

**ENVIRONMENTAL HEARING BOARD
RULES COMMITTEE
MINUTES OF MEETING OF JANUARY 29, 2019**

Attendance:

The Environmental Hearing Board Rules Committee met by conference call on January 29, 2019 at 10:30 a.m. Participating in the call were the following Rules Committee members: Chairman Howard Wein, Brian Clark and Matt Wolford. Participating on behalf of the Environmental Hearing Board were the following: Chief Judge and Chairman Tom Renwand, Judge Steve Beckman, Judge Rick Mather, Assistant Counsel Eric Delio, Board Secretary Christine Walker and Senior Counsel Maryanne Wesdock, who took the minutes.

Minutes of November 16, 2018 Meeting:

Because there was not a quorum, the Committee did not vote to approve the minutes of the November 16, 2018 meeting. The minutes will be voted on at the next meeting.

Revisions to Nunc Pro Tunc Rule:

Following the November 16, 2018 meeting, Jim Bohan circulated the latest set of proposed changes to the Board's rule on nunc pro tunc appeals, 25 Pa. Code § 1021.53a. Mr. Wein and Judge Renwand stated that they agreed with Mr. Bohan's proposed changes. Mr. Wolford expressed a concern with micro-managing the nunc pro tunc process. He felt that it is important to give the Board flexibility. However, he had no objections to the language proposed by Mr. Bohan.

Mr. Wein explained the background of the proposed changes to the nunc pro tunc rule. Both Mr. Bohan and DEP Chief Counsel Alex Chiaruttini had related that there was uncertainty among Department attorneys with regard to the procedure for addressing nunc pro tunc appeals,

e.g. how and when to respond to a petition to appeal nunc pro tunc. Therefore, Mr. Bohan had proposed changes to the rule to clarify the procedure.

Mr. Wolford related the details of a case he handled before the USTIF Board in which he successfully filed a petition to appeal nunc pro tunc. He noted that the rules governing the procedure were not extensive.

Judge Beckman stated that he felt that some of the issues raised by the Department could be dealt with in the Board's existing rules, but he did not object to the language proposed by Mr. Bohan. Mr. Wein stated that, based on his long-standing work with the Rules Committee, the goal of the Committee is to develop rules that are easy to follow, and there is a delicate balance between having rules that are too detailed versus having uncertainty as to the proper procedure to follow.

Because there was not a quorum, the Committee was not able to vote on the language proposed by Mr. Bohan. Mr. Wein asked Ms. Wesdock to circulate the language to the entire Rules Committee and ask for a vote by email. Mr. Wolford suggested that the following language accompany the email: "It is the consensus of the Rules Committee members and judges attending the January 29, 2019 meeting that the rule is acceptable to accomplish its purpose but because there was not a quorum in which to take a vote, we are asking the members to weigh in by email." Mr. Wein suggested giving the Committee members a week to cast their vote.

Mr. Wein noted that the nunc pro tunc revisions are the last set of changes to add to the Board's upcoming rules package, and he suggested that Ms. Wesdock so advise the Committee when she circulates the nunc pro tunc language. He also requested that Ms. Wesdock circulate the language of the current rule to compare with the proposed changes.

At this point in the meeting, Judge Mather joined the call. He stated that Mr. Bohan's latest set of proposed revisions had addressed his concern that a party should be able to raise the issue

of nunc pro tunc either in a petition to appeal nunc pro tunc or in response to a motion to dismiss for untimeliness.

Mr. Clark joined the call at this point in the meeting and agreed with the consensus of the Committee and judges.

Mr. Wein requested that Ms. Wesdock include the meeting minutes with the email asking for a vote on the proposed changes to the nunc pro tunc rule.

The meeting was adjourned at approximately 11:15 a.m.

Next Meeting:

The next meeting of the Rules Committee is scheduled for Thursday, March 14, 2019 at 10:30 a.m.