

Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter
Attachments: 04.2023 Locksmith Rule Return 21 NCAC 29 .0705.pdf

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, April 11, 2023 10:50 AM
To: Barden Culbreth <director@nclocksmithboard.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Objection Letter

Good morning Barden,

Attached, please find a letter formally returning Rule .0705 to the Board.

Please let me know if you have any questions or concerns.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter
Attachments: 04.2023 Locksmith Rule Return 21 NCAC 29 .0705.pdf

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, April 11, 2023 10:50 AM
To: Barden Culbreth <director@nclocksmithboard.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Objection Letter

Good morning Barden,

Attached, please find a letter formally returning Rule .0705 to the Board.

Please let me know if you have any questions or concerns.

Best,
Brian

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Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, April 10, 2023 4:53 PM
To: Barden Culbreth <director@nclocksmithboard.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Objection Letter

Additionally, I'll issue a letter formally returning the Rule to the Board. It should be coming your way tomorrow.

Brian Liebman
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From: Liebman, Brian R
Sent: Monday, April 10, 2023 4:00 PM
To: Barden Culbreth <director@nclocksmithboard.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Objection Letter

OK, that works, if that's what the Board wants to do. I will let the Commission know at next week's meeting that the Rule has been withdrawn.

Brian Liebman
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From: Barden Culbreth <director@nclocksmithboard.org>
Sent: Monday, April 10, 2023 3:58 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: Objection Letter

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How is this, it includes request to withdraw.

On Mon, Apr 10, 2023 at 3:53 PM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Thanks, Barden. Please let me know going forward if the Board decides to withdraw the rule from review.

Best,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter
Attachments: 2023 Response to Objection by RRC.pdf

From: Barden Culbreth <director@nclocksmithboard.org>
Sent: Monday, April 10, 2023 3:47 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: Objection Letter

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Please see attached.

Barden

On Mon, Apr 10, 2023 at 3:00 PM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Yes, the statute applies to all rules submitted for review.

Brian Liebman

Counsel to the North Carolina Rules Review Commission

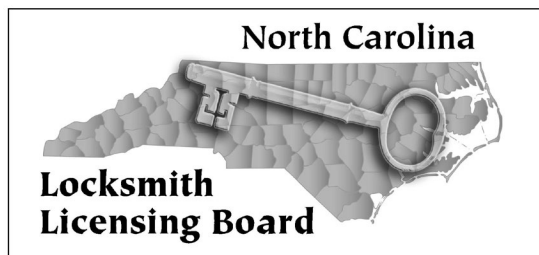
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--
Barden Culbreth
Administrative Director
NC Locksmith Licensing Board
www.nclocksmithboard.org



April 10, 2023

Brian Liebman
Counsel to the North Carolina RRC
Office of Administrative Hearings
1711 New Hope Church Rd
Raleigh, NC 27609

Dear Mr. Liebman,

The North Carolina Locksmith Licensing Board has received the objection letter to its proposed Rule 21 NCAC 29 .0705 dated March 17th, 2023, at its last meeting on April 5th, 2023.

At this time the Board declines to make any changes to the proposed rule as presented.

Please let me know if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Barden Culbreth".

Barden Culbreth
Executive Director
NC Locksmith Licensing Board

Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, April 10, 2023 3:00 PM
To: Barden Culbreth <director@nclocksmithboard.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Re: Objection Letter

Yes, the statute applies to all rules submitted for review.

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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brian.liebman@oah.nc.gov

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From: Barden Culbreth <director@nclocksmithboard.org>
Sent: Monday, April 10, 2023 1:22 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] Re: Objection Letter

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Even if it's a rule adoption, not amendment?

Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter

From: Barden Culbreth <director@nclocksmithboard.org>

Sent: Monday, April 10, 2023 1:22 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Re: Objection Letter

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Even if it's a rule adoption, not amendment?

On Mon, Apr 10, 2023 at 1:20 PM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Hi Barden,

Thanks for the heads up. So under G.S. 150B-21.12, the agency must either change the rule to satisfy the Commission's objection and submit the revised rule to the Commission, or submit a written response indicating that the agency has decided not to change the rule. If the latter, the rule stays under review by the Commission until the agency requests in writing that the Commission return the rule to the agency.

Please let me know which of the two courses the Board wants to take.

Thanks!

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

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brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter

From: Barden Culbreth <director@nclocksmithboard.org>

Sent: Monday, April 10, 2023 12:03 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] Re: Objection Letter

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Brian,

The Board did not have a response to the objection. They received the objection from the RRC and accepted it without comment.

