

## Chavez, Georgette, SRCA

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**From:** Hendricks, Rick, SRCA  
**Sent:** Tuesday, September 29, 2020 3:06 PM  
**To:** Chavez, Georgette, SRCA  
**Subject:** FW: 1.24.10 Public Hearing Comments #1

Rick Hendricks, Ph.D.  
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**From:** Chris Mechels [mailto:cmechels@q.com]  
**Sent:** Monday, September 28, 2020 9:17 AM  
**To:** CPR, RMD, SRCA <RMD.CPR@state.nm.us>  
**Cc:** Hendricks, Rick, SRCA <Rick.Hendricks@state.nm.us>; Ortiz, Matt, SRCA <Matt.Ortiz@state.nm.us>; John Kreienkamp <jKreienkamp@nmag.gov>; Sally Malave <smalave@nmag.gov>  
**Subject:** [EXT] 1.24.10 Public Hearing Comments #1

Dear Sir,

These comment for the upcoming Rules Hearing set for 30 September. I believe there are major violation of the Rules Act in your filings, making it wise to cancel the Hearing and reschedule it.

The basis of the problems are the failure to properly notice the 29 April Emergency Rule concerning 1.24.10. I made you aware of this in my 31 August email, included below.

Per the Rules Act, such failure to follow the Act makes the Rule "invalid". The posting of the Emergency Rule info on the Sunshine Portal, and the SRCA web page, on 1 September, following my email, is welcome but does not affect the "invalid" filing. The invalid Emergency Rule thus has no effect.

As the current change modifies the text from the Emergency Rule, that simply can't work. In addition, it is not appropriate to modify Emergency Rule text, in any event. The proposed modification should have addressed the 1.24.10 PRIOR to the Emergency Rule. This would have involved inserting the desired change, not deleting portions of the Emergency Rule text.

Even IF those problems did not exist, there are other problems. The required Purpose and Summary are missing from the current SunshinePortal entry for 1.24.10.

The "Notice" posted on the SRCA website has the following;

Synopsis:

Due to the governor's declaration of a public health emergency, the SRA issued an emergency amendment on April 29, 2020, to section 15 allowing for transmittal form filing with a digital signature. The proposed amendment of [1.24.10.15](#) NMAC consists of continuing to accept digital signature by eliminating the public health emergency predicate language.

This, in turn, is false, as the Purpose and Summary of the Emergency Rule contains No Mention of the digital signature. The sole Purpose mentioned concerned "Rule Filings".

This plentitude of errors, both procedural and textual, should lead to canceling the 30 September Hearing. Proceeding to "bull ahead", in spite of these many problems would set a disastrous example for the many state agencies bound by the Rules Act. It would also be illegal, as you know of the many Rules Act violations involved. Malfeasance??

I have recently been involved with many Dept of Health Rules Hearings, many of which also involved Emergency Rules. Much like your current proposal, most of those Hearing are illegal/invalid. The Rules Act implementation, across our State Agencies, is chaotic and, in many cases, scofflaw, esp under the current administration which allows far too many Emergency Rules (compared to previous practice). There should be some oversight of these practices from the Governor's office, but I see none.

It would be appropriate, and set a good example, to cancel the 30 September Public Hearing. It can always be rescheduled, with a chance to correct all the problems.

The Ethics Commission recently had problems with a Rules Hearing notice. When notified of this, they did the proper thing, simply canceled and rescheduled. No big deal.

Canceling the 30 September Hearing also seems "no big deal", simply rescheduling with a clean effort. Proceeding, in spite of all these legal issues is a "Big Deal", as it would show a scofflaw attitude by your office, which is charged with oversight of the Rules Act by statute. If YOU won't follow the law, the whole Rules Act is in jeopardy. That is a Big Deal. It threatens our Legislative process.

I think the choice is obvious.

Regards,

Chris Mechels  
505-982-7144

----- Forwarded Message -----

From: Chris Mechels <[cmechels@q.com](mailto:cmechels@q.com)>

To: rick hendricks <[rick.hendricks@state.nm.us](mailto:rick.hendricks@state.nm.us)>

Cc: matt ortiz <[matt.ortiz@state.nm.us](mailto:matt.ortiz@state.nm.us)>, Sally Malave <[smalave@nmag.gov](mailto:smalave@nmag.gov)>

Sent: Mon, 31 Aug 2020 15:38:45 -0400 (EDT)

Subject: RE: Rules Act issues

Dear Mr. Hendricks,

Thanks for the prompt response.

First item. <http://www.srca.nm.gov/meeting-minutes/> shows no sign of the meeting you mention., or any other meeting since Feb 2019. Please post the info, as was long the custom. As there in no other record on the website of those meetings, this seems necessary.

As for emergency rules, I believe I noted that in the seven years before the current administration, the average number of Emergency Rules was seven (7). In 2019 there were 23 Emergency Rules, and so far in 2020, 25 Emergency Rules. This needs to be examined. Checking the 2020 NM Register, I found that you also created an Emergency Rule, for 1.24.10, Issue 10, Page 377, 4/29/2020.

There seems to be a problem there, as the Sunshine Portal has no mention of that Emergency Rule, though it is required by the Rules Act; under "provide to the public" below.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

This seems to complicate the 9/30/2020 Rules Hearing, which concerns 1.24.20.

Yet another concern is why the Commission Meetings aren't listed in the Public Notices of the Sunshine Portal, as they once were. I suggest that they should be so listed, to properly inform the public.

In summary, I think these simply show how pervasive the Rules Act problems, and Public Notice problems, are currently. I know of only one agency, the Ethics Commission, that seems in compliance.

The Commission would seem to have some role in this area, even if only to issue a "Best Practices", or a Training Class. The current situation is chaotic, and illegal.

Can't we improve on this? The public has a right to participate in Rules Hearings, and this right is being compromised.

Regards,

Chris Mechels  
505-982-7144