

**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

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June 21, 2012

Delores A. Joyner  
State Personnel Commission  
116 West Jones Street  
Raleigh, NC 27603

Re: 25 NCAC 01B .0437, .0438

Dear Ms. Joyner:

At its June 20, 2012 meeting the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule .0437 based on ambiguity. In Paragraph (c), it is not clear what is meant by "good cause shown." The definition in 25 NCAC 01B is not relevant to the use of the term in this Rule. This objection applies to existing language in the Rule.

The Commission objected to Rule .0438 based on lack of statutory authority. In Paragraphs (a) and (b), there is no authority cited for and award of costs. G.S. 126-4(11) allows an award of witness fees and attorney fees only. In Part (b)(1)(A), there is no authority cited for the State Personnel Commission to award witness fees or legal fees where an Administrative Law Judge finds discrimination, harassment, or orders reinstatement or back pay. G.S. 150B-33(b)(11) gives that authority to the Administrative Law Judge. For contested cases filed on or after January 1, 2012, the Commission no longer hears cases. G.S. 126-4(11) thus no longer applies once a case reaches the Administrative Law Judge level. This objection applies to existing language in the Rule.

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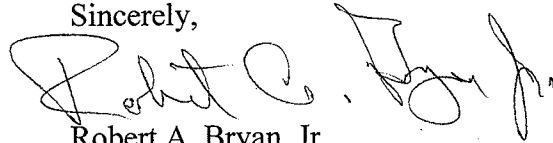
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Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bryan, Jr.", written in a cursive style.

Robert A. Bryan, Jr.  
Commission Counsel

RAB:tdc