

From: [Frank, Matthew](#)
To: [Reitz, Nate \(MSGC\)](#)
Subject: Draft Meeting Rules
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Attachments: [1395_001.pdf](#)

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Nate, I have had a chance to review the Draft Meeting Rules you sent to me, and I offer a couple comments. First, these would not be formal rules that would have to be promulgated under chapter 14. Rules must be formally promulgated under chapter 14 if they “directly affect the rights of or procedures available to the public.” Minn. Stat. section 14.06(a). But, there is a specific exception for rules that only address “the internal management of the agency . . . that do not directly affect the rights of or procedures available to the public.” Minn. Stat. section 14.03, subd. 3(a)(1). There is a strong argument that the proposed rules would be internal management rules only. Guidance is provided here by the court of appeals’ decision in *In re Assessment Issued To Leisure Hills Health Care Center*, 518 N.W.2d 71, 74 (Minn. Ct. App. 1994). At issue in that case was the Department of Health’s inspection procedures to carry out its statutory mandate to inspect and license nursing homes. The Court of Appeals held that the inspection procedures were not unpromulgated rules because they did not directly affect the rights of the public and did not directly affect the procedures available to the public. *Id.* They did not directly affect the rights of the public because, even though they directly led to licensing actions, the Department’s substantive standards were codified in statute and nursing homes had no right to certain inspection procedures. Likewise, to the extent there are substantive provisions applicable to the public for the SGC, they are contained in Minn. Stat. section 244.09 and the formal rules in chapter 3000. And the Health Department’s inspection procedures did not affect the procedures available to the public because they “involve only the internal management of the agency.” The proposed rules only affect the internal management of the Comm’n – how meetings will be conducted.

Second, you raise a question about Rule 1, defining quorum. While the precise wording of this rule does not seem to violate any known legal requirements, it does raise some questions when read in conjunction with Rule 3000.0600, as you identify in footnote 3. The questions I have about this seem to arise from the overuse of the term “quorum” in Rule 3000.0600. Generally, “quorum” as a concept is only used to determine whether a meeting can even start. Once a quorum is reached, the meeting can start. Strictly speaking, it does not factor into voting. So it is in using “quorum” in the context of the voting procedure in Rule 3000.0600 that creates some questions. The Rule refers to “a majority vote of a quorum of the commission present” followed shortly by defining “quorum” as a “majority of the members of the commission.” So this leads to two possible interpretations of Rule 3000.0600: the “majority vote of a quorum of the commission present” means a majority of how many commission members are physically (or remotely these days) present at the meeting, no matter how many so long as you reached a quorum at the beginning of the meeting, or a majority vote of six no matter how many are present. In light of the way agency meetings are usually

conducted, I think a better interpretation is the former (the word “quorum” there is somewhat superfluous – the board would not be voting if they didn’t have a quorum, so given the way that boards operate, I assume the word is there just to be clear that there had to be a quorum to vote, but typically agencies adopt resolutions based on the majority who are actually present). But, if in the proposed rule you define the quorum as a specific number, intending it to apply to Rule 3000.0660 meetings, it could be argued that you have effectively amended Rule 3000.0600 without going through the statutory processes in chapter 14 (to implement the latter interpretation). My advice to you then would be to change proposed Rule 1 to simply state: “A majority of the members of the commission constitutes a quorum.” I understand your concerns about a small group being able to change policy, but I think that is true of many boards and agencies. To me, it is the wording of Rule 3000.0600 that creates the question, but I would recommend against putting a definition of “quorum” in your proposed rules that may affect the application of Rule 3000.0600.

I talked with another attorney in the office who has more experience with representing boards and agencies. He thought the presence of the word “quorum” in the voting provision in Rule 3000.0600 was quite unusual. Typically, the voting provision simply requires a majority of those present. He called my attention to the *Shaw* opinion, which I have attached. It has some interesting insights into voting issues (although we are not sure why the board chair in that agency usually abstained – that is not how most boards operate).

I would be happy to discuss these matters further if you would like. Please do not hesitate to contact me should the need arise.

Thank you.

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