

**RULES REVIEW COMMISSION MEETING
MINUTES
November 16, 2023**

The Rules Review Commission met on Thursday, November 16, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Wayne R. Boyles III, Jeanette Doran, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker were present in the Commission Room. Commissioners Jay Hemphill and Paul Powell were present via WebEx.

Staff member Alexander Burgos, Commission Counsel Seth Ascher, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:03 a.m. with Chair Doran presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow-up matters Tab G and H for the Department of Revenue, Tab I for the Board of Examiners in Optometry, and permanent rules for the Building Code Council.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the October 19, 2023, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

The Chair asked for any discussion, comments, or corrections concerning the minutes of the November 6, 2023, emergency meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Commissioner Hyde joined the meeting in the Commission room.

FOLLOW UP MATTERS

Board of Agriculture

Upon the call of the Chair, 02 NCAC 52B .0214; 52J .0901, .0902, and .0903 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

02 NCAC 52J .0904 was withdrawn at the request of the agency. No action was required by the Commission.

Medical Care Commission

Upon the call of the Chair, 10A NCAC 13F .0702, .1307; 13G .0705, and .1301 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

DHHS - Division of Health Service Regulation

The Commission objected to 10A NCAC 14E .0104, .0106, .0107, .0109, .0112, .0114, .0201, .0202, .0207, .0209, .0210, .0211, .0212, .0315, .0318, .0319, .0320, .0321, .0322, .0323, .0324, .0325, .0326, .0327, .0328, .0329, .0330, and .0331 at the October meeting. No action was required by the Commission.

Department of Justice

12 NCAC 02J .0201 was withdrawn at the request of the agency. No action was required by the Commission.

Criminal Justice Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 09B .0209, .0403, .0501, .0502; 09G .0405, and .0406 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

12 NCAC 09C .0306 was withdrawn at the request of the agency. No action was required by the Commission.

Coastal Resources Commission

Prior to the review of the rules from the Coastal Resources Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning the rules because of a conflict of interest.

15A NCAC 07H .0208, .0308; and 07M .0603 -The Commission objected to these Rules at the October meeting. No action was required by the Commission.

Department of Revenue

Upon the call of the Chair, 17 NCAC 07B .0901, .0902, .0904, .1101, .1123, .1301, .1302, .1305, .1602, .1701, .1702, .1704, .1801, .1905, .1907, .2101, .2102, .2105, .2201, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3106, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, and .4106 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .0115 and .3107 – The Commission determined that the agency had fully resolved the September objections to these Rules and approved the rules by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .3101 – The Commission determined that the agency had not fully resolved the prior objection to this Rule and continued its objection to this Rule from the September meeting by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde,

Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .1202, .1303, .1404, .1601, .1605, .1705, .2001, .2002, .2204, and .4109 - The Commission objected to these Rules at the October meeting. No action was required by the Commission.

Andrew Furuset, with the agency, addressed the Commission.

Department of Revenue

Upon the call of the Chair, 17 NCAC 07B .4205, .4302, .4401, .4403, .4406, .4411, and .4413 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

17 NCAC 07B .4301 – The Commission approved the rule contingent on a technical change by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to these Rules incorporated in the staff opinion for 17 NCAC 07B .4203 for lack of statutory authority, clarity or ambiguity and necessity, 17 NCAC 07B .4210, .4404, and .4701 for being unclear or ambiguous, 17 NCAC 07B .4503, .4609 for being unnecessary, and 17 NCAC 07B .4614 for lack of statutory authority and unclear or ambiguous by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to continue its objections from the September and October meetings for 17 NCAC 07B .4201, .4202, .4206, .4415, .4510, .4707, .4708, .4801, .5001, .5002, and .5004 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Andrew Furuset, with the agency, addressed the Commission.

Board of Examiners in Optometry

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to the rule and incorporated the staff opinion for 21 NCAC 42D .0102 for lack of statutory authority, clarity or ambiguity, and failure to comply with the APA by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Johnny Loper, the rulemaking coordinator with the agency, addressed the Commission.

Ashley Snyder, the Codifier of Rules, addressed the Commission.

LOG OF FILINGS (PERMANENT RULES)

Child Care Commission

Upon the call of the Chair, the Commission voted to extend the period of review for 10A NCAC 09 .0102, .0601, .1707, .1725, .2204, .2206, .2209, .2611, .2612, .2613, .2614, .2615, and .2616 by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff

Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 10B .0603 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Licensing Board for General Contractors

Upon the call of the Chair, 21 NCAC 12A .0202, .0308, and .0828 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Board of Cosmetic Art Examiners

Upon the call of the Chair, 21 NCAC 14T .0501 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to the rules incorporated in the staff opinion for 21 NCAC 14T .0402 and .0404 for lack of statutory authority and clarity or ambiguity by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Lynda Elliot, the Executive Director with the Board, addressed the Commission.

Board of Dental Examiners

Upon the call of the Chair, 21 NCAC 16B .0101, .0501, and .0502 were approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

Board of Nursing

Upon the call of the Chair, 21 NCAC 36 .0228 was approved by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

The Chair called the meeting into a brief recess at 10:17 a.m.

The meeting resumed at 10:20 a.m.