I hope you have a pleasant Easter as well!

Thanks,

Barden

On Mon, Apr 10, 2023 at 11:16 AM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Burgos, Alexander N

From: Liebman, Brian R
Sent: Monday, April 10, 2023 11:16 AM
To: Barden Culbreth
Cc: Burgos, Alexander N
Subject: RE: [External] Re: Objection Letter

Hi Barden,

I was just checking in with you about Rule .0705. Was the Board planning to respond to the objection at this month's meeting? According to my math, I think a response is due by 4/17. I saw on your website the Board met on 4/5, so you've got the longer of 30 days from the objection (4/17) or 10 days from your next regular meeting (4/15).

Anyway, I hope all is well and that you had a great Easter!

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Barden Culbreth <director@nclocksmithboard.org>
Sent: Friday, March 17, 2023 1:15 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] Re: Objection Letter

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Thanks Brian. I appreciate you sending the outcome of .0705.

Sincerely,
Barden

On Fri, Mar 17, 2023 at 11:48 AM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Good morning Barden,

Attached, please find a letter regarding RRC's objection to 21 NCAC 29 .0705, made at the meeting yesterday.

As always, please feel free to contact me with any questions or concerns.

Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

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brian.liebman@oah.nc.gov

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--

Barden Culbreth
Administrative Director
NC Locksmith Licensing Board
www.nclocksmithboard.org

Burgos, Alexander N

Subject: FW: [External] Re: Objection Letter

From: Barden Culbreth <director@nclocksmithboard.org>

Sent: Friday, March 17, 2023 1:15 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: [External] Re: Objection Letter

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Thanks Brian. I appreciate you sending the outcome of .0705.

Sincerely,
Barden

Burgos, Alexander N

From: Liebman, Brian R
Sent: Friday, March 17, 2023 11:48 AM
To: director@nclocksmithboard.org
Cc: Burgos, Alexander N
Subject: Objection Letter
Attachments: 03.2023 Locksmiths Objection Letter 21 NCAC 29 .0705.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Good morning Barden,

Attached, please find a letter regarding RRC's objection to 21 NCAC 29 .0705, made at the meeting yesterday.

As always, please feel free to contact me with any questions or concerns.

Thanks,
Brian

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Burgos, Alexander N

Subject: FW: FW: [External] 21 NCAC 29 .0501 and .0705

From: Barden Culbreth <director@nclocksmithboard.org>

Sent: Tuesday, March 14, 2023 6:17 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: FW: [External] 21 NCAC 29 .0501 and .0705

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Yes sir. That's correct.

Sorry, that wasn't clear!

You have been extremely helpful!

Thanks,

Barden

On Tue, Mar 14, 2023 at 5:38 PM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Hi Barden,

I'm assuming, since you didn't have any further changes, that these are the final versions of the Rules, right? If so, and unless you have an objection, I'll ask Alex and Dana to file them as the final versions.

Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Locksmith Licensing Board Staff Opinion - Rule .0705
Attachments: 03.2023 - Locksmith Licensing Board .0705 Staff Opinion.doc

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, March 14, 2023 5:05 PM
To: OAH.RRC.Commissioners <RRC.Commissioners@lists.ncmail.net>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: director@nclocksmithboard.org
Subject: Locksmith Licensing Board Staff Opinion - Rule .0705

Good afternoon,

Attached, please find a staff opinion recommending objection to one of the two rules from the Locksmith Licensing Board before you this month.

As always, please let me know if you have any questions or concerns.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] 21 NCAC 29 .0501 and .0705

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, March 13, 2023 4:01 PM
To: Barden Culbreth <director@nclocksmithboard.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] 21 NCAC 29 .0501 and .0705

Hi Barden,

Since it's a matter of exercising disciplinary authority, and a measure of discretion is warranted there, I think .0501 is fine. I'll recommend approval.

What about Rule .0705? Are you withdrawing it, or do I need to draft a staff opinion?

Thanks,
Brian

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From: Barden Culbreth <director@nclocksmithboard.org>
Sent: Wednesday, March 8, 2023 4:14 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] 21 NCAC 29 .0501 and .0705

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Brian,

I understand your objection to .705 and think you are well within your grounds to recommend denial based on lack of authority.

