

From: [Chris Mechels](#)
To: [Apodaca, Sheila, DOH](#)
Cc: [Chris Goad](#); [Heather Ferguson](#); [New Mexico Foundation for Open Government](#)
Subject: [EXT] Mechels comment #7 on NMAC 7-1-30 Rules Hearing
Date: Thursday, July 23, 2020 2:55:33 PM

Dear Ms. Apodaca,

This is the seventh of a number of comments on this hearing.

I closed out my comments in #6 wondering about the integrity of the Hearing Officer who chosen by Kunkel.

That question seems answered on the record. He has none... and showed little to no knowledge of the Rules Act, and the 2017 changes wrought by HB58. He seemed utterly unprepared for the hearing.

I questioned him about the procedure for the Rules Hearing. He provided none. I advised him, as I had advised in my earlier comments, that NM law requires the use of the Default Procedure, NMAC 1.24.25, and that we should obtain it to guide the hearing, a legal requirement. He refused, and seemed to have no knowledge of 1.24.25, even though it IS, since April 2018, NM law. Apparently this does not concern him.

The next hurdle, also illegal, is that he was intent of restricting comments to proposed amendments to 7.1.30. This would be normal if 7.1.30 had been established in a "normal" Rules Hearing, with public input. But, 7.1.30 was established with an Emergency Rulemaking, which allow NO public input, therefore public comment should have been taken on the WHOLE RULE, in detail. This was not allowed. Therefore the public has NEVER been allowed a proper Rules Hearing, due to his ignorance. I offered to address the rule point by point, which would have been correct procedure, but he did not allow that. He seems ignorant of the Rules Act, and our rights as citizens, and cares little. A very poor choice as a Hearing Officer, esp has he has no respect for the law, though he's sworn to uphold it.

He blocked adequate comments allowing an examination in depth of 7.1.30, which is what seemed warranted, esp vs 7.1.2, an existing rule which serves as the basis of 7.1.30. This would have allowed adequate questioning of why all the appellants "rights", apparent in 7.1.2, had been stripped out in 7.1.30. Perhaps they didn't wish this question.

He arbitrarily limited comments to 3 minutes, which he then "extended" by 5 minutes for me. Not nearly enough time to examine 7.1.30 properly. This violated 1.24.25, the procedure he chose to ignore, which allows a more generous examination of the materials.

We are left with a very ugly picture. A Hearing Officer intent on "blocking" public input on 7.1.30, a very ugly procedure, adopted in an illegal Emergency Rulemaking. This calls the DOH Secretary's excessive use of Emergency Rulemaking into question. Emergency, in past practice, is for EMERGENCIES, not changing 18 years old, to 17 years old. Failure to change 18 to 17, was, per the Secretary, putting us into "imminent danger", though what that danger is she did not identify. An outrage, simple abuse of power, and violating our rights to input the process.

He shows no knowledge, or interest, in the legal requirements of the Rules Act, esp since HB58, and the Default Procedure. Looking to the record of his previous hearings, the same failures are apparent, calling the legality of THOSE hearings into question.

The current hearing on 7.1.30 shows how NOT to run a Rules Hearing, and could be used to instruct potential hearing officers on what NOT to do.

Today's hearing is illegal on very many fronts, procedural, content, legislative intent and being reasonable. It obviously cannot stand a legal challenge.

A sad example of poor, and illegal, governance. It shows why we rank LAST in the nation in most measures. Our

government won't follow the law, and the result is mayhem.

Regards,

Chris Mechels
505-982-7144

PS. You MUST get the Sunshine Portal FIXED. Any Rules Hearings require posting ON the Portal, and today that is impossible.

Regards,

Chris Mechels
505-982-7144