

**Public comment in rule making:
law and narrative theory**

*or,
The story of rules and the rules of stories*

Teshanee Williams
Richard Whisnant

twilliams@sog.unc.edu

richard_whisnant@unc.edu

School of Government, UNC-Chapel Hill

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Overview

- **The story of rules, and public comment thereon**
 - The basic law in NC
 - A brief history; evolutionary questions
- **The rules of stories: how to hear and understand them better**

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GS § 150B-21.2, Procedure for adopting a permanent rule

(a) Steps. - Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
.....
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.
(7) The period of time during which and the person within the agency to whom written comments may be submitted on the proposed rule.
.....
- (6) **Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.**
- (7) The period of time during which and the person within the agency to whom written comments may be submitted on the proposed rule.....

(d) Mailing List. - An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice or text to each person on the mailing list who has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

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GS § 150B-21.2(e) public hearings

(e) *Hearing.* - An agency **must** hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a **written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.**

An agency **may** hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published. If notice of a public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency shall publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

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GS § 150B-21.2 (g) – (i)

(g) *Adoption.* - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency shall review any fiscal note that has been prepared for the proposed rule and **consider any public comments received in connection with the proposed rule or the fiscal note.** An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

....
(h) *Explanation.* - An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss **why the agency rejected any arguments made or considerations urged against the adoption of the rule.** The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) *Record.* - An agency must keep a record of a rule-making proceeding. **The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule.** (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4; 2011-398, s. 5; 2013-143, s. 1; 2013-413, s. 3(a).)

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A (Very) Brief History of ad law

- “Pre” History: English antecedents and America before 1875
- Rise of regulation & the traditional model, 1875 - 1930
 - The New Deal
- The APA & the mature traditional model, 1940-1965
- Critique and transformation, 1965 - present

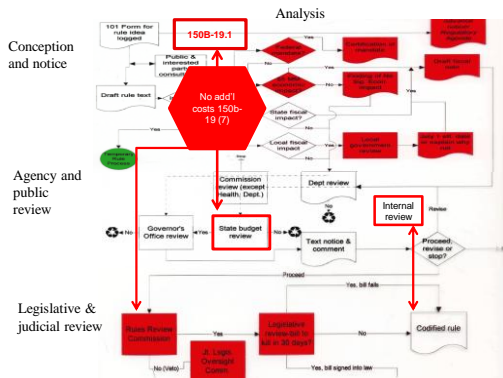


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Evolution of public comment post NC APA

- 1970s-1980s expanded comment procedures but still grounded in "quasi judicial" frame; major "risk" viewed as agency cooption
- 1990s brought expansive procedures beyond legal minima: public meetings, stakeholder groups, etc.
- but also many more agency analytic requirements (speed bumps) as "risk" perception changes

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Another view of rule making evolution



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How might public comment in rule making evolve?

- Is process beyond 150B-21.2 minima worth it anymore?
- Will NC follow national trend in which “adequate guiding standards” → focus on quality of process and faithfulness to principal’s (legislature’s) wishes?
- Could technology help?
- Most public comment takes the form of narratives. How well do we understand narratives, beyond their attention-holding and impact?



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Public Participation & Technology

- **Benefits**
 - Increased participation
 - Increased agency accountability
 - Increased perception of democracy
 - Lowers the cost of participation
 - Platform for deliberation between stakeholders
- **Challenges**
 - Increased perception of democracy
 - Quantity does not equal quality



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The rules of stories: how better to hear and understand them?



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The rules of stories: how better to hear and understand them?

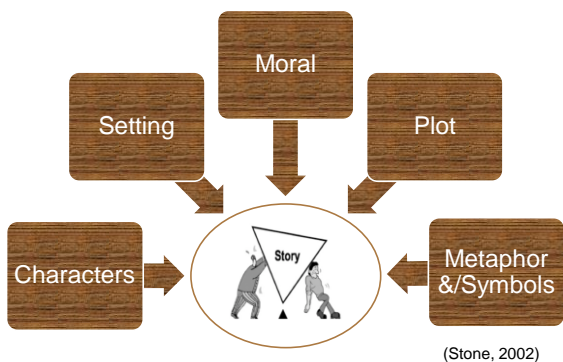
Stories in comments can be analyzed to understand how individuals formulate beliefs, communicate and reason (E. Shanahan et al., 2017)

- Contributes to understanding public sentiment
- Helps the agency to look inward
- Increases accountability
- Reduces the perception of the "democratic deficit"
- Considers multiple perspectives
- Improves communication with the public



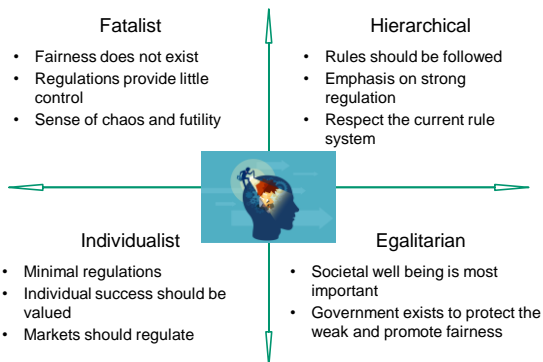
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Stories consist of literary elements



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Cultural Theory



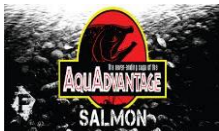
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Getting to the root of the “story”



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Getting to the root of the “story”



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Questions

Teshanee Williams
williams@sog.unc.edu
 School of Government, UNC-Chapel Hill

Richard Whisnant
richard_whisnant@unc.edu
 School of Government, UNC-Chapel Hill

References available upon request

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