I do ask that you consider letting the .0501 stand as written. There are rules within the .0500 Section that could be considered more serious than others. Further I do not want to bind the Board to being required to issue a non-disciplinary, even a warning or caution, when they don't have to. For example, in .0503 there are many requirements that the locksmith shall do. There are instances, perhaps emergencies, where the locksmith may forgo one of the

obligations, but no one is harmed and the Board does not feel that it warrant discipline or even non-disciplinary action. The main purpose of this rule is to include covered and employed persons within the provisions of the rule.

What has been happening is we have complaints against licensed apprentices and we are trying to get to the licensed locksmith supervisors for consideration of these complaints, however they allege that since the licensed apprentices are contract (1099) workers, that they are free from any Board scrutiny.

Let me know what you think.

Barden

On Wed, Mar 8, 2023 at 4:02 PM Liebman, Brian R <brian.liebman@oah.nc.gov> wrote:

Hi Barden,

Thanks for your responses. I fixed the formatting to Rule .0501, and the other changes look good. I had a couple follow ups to your answers below:

R. 0501

In (a), line 6, under what circumstances would failure to comply with Section .0500 not result in disciplinary action by the Board?

There are many times that an investigation or Board hearing could result in a non-disciplinary finding, such as a letter of warning or caution or an outright dismissal. The Board could find that there is insufficient grounds for discipline and therefore would not impose discipline even though there was an investigation by a disciplinary committee.

I think that makes sense, but the Rule says “failure to comply [with the provisions of Section .0500]” may result in disciplinary action. I understand the Board might investigate and determine that there is a lack of evidence and decline to impose discipline. But that would mean that it couldn’t be proved that someone failed to comply with Section .0500, not that there was a failure and the Board just decided not to do anything about it. With respect to a letter of warning or caution, that doesn’t fall under the banner of “disciplinary action”? If not, I’d suggest adding that to the Rule, revising that sentence along the lines of : “If a licensee fails to comply with the Rules of this Section, the Board shall issue a letter of caution, a letter of warning, or institute disciplinary action.” My concern is it sounds like you’re saying that some violations of Section .0500 are OK and some aren’t. That doesn’t follow from “All licensees are obligated to comply with the provisions of this Section.”

R. 0705

In general, what is the effect of inactivating a license? Does this toll the 3-year renewal period in G.S. 74F-10? Does it exempt the holder from continuing education requirements? It's not clear from the text of the Rule what inactivating a license does other than preventing a licensee from practicing or supervising an apprentice, which are things someone could do voluntarily or by relinquishing a license.

You asked about the purpose or effect of this rule. The purpose is to allow the licensee it to "pause" their license without penalty. If a license is valid for 3 years (36 months), and the licensee is deployed for 6-12 months, the Board wants to make sure they are allowed the full 36 months that the Board granted to them. Voluntarily relinquishing the licensure could have the same effect but does potentially open itself up to an administrative procedure of the Board. This rule makes clear that a deployed licensee can move their license to an inactive status, and reactivate without penalty or undue burden.

Unfortunately the Rule only says that while inactive the licensee can't provide services or supervise an apprentice. It does not say the 3 year licensure period is tolled, so it won't have that effect. I'm not sure it *could* have that effect given that G.S. 74F-10 says "all licenses shall expire three years after the date they were issued unless renewed." Unless there's some other statutory authority here allowing tolling of a license during the period of active service, I would have serious statutory authority questions if the rule did say that.

Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

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Barden Culbreth
Administrative Director
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Burgos, Alexander N

Subject: FW: [External] 21 NCAC 29 .0501 and .0705

From: Barden Culbreth <director@nclocksmithboard.org>

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Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] 21 NCAC 29 .0501 and .0705

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R. 0705

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You asked about the purpose or effect of this rule. The purpose is to allow the licensee it to "pause" their license without penalty. If a license is valid for 3 years (36 months), and the licensee is deployed for 6-12 months, the Board wants to make sure they are allowed the full 36 months that the Board granted to them. Voluntarily relinquishing the licensure could have the same effect but does potentially open itself up to an administrative procedure of the Board. This rule makes clear that a deployed licensee can move their license to an inactive status, and reactivate without penalty or undue burden.

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Thanks,

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

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brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] 21 NCAC 29 .0501 and .0705
Attachments: 21 NCAC 29 0705 Inactive Status Due to Military Employment Agency for March RRC.docx; 21 NCAC 29 0501 Obligation of Locksmiths For March 23 RRC Meeting.docx

From: Barden Culbreth <director@nclocksmithboard.org>
Sent: Tuesday, March 7, 2023 3:09 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] 21 NCAC 29 .0501 and .0705

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Brian,

Good afternoon. Please find attached the requested revisions to both 21 NCAC 29 .0501 and .0705.

