

## TITLE 30 – STATE ETHICS COMMISSION

*Notice is hereby given in accordance with G.S. 120C-101 that the State Ethics Commission intends to adopt the rules cited as 30 NCAC 10D .0101-.0105, .0201-.0204, .0301-.0303, .0401-.0407, .0501-.0502 and amend the rule cited as 30 NCAC 09B .0101.*

**Agency obtained G.S. 150B-19.1 certification:**

- OSBM certified on:  
 RRC certified on:  
 Not Required

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov)

**Proposed Effective Date:** June 1, 2014

**Public Hearing:**

**Date:** May 9, 2014

**Time:** 10:00 a.m.

**Location:** Capehart Crocker House, Commission Meeting Room, 424 N. Blount Street, Raleigh, NC 27601

**Reason for Proposed Action:**

**30 NCAC 09B .0101** – To change the composition of the preliminary inquiry and probable cause panels created under the State Ethics Act, G.S. 138A, by eliminating the Executive Director from such panels.

**30 NCAC 10D .0101, .0102, .0103, .0104, .0105, .0201, .0202, .0203, .0204, .0301, .0302, .0303, .0401, .0402, .0403, .0404, .0405, .0406, .0407, .0501, .0502** – To establish and provide notice of lobbying law complaint procedures which execute the authority granted to the State Ethics Commission pursuant to the Lobbying Law, G.S. 120C.

**Comments may be submitted to:** Oral comments will be accepted at the scheduled public hearing. Written comments should be directed to Pam Cashwell, 1324 Mail Service Center, Raleigh, NC 27699-1324; fax (919) 716-1644; email [pam.cashwell@doa.nc.gov](mailto:pam.cashwell@doa.nc.gov). The written comment period begins March 17, 2014 and ends May 5, 2014.

**Fiscal impact (check all that apply).**

- State funds affected  
 Environmental permitting of DOT affected  
Analysis submitted to Board of Transportation  
 Local funds affected  
 Substantial economic impact ( $\geq$ \$1,000,000)  
 No fiscal note required by G.S. 150B-21.4

## CHAPTER 09 – ETHICS COMPLAINTS

### SUBCHAPTER 09B - PRELIMINARY INQUIRY AND PROBABLE CAUSE DETERMINATION

**30 NCAC 09B .0101 INQUIRY AND PROBABLE CAUSE PANELS**

(a) The preliminary inquiry and the determination of probable cause shall be made by a Commission panel of two Commission members, who shall not be of the same political party, ~~and the Executive Director.~~ party. The Chair shall appoint members of the panel to serve on a rotating basis. The Chair may appoint substitute panel members.

(b) After a preliminary inquiry, the Commission panel may dismiss a complaint if it ~~determines~~ determines the following:

- (1) that the ~~The~~ individual against whom the complaint was filed is not a covered person or legislative employee; or
- (2) that the ~~The~~ complaint did not allege facts sufficient to constitute a violation under G.S. 138A-12(b).

~~(c) Commission members who serve on a panel shall not participate in any other proceeding involving a complaint which was considered by the panel.~~

(c) If the Commission panel members cannot agree at the preliminary inquiry stage as to whether the complaint alleges facts sufficient to constitute a violation, the matter shall proceed to an investigation.

(d) If the Commission panel members disagree on the probable cause determination, the complaint shall proceed to the Commission for a determination with the panel members recusing themselves from voting.

Authority G.S. 138A-10(a)(2); 138A-10(a)(5); 138A-10(a)(6); 138A-10(a)(10); 138A-12.

## SUBCHAPTER 10D – LOBBYING COMPLAINTS

### SECTION .0100 – GENERAL

#### 30 NCAC 10D .0101 SCOPE

The rules in this Subchapter execute the authority granted to the State Ethics Commission pursuant to the Lobbying Law, G.S. 120C of the North Carolina General Statutes regarding lobbying complaints.

