

**State Ethics Commission Proposed Rules
As Published in the NC Register, Volume 26, Issue 24, pp. 1992 – 1996
June 15, 2012**

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 05B .0105; 08 .0101; 10A .0101; 10C .0104-.0105, .0302; and 10D .0101-.0108.

Link to agency website: <http://www.ethicscommission.nc.gov>

Proposed Effective Date: January 1, 2013

Public Hearing:

Date: August 10, 2012

Time: 9:00 a.m.

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

Reason for Proposed Action:

30 NCAC 05B .0105 – to define types of income that must be reported on a filer's SEI

30 NCAC 08 .0101 – to define "advertising" for purposes of use of public title

30 NCAC 10A .0101 – to define "significant part" of an employee's job for purposes of registering as a lobbyist

30 NCAC 10C .0104-.0105 – to establish what information must be provided for a "description of" and "connected with" a reportable expenditure

30 NCAC 10C .0302 – to establish even costs that must be reported for lobbying events

30 NCAC 10D .0101-.0108 – to establish lobbying law complaint procedures

Comments may be submitted to: Mary Shuping, 1324 Mail Service Center, Raleigh, NC 27699-1324; phone (919) 715-2071; fax (919) 715-1644; email mary.shuping@doa.nc.gov

Comment period ends: September 30, 2012

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
Date submitted to OSBM:
- Substantial economic impact (≥\$500,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 05 - STATEMENTS OF ECONOMIC INTEREST

SUBCHAPTER 05B - CONTENTS

30 NCAC 05B .0105 DEFINITION OF INCOME

In addition to the types of income listed in G.S. 138A-24(a)(3) that must be reported on the Statement of Economic Interest,

income shall also include all income reported on the filer's federal tax return.

Authority G.S. 138A-10(a)(2); 138A-10(a)(10); G.S. 138A-24(a)(3).

CHAPTER 08 – CONFLICTS OF INTEREST AND OTHER ETHICAL STANDARDS

30 NCAC 08 .0101 USE OF TITLE

(a) For purposes of G.S. 138A-31(b), the following definitions shall apply:

- (1) "Advertising" means a written or oral communication that is published, disseminated, circulated, or placed before the public for the purpose of attracting public attention to a product, business, or service. "Advertising" excludes a letter sent to an individual or business concerning the qualifications or characteristics of an individual or business and that is not otherwise publicly distributed.
- (2) "Nongovernmental advertising" means that the funding or resources used to produce and publicize the advertisement was not derived from the State, a political subdivision of the State, or the federal government.

(b) For purposes of G.S. 138A-31(b), an advertisement "advances the private interest" of a covered person or others when its primary purpose is to benefit a private, rather than a public, interest.

Authority G.S. 138A-10(a)(2); 138A-10(a)(10); 138A-31(b).

CHAPTER 10 - LOBBYING

SUBCHAPTER 10A - REGISTRATION

30 NCAC 10A .0101 SIGNIFICANT PART

(a) For purposes of G.S. 120C-100(a)(10)d., a "significant part" of an employee's job duties include lobbying if during any rolling 30 day period either:

- (1) five percent or more of an employee's actual duties included direct lobbying; or
- (2) five percent or more of an employee's actual duties included goodwill lobbying.

(b) In making this determination:

- (1) The amount of time an employee spends engaged in direct lobbying activities and in goodwill lobbying activities shall not be aggregated; and,
- (2) The amount of an employee's time spent on those activities that are otherwise exempt under G.S. 120C-700 shall be excluded.

(c) Once the amount of time spent by an employee engaged in direct lobbying or in goodwill lobbying during the prior 30 day period equals or exceeds five percent of his or her actual hours

**State Ethics Commission Proposed Rules
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worked, the employee must register as a lobbyist within one business day.

Authority G.S. 120C-100(a)(10)d.; 120C-101(a).

