



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
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Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

April 20, 2017

Barden Culbreth
Locksmith Licensing Board
Sent via email only: barden@recanc.com

Re: Extension of the Period of Review for Rules 21 NCAC 29 .0102, .0201, .0204, .0205, .0206, .0401, .0404, .0502, .0503, .0504, .0702, .0703, .0802, .0803, .0804, .0805, and .0806.

Dear Mr. Culbreth:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to complete requested technical changes and submit the rewritten 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 rules or call a public hearing on the same within 70 days.

Should you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

Administration
919/431-3000
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Rules Division
919/431-3000
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Re: Objection to Rules 21 NCAC 29 .0402 and .0601.

Dear Mr. Culbreth:

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 21 NCAC 29 .0402 based upon lack of statutory authority and ambiguity.

Specifically, the Commission found that the Board lacks statutory authority to refuse to license applicants based solely upon past convictions. The Rule addresses the use of criminal convictions to determine if the applicant may be licensed. In Subparagraph (g)(1) of the Rule, it states that an applicant with any Class A or B felony conviction is ineligible for licensure. Further, the Rule states that a licensed locksmith who is convicted of a Class A or B felony shall be subject to immediate revocation of licensure. However, G.S. 74F-18(c) states that a conviction cannot automatically bar licensure. The Board does not have authority to write a rule that contradicts the statute.

Further, G.S. 74F-15 allows the Board to deny or refuse to renew, suspend, or revoke a license if the licensee is convicted or pleads guilty or no contest to any of the crimes listed in G.S. 74F-18. However, the Board does not have authority to take these actions without considering the factors in G.S. 74F-18.

In addition, G.S. 74F-18(c) lists seven factors that the Board is required to consider to determine whether the applicant may be disqualified based upon criminal conviction. This Rule addresses some of the factors in Paragraphs (d) and (h), but not all of them.

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In addition, those Paragraphs state that the Board only “may” consider the factors, when the Board is required to do so pursuant to G.S. 74F-18(c). If the Board is implementing the statutory factors without listing them in Rule, the Rule is unclear as written as it addresses some, but not all, of the factors required by statute.

The Commission further found that Paragraph (h) of the Rule is unclear as written, as it says the Board may also consider additional factors to determine the present fitness of a person who has been convicted of a crime that relates to the duties and responsibilities of a locksmith. The Rule does not state what those crimes are. G.S. 74F-18(a)(2) defines criminal history as “A history of conviction of [a crime] that bears on an applicant’s fitness for licensure to practice locksmithing.” Given the language of Paragraph (h), it is unclear if Paragraph (c) of the Rule is addressing crimes that do not affect the fitness for licensure, and therefore, Paragraph (c) is in excess of the Board’s statutory authority.

In addition, since Paragraph (c) of the Rule appears to encompass every level of felony and misdemeanor in the State, it is unclear what crimes the Board is referring to in Paragraph (h). However, for these crimes, the Board states that it “may” consider what appears to be four of the seven statutory factors, as well as two additional factors that are not in statute.

The Commission objected to Rule 21 NCAC 29 .0601 based upon lack of statutory authority and ambiguity.

Specifically, the Commission found that the Board lacks statutory authority to require some of the additional information set forth in the Rule in a petition for rulemaking. In the text of the rule, the agency is requiring that a petitioner submit the effect of a proposed new rule or amendment on existing rules or decisions, practices likely to be affected, and an identification of the persons or class of persons most likely to be affected by the proposal in Subparagraphs (a)(5), (6), and (7) of the Rule. The Commission found that the agency does not have statutory authority to require these items from a petitioner, as they are beyond the authority conferred by G.S. 150B-20.

The Commission further found that Subparagraphs (a)(5) or (a)(6) of the Rule may have been intended to address the “effect of the proposed new rule or amendment of the proposed change” expressly allowed by G.S. 150B-20(a). However, as the Rule is written, this is not clear. In addition, (a)(6), which addresses “practices likely to be affected” is unclear as written.

The Commission also found that Paragraph (b), which states that “The Board may request additional information” is unclear, as it does not state how the information will be requested, to whom the request will be made, or under what circumstances the request will be made.

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,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Amanda J. Reeder
Commission Counsel