.0501 Amendment:

You asked under what circumstances would failure to comply with Section .0500 not result in disciplinary action by the Board. Answer: There are many times that an investigation or Board hearing could result in a non-disciplinary finding, such as a letter of warning or caution or an outright dismissal. The Board could find that there is insufficient grounds for discipline and therefore would not impose discipline even though there was an investigation by a disciplinary committee.

.0705 Adoption:

You asked about the purpose or effect of this rule. The purpose is to allow the licensee it to "pause" their license without penalty. If a license is valid for 3 years (36 months), and the licensee is deployed for 6-12 months, the Board wants to make sure they are allowed the full 36 months that the Board granted to them. Voluntarily relinquishing the licensure could have the same effect but does potentially open itself up to an administrative procedure of the Board. This rule makes clear that a deployed licensee can move their license to an inactive status, and reactivate without penalty or undue burden.

I have removed references to "inactivation" and activation forms. Simply written notification to the Board will suffice for this.

I removed the cumbersome language in (c), line 8.

Thank you for your input.

My best,

--

Barden Culbreth
Administrative Director
NC Locksmith Licensing Board
www.nclocksmithboard.org

1 21 NCAC 29 .0501 is amended with changes as published in 37:10 NCR 755-756 as follows:

2 21 NCAC 29 .0501 OBLIGATION OF LICENSED LOCKSMITHS

3 ~~By applying for and accepting a license issued by the Board, all licensees become obligated to comply with the~~
4 ~~provisions of this section. Failure to comply shall result in disciplinary action by the Board.~~

5 (a) By applying for and accepting a license issued by the Board, all licensees become obligated to comply with the
6 provisions of this ~~section.~~ Section. Failure to comply may result in disciplinary action by the Board.

7 (b) The obligations of this Chapter extend to all employees of licensed individuals and licensed individuals shall be
8 responsible for the actions of their employees. The term "employee" shall mean every person engaged in
9 employment under a contract of hire or apprenticeship, express or implied, oral or written, including non-citizens,
10 and also minors, whether lawfully or unlawfully employed.

11
12 *History Note: Authority G.S. 74F-6; ~~[74F-3;]~~ 74F-3; 74F-6;*

13 *Temporary Adoption Eff. August 13, 2002;*

14 *Eff. August 1, 2004;*

15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest*

16 *Eff. ~~February 2, 2016.~~ February 2, 2016;*

17 *Amended Eff. ~~[March 1, 2023;]~~ April 1, 2023.*

1 21 NCAC 29 .0705 is adopted with changes as published in 37:10 NCR 755-756 as follows:

2

3 **21 NCAC 29 .0705 INACTIVE LICENSE STATUS DUE TO ACTIVE MILITARY DEPLOYMENT**

4 (a) A licensee who is actively deployed for military service may place their license on inactive status by notifying
5 the Board ~~by submission of the military activation form on the Board's website~~ in writing indicating their
6 deployment.

7 (b) A license placed on inactive status may be re-activated by the license holder notifying the Board in writing of
8 their return to civilian ~~employment by use of the re-activation form available on the Board's website.~~ employment.

9 (c) While a licensee holds an inactive ~~license status issued by the Board,~~ license, the licensee shall not provide
10 locksmith services to the public, nor shall they supervise a locksmith apprentice.

11

12 *History Note: Authority G.S. 74F-6; 74F-7; 74F-10;*

13 *Eff. ~~March 1, 2023.~~ April 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: Locksmith Licensing Board Request for Changes - March 2023 RRC

From: director@nclocksmithboard.org <director@nclocksmithboard.org>
Sent: Monday, February 27, 2023 3:10 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; barden <barden@recanc.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: Locksmith Licensing Board Request for Changes - March 2023 RRC

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Thanks Brian. I'll get to work on this and get you something later in the week

Barden Culbreth
Administrative Director



Burgos, Alexander N

From: Liebman, Brian R
Sent: Monday, February 27, 2023 11:19 AM
To: barden; director@nclocksmithboard.org
Cc: Burgos, Alexander N
Subject: Locksmith Licensing Board Request for Changes - March 2023 RRC
Attachments: 03.2023 - Locksmith Licensing Board Request for Changes .docx

Good morning,

I'm the attorney who reviewed the Rules submitted by the Board for the March 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, March 16, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, March 10, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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