SUBCHAPTER 10C - REPORTING

SECTION .0100 - GENERAL

30 NCAC 10C .0104 DESCRIPTION OF REPORTABLE EXPENDITURE

(a) For purposes of G.S. 120C-401(b)(3), which requires that "a description" of the reportable expenditure be set forth on each report, the following information should be provided where applicable:

- (1) An identification of the tangible item given;
- (2) An identification of the third party recipient of an item or monetary contribution made at the request of or on behalf of a designated individual or a member of his or her immediate family; or,
- (3) An identification of the name or title of the event or meeting and the date(s) of the event or meeting.

(b) The information required by G.S. 120C-403(b)(3) is in addition to the requirement in G.S. 120C-401(c) that the report list particular expenditure categories.

Authority G.S. 120C-101(a); 120C-401(b)(3).

30 NCAC 10C .0105 CONNECTED WITH REPORTABLE EXPENDITURE

For purposes of G.S. 120C-401(b)(5), the name of the designated individual or member of the designated individual's immediate family "connected with" a reportable expenditure means the designated individual or the immediate family member who:

- (1) Received or benefited from the reportable expenditure, if the designated individual or immediate family member was the ultimate recipient of the expenditure; or,
- (2) Requested the reportable expenditure or on whose behalf the reportable expenditure was made, if a third party other than the designated individual or immediate family member was the ultimate recipient of the expenditure.

Authority G.S. 120C-101(a); 120C-401(b)(5).

SECTION .0300 - LOBBYIST PRINCIPAL REPORTING

30 NCAC 10C .0302 REPORTABLE EXPENDITURES MADE FOR LOBBYING

For purposes of G.S. 120C-402(b)(1) and 120C-403(b)(1), when reporting expenditures for events held for lobbying, the entire cost of the event must be reported. This includes the cost of food service supplies, printing, facility rental, name badges, and

flowers and other decorations, in addition to the fair market value or face value of food and beverages provided at the event.

Authority G.S. 120C-101(a); 120C-402(b)(1); 120C-403(b)(3).

SUBCHAPTER 10D – LOBBYING COMPLAINTS

30 NCAC 10D .0101 SCOPE

The rules in this Subchapter apply only to complaints filed or investigations initiated pursuant to the Lobbying Law, Chapter 120C of the North Carolina General Statutes.

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

30 NCAC 10D .0102 COMPLAINTS

(a) Complaints.

- (1) Complaints shall be filed in accordance with these rules. Complaints may be:
 - (A) Written. A form for filing a complaint is available on the Commission's website _____ at www.ethicscommission.nc.gov or by contacting the Commission at (919) 715-2071, or any successive phone numbers published on the Commission's website.
 - (B) Verbal. All verbal complaints shall be confirmed in writing by the Commission staff.
- (2) Anonymous complaints shall not be accepted.
- (3) Complaints shall include the following information:
 - (A) Contact information for the complainant;
 - (B) The name and affiliation of the person against whom the complaint is filed (respondent); and,
 - (C) A clear basis for the complainant's allegations, including specific facts indicating that a violation over which the Commission has jurisdiction has occurred.

(b) Referrals. The Commission may accept referrals from other state or federal agencies. For purposes of the rules in this Subchapter, a referral from another state or federal agency shall be treated as a complaint.

(c) Upon receipt of a lobbying complaint, the Commission staff may either make the initial determination as to whether the complaint contains sufficient information to allege a violation of Chapter 120C and whether the Commission has jurisdiction over the matter or refer the matter to a panel for the initial determination.

(d) A lobbying complaint that does not clearly allege facts sufficient to constitute a violation under any provision of Chapter 120C shall be declined.

(e) A lobbying complaint that relates solely to Article 2, Article 4, or Article 8 of Chapter 120C shall be referred to the North Carolina Secretary of State.

