



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
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June 18, 2020

Will Polk
Rulemaking Coordinator, Crime Victims Compensation Commission
Sent via email only: will.polk@ncdps.gov

Re: Objection to Rules 14B NCAC 09 .0303 and .0304; Extension of the Period of Review for Rules 14B NCAC 09 .0301, .0302, and .0305

Dear Mr. Polk:

At its June meeting, the Rules Review Commission objected to 14B NCAC 09 .0303 and .0304 in accordance with G.S. 150B-21.10.

The Commission objected to 14B NCAC 09 .0303 for lack of statutory authority, clarity, and necessity. The agency did not provide authority for Paragraph (b), which allows the Director to “poll the members of the Commission regarding any matter requiring the Commission’s attention.” (emphasis added). G.S. 15B-3(e) states “a majority of the Commission constitutes a quorum to transact business.” Further, North Carolina’s Open Meetings Laws provide “. . . each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.” G.S. 143-318.10(a). As a result, the agency lacks statutory authority to make decisions regarding “any matter” without a quorum present at an open meeting.

Paragraph (b) allows the Director to poll Commission members “at such times as it is not practicable for the members to meet as a body.” The Rule does not clarify under what circumstances it is considered “not practicable” for the Commission to meet. Paragraph (b) is therefore ambiguous as written.

Paragraphs (a) and (d) govern conduct of Commission members at meetings. These statements concern only the internal management of the agency and do not meet the definition of a “Rule.” G.S. 150B-2(8a)(a). Therefore, Paragraphs (a) and (d) are unnecessary. The first sentence of Paragraph (c) refers to public notice requirements established in statute for Commission meetings and is also unnecessary.

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The Commission objected to 14B NCAC 09 .0304 for lack of statutory authority and necessity. Paragraphs (b) and (c) follow a process that allowed agencies to issue a “final decision” after a “recommended decision” from the Office of Administrative Hearings in contested cases. This process of appealing agency decisions was changed in 2012 by S.L. 2012-187. The Administrative Procedure Act no longer allows the Crime Victims Compensation Commission to review decisions from Administrative Law Judges. Additionally, the Commission objected for lack of necessity because G.S. 15B-10(d) and G.S. 150B, Article 3 provide the process for commencing a contested case.

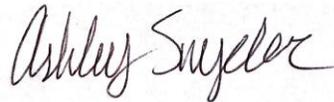
Please respond to these objections in accordance with the provisions of G.S. 150B-21.12.

At its meeting, the Rules Review Commission also extended the period of review for Rules 14B NCAC 09 .0301, .0302, and .0305. The Commission did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the revised rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to the rule or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Ashley Snyder". The signature is written in black ink on a white background.

Ashley Snyder
Commission Counsel



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June 18, 2020

Jeff Gray, Rulemaking Coordinator
Private Protective Services Board
Sent via email only: jgray@bdixon.com

Re: Objection to Rules 14B NCAC 16 .1001, .1002, .1003, .1207, .1304, and .1404

Dear Mr. Gray:

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

The Commission objected to Rule 14B NCAC 16 .1001, .1002, and .1003 for lack of statutory authority. Specifically, these three rules comprise the entirety of 14B NCAC 16 .1000, the Section named "Recovery Fund." These rules address the process for an individual to apply to the Board for recovery of funds when he or she believes a member of the regulated public harmed them. All three rules cite to G.S. 74C-31 as sole authority for the rules. G.S. 74C-31 was repealed by Session Law 2009-328. That Session Law further eliminated the Recovery Fund that was previously addressed in G.S. 74C, Article 2 and created an Education Fund. The roles of those funds do not appear to be similar. The Commission found that the Board does not have any statutory authority to regulate this now defunct fund.

The Commission objected to Rule 14B 16 .1207 for lack of necessity. The Commission found that this Rule simply repeated the requirements of Rule 14B NCAC 16 .1205(b) and was therefore unnecessary.

The Commission objected to Rules 14B NCAC 16 .1304 and .1404 for lack of statutory authority and ambiguity. Specifically, the Commission found that the use of the term "administrator" throughout the Rules was ambiguous, as changes to G.S. 74C through Session Law 2001-487 established a new position of "Director" and it does not appear that the administrator position exists anymore.

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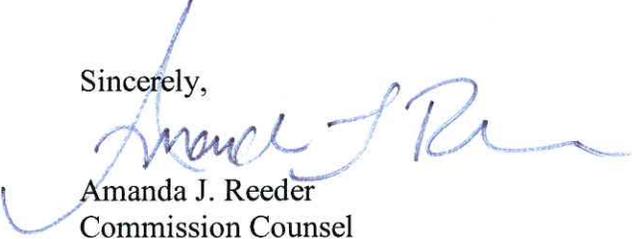
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In addition, Paragraph (a) of each Rule states that there shall be “such further investigation of the applicant as deemed necessary.” The Rules do not say who will deem the investigation necessary, nor how the necessity will be determined. The Commission found that this language was ambiguous.

In Paragraph (b), the Rules state that any denial of the registration by the administrator will be subject to review of the Board. However, G.S. 74C-12 states that any denial of an application will be made by the Board. The agency did not cite to any authority for the administrator to issue a denial such that it is reviewable by the Board, nor any authority of the Board to delegate this decision. Therefore, the Commission found that the agency lacks statutory authority for this Paragraph in each Rule.

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 actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

cc: Charles McDarris