

Comments

From: Chris Mechels <cmechels@q.com>

Sent: Tuesday, November 22, 2022 4:30 PM

To: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>

Subject: [EXTERNAL] Comment #2 to the 29 November DPS Rules Hearing

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Jason, et al,

These comments relate primarily to the 29 November 2022 Rule Making of [10.2.4](#) NMAC. It has numerous problems concerning both the Rule Making process and the content. Below, some of the major problems which render the Rule Making noncompliant with the Rules Act, suggesting a rescheduling of the Hearing.

1) The statutes cited, as required, in the SSP entry are incorrect, and don't agree with the contents of the Rule text file.

2) The required Summary appears to rely on the previous existence of 10.2.4 NMAC created via the 5 May 2022 Emergency Rule Making. As described in my previous comment, that Emergency Rule Making had major problems and is void. The Summary avoids this reality.

3) Due to the problems with the 5 May 2022 Rule Making, and the lapse following 180 days, the December 15th date noted in the summary for a disbursement seems impossible, due to the Register publishing schedule. The next available submittal deadline is 7 December, with publishing on 19 December. 15 December simply won't work.

All of this, and the major confusion surrounding the 5 May Rule Making, suggests cancellation of the 29 November hearing. Attempting to get FY22 disbursements led to getting the NMACS released before the statute which enabled the NMACS, and this seems illegal.

I suggest forgetting the FY22 attempt, laying on a clean hearing for 10.2.4 NMAC, and focusing on FY23 and beyond.

Of course I can't stop DPS from violating our laws, but I certainly discourage you from doing so, as its unethical, and in violation of your oaths to those laws.

I am curious what DPS will do with this hearing, as reveals a good bit about your character. Uniforms don't make the man, character does.

BTW, I'm still waiting for a reply concerning my hearing difficulties. I believe you have an obligation under our laws?

Regards,

Chris Mechels
505-982-7144

From: Chris Mechels <cmechels@q.com>
Sent: Tuesday, November 22, 2022 3:49 PM
To: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; smalave@nmag.gov
Subject: [EXTERNAL] Comment #1 to the 29 November DPS Rules Hearing

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Jason, et al,

These comments relate primarily to the Emergency Rule Making of 10.2.4 NMAC, effective 5 May 2022. It has numerous problems concerning both the Rule Making process and the content. Below, some of the major problems which render the Rule Making noncompliant with the Rules Act, and void.

1) The Rule has an effective date of 5 May 2022, and implements a section of HB68 which does not take effect until 19 May 2022, as stated in the SSP entry of 10 May 2022. Thus the Rule implements a statute that has no existence until 19 May. I don't believe this is possible legally, as I've never seen it tried before. If there is a precedent please provide it.

2) The Emergency Rule CES "justification", required by statute, is "an unanticipated loss of funding". This is patently false, as the content of the Bill clearly establishes the program, and failed to implement it immediately, as they could have done by declaring an emergency,. The justification is dishonest, on its surface; thus the Emergency Rule Making lacks the required justification.

3) The required records for The Emergency Rule making are lacking, both in the SSP entry and the DPS webpage. This violation, itself, makes the Rule Making invalid.

With these failures everything done to date by DPS which relies upon the 5 May Rule seems illegal, and, to the extent disbursements are involved, fraud and larceny.

These problems could have, and should have, been caught by SRCA on your submittals, but they avoid inspection, allowing you to violate our Rules Act if you wish, without comment on their part.

Another over hanging problem is that the 5 May Rule expired on 5 November 2022, leaving any activities under that Rule since then without legal support. This failure seems a DPS management failure, as the 180 days is clearly established.

Thus, due to the 5 May Rulemaking Problems, and the lapse after 180 days, any activity under 10-

2-4 NMAC to date is illegal, and possibly fraudulent.

This suggests that the 29 November hearing is built on quicksand, and should be re-scheduled.