*Authority G.S. 120C-101(a); 120C-601.*

#### 30 NCAC 10D .0102 COMPLAINT REQUIREMENTS

(a) Complaints shall be initiated in one of the following ways:

- (1) a written complaint. A form is available on the Commission's website at [www.ethicscommission.nc.gov](http://www.ethicscommission.nc.gov) or by contacting the Commission at (919) 715-2071. The form is not mandatory for a complaint to be valid and considered;
- (2) an oral complaint. Oral complaints shall be confirmed in writing by Commission staff;
- (3) a complaint based upon information through general notice. Commission staff or a member of the Commission may take general notice of available information, even if not formally provided to the Commission in the form of a complaint; or
- (4) referrals from a local, state or federal agency.

(b) Complaints shall include the following information:

- (1) the name and other contact information for the complainant;
- (2) the name of the lobbyist, lobbyist principal, or other individual(s) subject to the Lobbying Law (respondent) against whom the complaint is filed; and
- (3) the allegations and the basis upon which the complainant believes the allegations to be true, including specific facts about a potential violation as set forth in G.S. 120C.

*Authority G.S. 120C-101(a); 120C-601.*

#### 30 NCAC 10D .0103 ACKNOWLEDGMENT

Within 10 business days of receipt of a Lobbying Law complaint from a third party or a referral, the Commission shall provide written acknowledgment as to the receipt of the complaint to the complainant. The acknowledgment shall indicate that an investigation has not begun, shall direct the complainant to preserve any potentially relevant information, and shall include the confidentiality provisions of G.S. 120C-601(c).

*Authority G.S. 120C-101(a); 120C-601.*

#### 30 NCAC 10D .0104 NOTICE TO THE COMPLAINANT OF REFERRAL

The Commission shall notify the complainant of a referral to the Secretary of State's Lobbying Compliance Division pursuant to G.S. 120C-601(a).

*Authority G.S. 120C-101(a); 120C-601.*

#### 30 NCAC 10D .0105 PANEL COMPOSITION

The Commission panels referred to under this Subchapter shall be comprised of two Commission members, who shall not be of the same political party. The Chair shall appoint members of the panel to serve on a rotating basis. The Chair may appoint substitute panel members.

*Authority G.S. 120C-101(a); 120C-601.*

### SECTION .0200 – PRELIMINARY INQUIRY

#### 30 NCAC 10D .0201 GENERAL

(a) A preliminary inquiry is conducted to determine whether the individual against whom the complaint is filed is subject to the Lobbying Law and whether the facts are sufficient to allege a violation of the Lobbying Law.

(b) In preparing for a preliminary determination, Commission staff may take pre-investigative actions, including contacting the complainant to seek additional information, requesting the identity of the original source of the information, or contacting the source for further information. Any additional requested information shall be provided within no less than ten business days of the request.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0202 PRELIMINARY INQUIRY PROCEDURE**

A preliminary inquiry decision shall be made by:

- (1) The full Commission if the complaint is received from one of the following:
  - (a) any member of the Commission;
  - (b) a duly constituted panel of the Commission; or
  - (c) Commission staff.
- (2) A Commission panel if the complaint is received from one of the following:
  - (a) a local, state or federal agency referral; or
  - (b) a third-party complainant.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0203 TIMING**

The preliminary inquiry shall conclude within 30 business days of receipt of the complaint. This provision may be extended by the Chair when necessary to comply with Rule .0201(b) of this Subchapter.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0204 PRELIMINARY INQUIRY DECISIONS**

(a) Upon completion of the preliminary inquiry, the following actions may be taken:

- (1) an investigation, if the information alleges a violation over which the Commission has jurisdiction under G.S. 120C.
- (2) decline or dismiss a complaint for the following reasons:
  - (A) the complaint is not within the Commission's jurisdiction and authority under G.S. 120C;
  - (B) the facts are insufficient to constitute a violation under any provisions within the Commission's jurisdiction under G.S. 120C;
  - (C) the complaint is determined to be frivolous; or
  - (D) the respondent and the conduct complained of are the same actions or conduct that have been the subject of a prior complaint.
- (3) refer to one of the following:
  - (A) the N.C. Secretary of State when a complaint relates to Article 2, 4, or 8 of G.S. 120C. The complainant shall be notified.
  - (B) other State, federal or local agencies or law enforcement authorities. The complainant shall be notified.
- (4) stay. If other agencies or authorities are conducting an investigation of the same actions or conduct, the Commission may stay its inquiry pending final resolution of the other investigation. This provision does not prohibit the Secretary of State's Lobbying Compliance Division from exercising its investigative and enforcement authority for portions of a complaint subject to Article 2, 4, or 8.

