rule based on lack of statutory authority in accordance with G.S. 150B-21.10.

There is no authority cited for Paragraph (e) as written. The addition of "genetic information" to the classifications of unlawful workplace harassment makes Paragraph (e) inconsistent with G.S. 126-34.1. G.S. 126-34.1(a)(10) limits filing a workplace harassment case to harassment based upon age, sex, race, color, national origin, religion, creed, and handicapping (disabling) condition. While harassment based on genetic information may violate federal law, it does not give rise to a contested case under Article 3 of G.S. 150B. G.S. 126-34.1(e) specifically states that "[a]ny issue for which appeal to the State Personnel Commission through the filing of a contested case under Article 3 of Chapter 150B of the General Statutes has not been specifically authorized by [G.S. 126-34.1] shall not be grounds for a contested case under G.S. 126." Harassment based on genetic information is not specifically authorized as a ground for a contested case.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,



Robert A. Bryan, Jr.
Commission Counsel

RAB:tdc

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