Regards,

Chris Mechels
505-982-7144

From: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>
Sent: Monday, November 7, 2022 8:57 AM
To: Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>
Subject: Fwd: [EXTERNAL] Open Meetings

Let's chat about this tomorrow. Should we consider a hybrid meeting

From: Chris Mechels <cmechels@q.com✉>
Sent: Sunday, November 6, 2022 11:50:35 AM
To: Hendricks, Rick, SRCA <[Rick.Hendricks@srca.nm.gov|mailto:Rick.Hendricks@srca.nm.gov]>;
Greenlee, Jason, DPS <[Jason.Greenlee@dps.nm.gov|mailto:Jason.Greenlee@dps.nm.gov]>
Subject: [EXTERNAL] Open Meetings

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Rick and Jason,

I have been following up on my concerns with OMA requirements for the upcoming meeting; SRCA on 22 Nov, DPS on 29 Nov.

I am concerned that both of these meeting are not open to the public, as I find video means very difficult, due to hearing issues.

<https://cv.nmhealth.org/wp-content/uploads/2022/08/081222-Omnibus-PHO.pdf> seems the latest DOH Covid guidance and relaxes restrictions.

SF County BCC allows public presence since 6-14-2022. LA County even earlier.

I therefore suggest, and request, that the two meetings of interest allow public presence, and this is consistent with OMA requirement. Not allowing the public would seem to be a violation of OMA.

I request a prompt response, as I will need hearing assistance if you insist on going with video. If I am present my hearing aids are adequate.

Regards,

Chris Mechels
505-982-7144

From: Waters, Joan, DPS

Sent: Monday, November 7, 2022 3:33 PM

To: Chris Mechels <cmechels@q.com>

Cc: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>

Subject: RE: [EXTERNAL] DPS Rule Hearing on 11/29/2022

Mr. Mechels: Thank you for your e-mail of November 4, 2022. You articulated two concerns regarding the publication of the Notice of Public Hearing on Proposed New Permanent Rule on the New Mexico Sunshine Portal. Your concerns and the agency's responses are set forth below:

1. "The Public Notice, provided in the SSP entry, conflicts with the SSP entry content in the Purpose and Summary sections, with the Notice being more correct."

Response: The portion of the Notice entitled "Summary of the full text of the proposed permanent rule" was entered in the Sunshine Portal as the "Purpose". The first sentence (only) of the portion of the Notice entitled the "Purpose of the proposed permanent rule" was posted on the Sunshine Portal as the "Summary". We apologize for any confusion this may have caused and we thank you for bringing this matter to our attention.

2. "In both the SSP entry and the Notice the statutes cited as authority (required) are wrong."

Response: This is true. The first statute cited, Section 29-11A-5, provides for the department's rulemaking authority under the Sex Offender Registration and Notification Act. The second statute cited, Section 9-19-4 H. (3), is a typographical error. The correct statute is Section 9-19-14 H. (3). Again, we apologize for any confusion this may have caused and we thank you for bringing this matter to our attention.

Joan M. Waters,

Assistant General Counsel

N.M. Department of Public Safety

P.O. Box 1628 (87504-1628)

4491 Cerrillos Rd.

Santa Fe, N.M. 87507

Office: 505.827.9154

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Cell: 505.365.3531

E-mail: joan.waters2@dps.nm.gov

From: Chris Mechels <cmechels@q.com>

Sent: Monday, November 7, 2022 7:55 AM

To: Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>

Cc: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Waters, Joan, DPS

<Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>

Subject: RE: [EXTERNAL] DPS Rule Hearing on 11/29/2022

Matt,

I understand your position of course. Just found it interesting that DPS noted your "approval". Never seen that before.

As you know, there are ongoing problems with illegal (violation of the Rules Act) submissions on Rule Makings. You won't look at content. The AG won't look at Hearing Procedures which violate the Default Hearing Procedure (EIB being an example), as the statutes simply say the procedures "must be filed" with the AG, not that that AG must look at them.

My conclusion; you, and the AG, don't give a rip about the Rules Act, even though you are responsible, and you don't give a rip about "upholding the NM laws" which you are sworn to.