(b) A panel decision to dismiss, decline, refer, or stay a complaint following a preliminary inquiry shall be considered by the Commission no later than its next regularly scheduled quarterly meeting. If the Commission rejects the panel's decision, the complaint shall be investigated.

(c) The following actions shall proceed without Commission approval upon a decision by the panel to investigate or if the panel members disagree on whether to investigate:

- (1) an investigation; and
- (2) a referral pursuant to Part (a)(3)(A) of this Rule.

(d) Upon receipt of a referral under Part (a)(3)(A) of this Rule, the Secretary of State may:

- (1) investigate; or
- (2) resume an investigation referred to the Commission pursuant to Article 6 of G.S. 120C.

*Authority G.S. 120C-101(a); 120C-600; 120C-601.*

## **SECTION .0300 – INVESTIGATION OF AN ACCEPTED COMPLAINT**

### **30 NCAC 10D .0301 NOTICE OF INVESTIGATION TO RESPONDENT**

Within 10 business days of a decision by the Commission or a panel to investigate, the Commission shall notify the respondent in writing of:

- (1) the general allegation(s);
- (2) the potential statutory violations;
- (3) the Commission's subpoena power;
- (4) that the respondent shall retain any relevant information, including documents, correspondence, notes, electronic communications, electronically stored information and emails; and
- (5) that respondent may respond within 30 calendar days after receiving the notice. The Executive Director may extend this deadline for up to 30 calendar days upon good cause shown.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0302 MIXED COMPLAINT INVESTIGATIONS**

A mixed complaint is a complaint alleging one or more violations under Article 1, 3, 5, or 7 of G.S. 120C and one or more violations under Article 2, 4, or 8 of G.S. 120C. Commission staff shall investigate the portions of the complaint subject to Article 1, 3, 5 and 7 of G.S. 120C. Commission staff may investigate the portions of the complaint subject to Articles 2, 4, and 8 of Chapter 120C as incidental to making a determination on the Article 1, 3, 5, and 7 allegations.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0303 INVESTIGATIVE REPORT**

Upon completion of the investigation, Commission staff shall prepare an investigative report that contains the following:

- (1) the allegations;
- (2) investigative facts and findings;
- (3) relevant statutory provisions;
- (4) disposition options;
- (5) if relevant, possible sanctions; and
- (6) any response from the respondent.

*Authority G.S. 120C-101(a); 120C-601.*

## **SECTION .0400 – COMPLAINT DISPOSITIONS**

### **30 NCAC 10D .0401 PANEL REVIEW AND RECOMMENDATION**

(a) For complaints initiated pursuant to Rule .0202(b) of this Subchapter, Commission staff shall present the investigative report to the same Commission panel that conducted the preliminary inquiry or a substitute panel appointed pursuant to Rule .0105 of this Subchapter.

(b) The Commission panel shall review the investigative report and shall take one or more of the following actions regarding the Article 1, 3, 5 and 7 allegations:

- (1) direct Commission staff to conduct further investigation or obtain additional information;
- (2) recommend that the Commission refer the lobbying complaint to another agency;
- (3) recommend that the Commission dismiss the lobbying complaint or specific allegations within the complaint for lack of a violation of Article 1, 3, 5, or 7 of G.S. 120C.
- (4) recommend that the Commission find a violation of Article 1, 3, 5 or 7 of G.S. 120C and that a specific sanction or sanctions should be imposed. A violation shall be shown to exist by a preponderance of the evidence.

