

Rules Review Commission

Litigation Overview

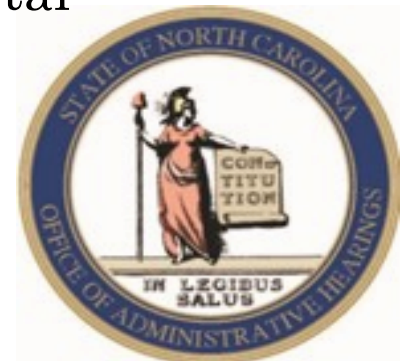
2017-Present

William W. Peaslee
Rules Review Commission
Counsel



Litigation 2017 to present

- 2014 – N.C. State Board of Education v RRC (Active in 2014-18)
- 2018 – N.C. Department of Health and Human Services, and the N.C. Commission for Public Health v RRC
- 2023 – Environmental Management Commission v. RRC
- 2023 – N.C. Department of Environmental Quality, Division of Coastal Management, and the Coastal Resources Commission v RRC



State Board of Education v. RRC

- SBE represented by Robert F. Orr, PLLC by Robert F. Orr; Poyner Spruill LLP, by Andrew H. Erteschik, Saad Gul, and John M. Durnovich, plaintiff.
- State of North Carolina represented by Joshua H. Stein, Attorney General
- RRC represented by C. Elizabeth Hall and Christopher G. Browning, Jr. for Troutman Sanders LLP, defendants.
- Issue: Whether the General Assembly lawfully and constitutionally delegated the authority to review rules adopted by the Board.
- Status: 2018 decision by the N.C. Supreme Court in favor of North Carolina and the RRC.



N.C. Department of Health and Human Services, and the N.C. Commission for Public Health v. RRC

- SBE represented by Joshua H. Stein, Attorney General by John P. Barkley and John H. Schaeffer, plaintiffs.
- RRC represented by Alec Peters, Chief Deputy Attorney General, defendants.
- Issue: Whether the RRC had authority to or abused its discretion by declaring certain rules expired after plaintiff missed a filing deadline during the periodic rules review process.
- Status: Voluntary dismissal commensurate with a consent order.



N.C. Environmental Management Commission v. RRC

- EMC represented by Joshua Stein, Attorney General, by Christine M. Ryan and Phillip T. Reynolds, plaintiff.
- RRC represented by Higgins Benjamin by Robert N. Hunter, Jr., defendant.
- Issue: Whether the RRC could determine that an OSBM approved fiscal note failed to comply with the Administrative Procedure Act.
- Status: Second voluntary dismissal filed in February 2024 in Wake County Superior Court.



N.C. Coastal Resources Commission v. RRC and Codifier of Rules

- EMC represented by Joshua Stein, Attorney General, by Mary L. Lucasse, plaintiff.
- RRC represented by Nelson Mullins by John E. Branch III and D. Martin Warf, defendant.
- Codifier of Rules represented by N.C. Department of Justice by Lewis Lamar and Mark Teague, defendant.
- Issue: Whether rules adopted by the CRC failed to comply with G.S. 150B-21.9.
- Status: Pending in Wake County Superior Court



Authority to retain private counsel

G.S. 143B. 30.1(g) – In the discretion of the Commission, G.S. 114-2.3 and G.S. 147-17(a) through (c1) shall not apply to the Commission if the Commission is being sued by another agency, institution, department, bureau, board, or commission of the State, whether such body is created by the Constitution or by statute. The chairman, upon approval of a majority of the Commission, may retain private counsel to represent the Commission to be paid with available State funds to defend such litigation either independently or in cooperation with the Department of Justice. If private counsel is to be so retained to represent the Commission, the chairman shall designate lead counsel who shall possess final decision-making authority with respect to the representation, counsel, or service for the Commission. Other counsel for the Commission shall, consistent with the Rules of Professional Conduct, cooperate with such designated lead counsel.



Litigation funding

S.L. 2017-57

PART XX. OFFICE OF ADMINISTRATIVE HEARINGS OAH/LAWSUIT FUNDS SECTION

20.1. The Department of Public Instruction shall transfer the sum of fifty thousand dollars (\$50,000) to the Office of Administrative Hearings to be allocated to the Rules Review Commission, created by G.S. 143B-30.1, to pay for any litigation costs incurred in the defense of North Carolina State Board of Education v. The State of North Carolina and The Rules Review Commission, Wake County Superior Court, File No. 14 CVS 14791 (filed November 7, 2014). These funds shall not revert at the end of the 2017-2018 fiscal year but shall remain available during the 2018-2019 fiscal year for expenditure in accordance with the provisions of this section.



Outstanding legal fees

- EMC v RRC (final) \$14,357.50
- CRC v RRC (through January 2024) \$35,380.80



Budget request

The Rules Review Commission requests an annual budget of \$100,000 for the purpose of retaining private legal counsel pursuant to G.S. 143B-30.1(g) which would be reverted if not used.



Questions

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 - Jeanette.k.doran@gmail.com
- William W. (Bill) Peaslee, RRC Counsel
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