rrc staff OPINION

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: INTERPRETER AND TRANSLITERATOR LICENSING BOARD

RULE CITATION: 21 NCAC 25 .0209

RECOMMENDED ACTION:

 Approve, but note staff’s comment

X Object, based on:

 X Lack of statutory authority

 Unclear or ambiguous

 Unnecessary

 Failure to comply with the APA

 Extend the period of review

COMMENT:

There is no authority cited for the agency to refuse to renew the license of a licensee because of failure to pay a civil penalty. G.S. 90D-12 lists reasons that the Board may deny, suspend, revoke or refuse to license a licensee and failure to pay a civil penalty is not one of them. There is no authority cited to set renewal requirements beyond those set by the statute.

Robert A. Bryan, Jr.

Commission Counsel

§ 90D-6. Powers of the Board.

The Board shall have the power and duty to:

(1)        Administer this Chapter.

(2)        Adopt, amend, or repeal rules necessary to carry out the provisions of this Chapter, subject to the provisions of Chapter 150B of the General Statutes.

(3)        Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.

(4)        Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(5)        Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Chapter.

(6)        Set fees as authorized in G.S. 90D-10.

(7)        Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.

(8)        Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.

(9)        Keep on file in its office at all times a complete record of the names, addresses, license numbers, and renewal license numbers of all persons entitled to practice under this Chapter.

(10)      Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.

(11)      Adopt rules for continuing education requirements.

(12)      Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes. (2002-182, s. 1; 2005-299, s. 3.)

§ 90D-11. License renewal.

Each license issued under this Chapter shall be renewed on or before October 1 of each year. All applications for renewal shall be filed with the Board and shall be accompanied by the renewal fee as required by G.S. 90D-10 and written proof of satisfactory completion of continuing education requirements adopted by the Board. Licenses that are not renewed shall automatically lapse, and the licensee shall be required to reapply for licensure in accordance with rules adopted by the Board. (2002-182, s. 1; 2003-56, s. 3.)

§ 90D-12. Disciplinary action.

The Board may deny, suspend, revoke, or refuse to license an interpreter or transliterator or applicant for any of the following:

(1)        Giving false information to or withholding information from the Board in procuring or attempting to procure a license.

(2)        Having been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to perform interpreter or transliterator services or that indicates the person has deceived or defrauded the public.

(3)        Having been disciplined by the Registry of Interpreters for the Deaf, Inc., (RID).

(4)        Demonstrating gross negligence, incompetency, or misconduct in performing interpreter or transliterator services.

(5)        Failing to pay child support after having been ordered to do so by a court of competent jurisdiction.

(6)        Willfully violating any provisions of this Chapter or rules adopted by the Board. (2002-182, s. 1; 2003-56, s. 3.)

§ 90D-14. Civil penalties.

(a)        Authority to Assess Civil Penalties. – The Board may assess a civil penalty not to exceed one thousand dollars ($1,000) for the violation of any section of this Chapter or any rules adopted by the Board. The clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b)        Consideration Factors. – Before imposing and assessing a civil penalty, the Board shall consider the following factors:

(1)        The nature, gravity, and persistence of the particular violation.

(2)        The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3)        Whether the violation was willful and malicious.

(4)        Any other factors that would tend to mitigate or aggravate the violations found to exist.

(c)        Schedule of Civil Penalties. – The Board shall establish a schedule of civil penalties for violations of this Chapter or rules adopted by the Board.

(d)       Costs. – The Board may assess the costs of disciplinary actions against a person found to be in violation of this Chapter or rules adopted by the Board. (2005-299, s. 4.)