IF you cared, you "could" look at the submitted content, and, if necessary, pick up the phone, and call the submitter, in this case Jason. I suspect he'd appreciate such a call, and would like to be correct. But, you won't do that, and the AG won't call the EIB on their illegal hearing procedure.

So, what does it mean, to "uphold" the NM laws, including the Rules Act. Holding them over your head to keep the rain off?

You all seem content to let illegal (non compliant with the Rules Act) filings go by, and print them in the Register. Is the public then to catch the errors and sue the DPS, to have the hearing set aside? The AG will of course defend the DPS against the public. DPS, the lead "law enforcement" agency, knowingly violating the law?

This is called "governance"? When those employees, and their agencies, "sworn" to our laws have no interest in their implementation, and dare the public to sue, IF they can find Counsel, and pay for the suit? There is no fee recovery specified for Rules Act suits, unlike OMA and IPRA.

It seems you just don't care to implement the laws you are responsible for, even enough to pick up the telephone. You only pick up your pay check.

This is called "governance" in our fair state. No "Rule of Law" because you don't care about the law. If you did, you'd pick up the phone.

We live in a Dark time, when the Rules Act is violated with impunity, and you watch and do nothing. The only hope is a new Governor and AG, and that's only a hope.

Sadly, you aren't even the worst.

Regards,

Chris Mechels

505-982-7144

On Fri, 4 Nov, 2022 at 10:37 AM, Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov> wrote:

To: chris mechels; hendricks, rick, srca

Cc: Jason.Greenlee@dps.nm.gov; Joan.Waters2@dps.nm.gov

Hi Chris,

Then notice that was reviewed and approved by me (as every notice is reviewed and approved by A.L.D. pursuant to rule and statute) is found here:

https://www.srca.nm.gov/nmac/nmregister/xxxiii/DPSnotice_xxxiii19.html

https://www.srca.nm.gov/nmac/nmregister/xxxiii/DPSnotice_xxxiii19.pdf

I don't review or approve anything that any agency places on the sunshine portal. The requirement to place on the sunshine portal is placed on each agency.

All of these points have been made to you before...

I've gone ahead and corrected your incorrect cc: to DPS general counsel office.

Have a great weekend.

Please keep you and yours well: wear your mask, keep your distances and wash your hands often !

matt

Matthew Ortiz

Administrative Law Division Director

+ matt.ortiz@srca.nm.gov +

505-476-7941

<<http://www.nmcpr.state.nm.us/>>

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From: Chris Mechels <cmechels@q.com>

Sent: Friday, November 4, 2022 10:15 AM

To: Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Ortiz, Matt, SRCA

<Matt.Ortiz@srca.nm.gov>; jason.jason.greenlee@state.nm.us

Subject: [EXTERNAL] DPS Rule Hearing on 11/29/2022

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Rick, et al,

This email to alert you all to a problem with this hearing. I'm sending this to SRCA and DPS because the SSP entry mentions Matt as approving.

While I applaud the involvement, which I have long suggested, in approving Rules submitted to SRCA, this SSP entry has obvious problems.

The Public Notice, provided in the SSP entry, conflicts with the SSP entry content in the Purpose and Summary sections, with the Notice being more correct.

In both the SSP entry and the Notice the statutes cited as authority (required) are wrong.

It seems both DPS and SRCA dropped the ball on this one.

That said, I applaud SRCA actually looking at the submittals, which they have resisted doing.

Regards,

Chris Mechels

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From: Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>

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Have a great weekend.

Please keep you and yours well: wear your mask, keep your distances and wash your hands often !

matt

Matthew Ortiz

Administrative Law Division Director

+ + matt.ortiz@srca.nm.gov +

505-476-7941

<<http://www.nmcpr.state.nm.us/>>

From: Chris Mechels <cmechels@q.com>

Sent: Friday, November 4, 2022 10:15 AM

To: Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>; jason.jason.greenlee@state.nm.us
Subject: [EXTERNAL] DPS Rule Hearing on 11/29/202

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Chris Mechels

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