(c) Recommendations shall be presented to the Commission no later than at the next regularly scheduled quarterly Commission meeting.

(d) If the panel members disagree on a decision under this Rule, the complaint shall go before the Commission for a decision with the panel members recusing themselves from voting.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0402 SETTLEMENT OF COMPLAINTS**

(a) At any time, the respondent or his or her legal counsel may meet by mutual consent with the Commission staff to discuss the possibility of settlement of the complaint subject to Article 1, 3, 5, or 7 of G.S. 120C. Settlement of complaints subject to Article 2, 4, or 8 of G.S. 120C is within the Secretary of State's discretion. Resolution by settlement between the respondent and the Commission does not impact or impede the Secretary of State's authority to determine that violations of Article 2, 4, or 8 have occurred, to assess penalties for those violations and to refer to a District Attorney.

(b) If a panel finds that an alleged violation has occurred, Commission staff shall provide the respondent with the panel's recommended determination and offer to engage in settlement discussions. Any recommended determinations provided to the respondent to facilitate settlement discussions shall redact information regarding Article 2, 4 or 8 to the extent possible under the circumstances.

(c) Staff shall present any proposed settlement to the panel. The panel may accept, reject, or modify the terms of the proposed settlement. The panel shall make a final recommendation regarding the settlement to the Commission for approval. If the panel members disagree on acceptance of a proposed settlement, the complaint shall go before the Commission for a decision with the panel members recusing themselves from voting.

(d) Upon the Commission's approval of a settlement under Rule .0404(a)(1) of this Subchapter, the complaint shall be closed as to the complaints subject to Article 1, 3, 5, or 7, subject to re-opening by the Commission if the settlement agreement is breached.

(e) The Commission shall only provide written notice of a settlement to the complainant and the complainant shall not receive a copy of the settlement agreement.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0403 COMMISSION REVIEW**

(a) For complaint investigations initiated pursuant to Rule .0202(a) of this Subchapter, Commission staff shall present the investigative report to the full Commission, and the Commission shall determine the appropriate action as set forth in Rule .0404 of this Subchapter.

(b) For complaint investigations initiated pursuant to Rule .0202(b) of this Subchapter, upon receipt of a recommendation from the panel, the Commission shall determine the appropriate action as set forth in Rule .0404 of this Subchapter with the panel members recusing themselves from voting.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0404 COMMISSION ACTIONS ON A COMPLAINT**

The Commission may take one or more of the following actions regarding the Article 1, 3, 5, or 7 allegations:

- (1) accept, modify or reject any proposed settlement agreement.
  - (a) If accepted, the Commission shall notify the respondent of the Commission's decision.
  - (b) If modified, staff shall present the modifications to the respondent for approval.
  - (c) If rejected, the Commission shall proceed with any other action under Items (2)-(5) of this Rule.
- (2) direct Commission staff to conduct further investigation or obtain additional information;
- (3) refer the complaint to another agency, and notify the respondent and the complainant of the referral.
- (4) dismiss the complaint for lack of evidence if a violation of G.S. 120C is not established by a preponderance of the evidence. If dismissed, the Commission shall provide the following:
  - (a) Notice of Dismissal to respondent; and
  - (b) notice to the complainant that the complaint was dismissed because a violation was not established by a preponderance of the evidence. The complainant shall not receive a copy of the Notice of Dismissal.
- (5) determine that a violation has occurred and proceed as appropriate under Rule .0501 of this Subchapter.

*Authority G.S. 120C-101(a); 120C-601.*

### **30 NCAC 10D .0405 MIXED COMPLAINT DETERMINATIONS**

(a) In a mixed complaint, within 10 business days after determination by the Commission of the Article 1, 3, 5 and 7 portions of the complaint, Commission staff shall:

- (1) send copies of the relevant investigative material, Notice of Dismissal, Finding of Violations, respondent's Notice of Referral, or other relevant documents to the Secretary of State's Lobbying Compliance Division for any appropriate actions with regard to the remaining allegations subject to Article 2, 4, or 8 of G.S. 120C, excluding attorney work-product or privileged items under current law;
- (2) provide the Secretary of State's Lobbying Compliance Division with access to all investigative files in mixed complaint investigations, excluding attorney work-product or privileged items under current law;
- (3) notify the respondent of the referral and their duty to retain any potentially relevant information, including documents, correspondence, notes, electronic communications, electronically stored information, and emails; and
- (4) notify the complainant of the referral and direct them to retain any potentially relevant information, including documents, correspondence, notes, electronic communications, electronically stored information, and emails.