Building Code Council

Upon the call of the Chair, the Commission voted to extend the period of review for Section 101.2 of the 2024 North Carolina Building Code, Section 101.2 of the 2024 North Carolina Existing Building Code, Section 803.2.1.2 of the 2024 North Carolina Existing Building Code, Section 102.13 of the 2024 North Carolina Fire Code, and Section 5706.5.4.5 of the 2024 North Carolina Fire Code, and the Commission voted to adopt the staff's recommendation to object to the rules incorporated in the staff opinion for the 2024 North Carolina Building Code, 2024 North Carolina Fire Code, and the 2024 North Carolina Existing Building Code for lack of statutory authority and failure to comply with the APA by roll-call vote, ayes 7, noes 1 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill,

Jeff Hyde, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 7. Voting in the negative: Barbara Jackson -1.

During the discussion of the rules and before the vote from the Commission on the rules from the Building Code Council, Commissioner Powell left the meeting via WebEx.

Nathan Childs, with the Department of Justice and representing the agency, addressed the Commission.

Terrance Friedman, Special Counsel with the Department of Insurance, addressed the Commission.

Existing Rule Review

Upon the call of the Chair, the Commission voted to add the report for 07 NCAC 11 to January 2027 in the 2024-2027 Existing Rules Review Schedule by roll-call vote, ayes 9, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 9. Voting in the negative: None.

COMMISSION BUSINESS

Ashley Snyder, the Codifier of Rules, presented an overview of the RRC staff attorney workflow with the Commission.

At 11:42 a.m., upon a motion by Chair Doran and a second by Commissioner Jackson, the Commission voted to call the public meeting of the Rules Review Commission into recess and enter into a closed session pursuant to G.S. 143-318.11(a)(1) to review and approve the general account of the November 6, 2023 closed session which may be withheld from public inspection pursuant to G.S. 143-318.10(e) and to consult with counsel regarding CRC v. RRC and EMC v. RRC and other potential litigation pursuant to G.S. 143.11(a)(3), by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

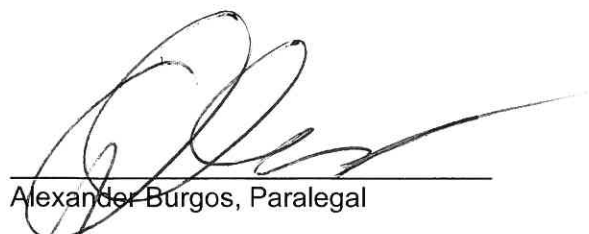
At 12:48 p.m., upon a motion by the Chair and a second by Commissioner Jackson, the Commission voted to come out of closed session and reconvene the public meeting of the Rules Review Commission by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

Upon a motion by the Chair and a second by Commissioner Jackson, the Commission voted to authorize the Chair to direct litigation for the RRC in the matter of CRC v. RRC and EMC v. RRC without further consultation with the RRC in her sole discretion as she deems it necessary by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

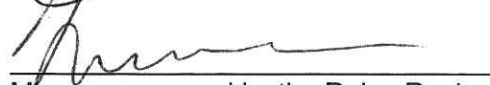
Upon a motion by the Chair and a second by Commissioner Jackson, the Commission voted to authorize the Chair to retain private counsel to represent the RRC in the matter of EMC v. RRC by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Brandon Leebrick, Bill Nelson, Randy Overton, and Jake Parker – 8. Voting in the negative: None.

The meeting was adjourned at 12:51 p.m.

The next regularly scheduled meeting of the Commission is Thursday, December 14, 2023, at 9:00 a.m.



Alexander Burgos, Paralegal



Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

Rules Review Commission Meeting November 16, 2023
Via WebEx

Name	Agency
Jessica Winebrenner	nc.gov
Anne Evangelista	nc.gov
Ann Elmore	SOSNC
Dana Lee	ncauditor.net
Julie Peck	DHHS
Jennifer Everett	DEQ
Emily Jones	DOT
Dennis Seavers	Barbers
Karen Holder	DOI
Julie Eddins	OAH
Dana McGhee	OAH
Ashley Snyder	OAH
Cameron Ervin	cshlaw.com
Ann Elmore	SOSNC
Helen Landi	hntb.com
Phillip Reynolds	DOJ
K. Lovelace	durhamsheriff.org
Anna Baird Choi	BON
Richard Squires - Sheriffs' Standards Division	DOJ
Susanna Birdsong	ppsat.org
Johnson, Daniel H	DOT
Lisa Martin	cap-ad.com
Julie Youngman	selcnc.org
Sheriff C. F. Birkhead	durhamsheriff.org
Hope Ascher	
Makeda Harris	NCHA
Libby Kinsey	DHHS
Ross Smith	myncma.org
E Stephens	cshlaw.com
Lisa Corbett	DHHS
Shalisa Jones	DHHS
Janice Peterson	ncoptometry.org
Hannah Jernigan	DOT
Ross Smith	myncma.org
Megan Lamphere	DHHS
Amber Davis	DOJ

Dauna Bartley	brockerlawfirm.com
Anne Coan	ncfb.org
William Rafferty	ncoptometry.org
Nadine Pfeiffer	
Marielena Salazar	shelltapup.com
Kimberly Luisana	BON
Melissa Bowman	DOJ
Johnny Loper	Optometry
Robert B Roegner	DOI
Russell Henderson	DOJ
Lynda Elliott	nccosmeticarts.com

MEMORANDUM OF ABSTENTION FROM
PARTICIPATION IN OFFICIAL ACTION
RULES REVIEW COMMISSION

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding

Agenda Item F.

I have abstained because the potential of a conflict of interest.

This the 16 day of November, 2023.



Signature of Commission Member

No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.