(b) Any Commission determinations provided to the respondent to facilitate settlement discussions shall redact information regarding Article 2, 4 or 8 to the extent possible under the circumstances.

*Authority G.S. 120C-101(a); 120C-600; 120C-601.*

### **30 NCAC 10D .0406 NOTIFICATION OF VIOLATION TO RESPONDENT**

If the Commission finds that a violation has occurred, the respondent shall be notified of the following:

- (1) the Commission's decision;
- (2) any sanctions imposed pursuant to Rule .0501 of this Subchapter;
- (3) if it is a mixed complaint, the referral to the Secretary of State's Lobbying Compliance Division and the respondent's duty to retain any potentially relevant information, including documents, correspondence, notes, electronic communications, electronically stored information and emails;
- (4) the respondent's right to appeal the determination by filing a petition with the Office of Administrative Hearings and that the Commission's determination shall become final upon a failure to appeal within 60 days;
- (5) the respondent's opportunity to meet with Commission staff to discuss post-decision settlement; and
- (6) the requirement that pursuant to G.S. 120C-603(a), apparent violations of G.S. 120C shall be reported to the district attorney.

*Authority G.S. 120C-101(a); 120C-601; 120C-603.*

### **30 NCAC 10D .0407 NOTIFICATION OF VIOLATION TO COMPLAINANT**

If the Commission determines that a violation occurred, Commission staff shall notify the complainant that an Order has been entered and, if relevant that a referral has been made to the Secretary of State under Rule .0405 of this Subchapter.

*Authority G.S. 120C-101(a); 120C-601; 120C-603.*

## **SECTION .0500 – SANCTION CRITERIA AND IMPOSITION OF SANCTIONS**

### **30 NCAC 10D .0501 POTENTIAL SANCTIONS**

Upon finding a violation and taking the criteria in Rule .0502 of this Subchapter into consideration, the Commission may:

- (1) issue a letter of warning;
- (2) impose a fine of up to five thousand dollars (\$5,000) per violation;
- (3) require a respondent to attend lobbying education as specified by the Commission; and
- (4) impose other sanctions as provided in Chapter 120C.

*Authority G.S. 120C-101(a); 120C-601; 120C-602.*

### **30 NCAC 10D .0502 SANCTION CRITERIA**

The Commission may consider one or more of the following criteria in imposing sanctions:

- (1) the length of time the respondent has been engaged in lobbying for payment;
- (2) the length of time the respondent has been paying an individual to lobby on its behalf;
- (3) the length of time the respondent has been registered as a lobbyist or liaison personnel;
- (4) the length of time the respondent has been registered as a lobbyist principal;
- (5) the number of past violations of G.S. 120C by the respondent;
- (6) the number of times the respondent has received a warning letter;
- (7) whether the respondent knew or should have known that the conduct or activity was a violation of Article 1, 3, 5, or 7 of G.S. 120C;
- (8) the nature and number of violations in the complaint;
- (9) the duration of the violation;
- (10) whether the respondent attempted to correct the violation prior to a complaint being filed;
- (11) the result or effect of the violation;
- (12) whether the violation was inadvertent or intentional;
- (13) whether the respondent has received advice, informal or formal, from the Commission regarding the conduct or activity giving rise to the violation;
- (14) the scope of the lobbying activity concealed;
- (15) the amount of the resources expended to violate the law;
- (16) the amount of expenditures concealed; or
- (17) any other criteria that the Commission deems reasonable to assist with the determination of sanctions.

*Authority G.S. 120C-101(a); 120C-601; 120C-602.*