State Ethics Commission Proposed Rules
As Published in the NC Register, Volume 26, Issue 24, pp. 1992 – 1996
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(f) A lobbying complaint that alleges information that, if true, may violate Article 3, Article 5, or Article 7 of Chapter 120C shall be accepted.

(g) The Commission shall notify the complainant if the lobbying complaint is either declined or referred.

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

30 NCAC 10D .0103 COMMISSION INITIATED INVESTIGATIONS

Notwithstanding Rule .0102 of this Subchapter, the Commission may initiate an investigation:

- (1) On its own motion; or,
- (2) Upon the request of any Commission member.

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

30 NCAC 10D .0104 INVESTIGATION OF AN ACCEPTED COMPLAINT

(a) Upon acceptance of a lobbying complaint pursuant to Rule .0102 of this Subchapter or upon a Commission-initiated investigation pursuant to Rule .0103 of this Subchapter, the Commission staff shall investigate the allegations to determine whether the respondent committed a violation within the Commission's jurisdiction under Article 3, Article 5, or Article 7 of Chapter 120C.

(b) The Commission shall notify the respondent of the initiation of an investigation, including the general allegations and potential statutory violations. The notice shall also request that the respondent preserve all potentially relevant information, including documents, correspondence, notes, electronic communication, and emails. The notice shall also include notification of the Commission's subpoena power.

(c) The respondent shall have 30 calendar days after receiving the notice in which to respond. The Executive Director may extend this deadline for up to 30 calendar days upon good cause shown.

(d) Upon completion of the investigation, Commission staff shall prepare an investigation report which includes the allegations, investigative findings, statutory violations, and any responses from the respondent.

(e) Commission staff shall provide the respondent with the investigation report and offer to engage in settlement discussion if appropriate.

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

30 NCAC 10D .0105 SETTLEMENT OF COMPLAINTS

(a) At any time after a complaint has been accepted or an investigation has been initiated by the Commission and before the Commission's determination pursuant to Rule .0107 of this Subchapter, the respondent and/or his or her legal counsel may meet by mutual consent with the staff of the Commission to discuss the possibility of settlement of the complaint or Commission-initiated investigation.

(b) Staff shall present any proposed settlement to a 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.

(c) A proposed settlement of a complaint is subject to the approval of the Commission.

(d) Upon the Commission's approval of a settlement, the complaint shall be closed subject to re-opening by the Commission if the settlement agreement is breached.

(e) The Commission shall provide written notice of the fact of settlement to the individual who filed the complaint.

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

30 NCAC 10D .0106 PANEL REVIEW AND RECOMMENDATION

(a) For complaints filed pursuant to Rule .0102 of this Subchapter, the Chair shall appoint two Commission members, who shall not be of the same political party, and the Executive Director to serve on a complaint review panel on a rotating basis. The Chair may appoint substitute panel members. Commission members who serve on a panel shall not participate in any other proceeding involving a complaint which was considered by the panel.

(b) The Commission panel shall review the investigation report and shall take one or more of the following actions:

- (1) Direct Commission staff to conduct further investigation or obtain additional information.
- (2) Recommend to the Commission that the lobbying complaint be dismissed for lack of a violation of Article 3, Article 5, or Article 7 of Chapter 120C.
- (3) Recommend to the Commission that a violation has occurred and that a specific sanction or sanctions should be imposed. A violation must be shown to exist by a preponderance of the evidence.
- (4) Refer the lobbying complaint to another agency when appropriate.

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

30 NCAC 10D .0107 COMMISSION DETERMINATION

(a) If a proposed settlement is not approved by the Commission,

- (1) For complaints filed pursuant to Rule .0102 of this Subchapter, upon receipt of a recommendation from the panel, the remaining Commission members excluding the panel members shall review the panel's recommendations and determine appropriate action.

- (2) For complaints filed pursuant to Rule .0103 of this Subchapter, the Commission shall review the investigation report and determine appropriate action.

(b) If the Commission dismisses the lobbying complaint, the complainant and respondent shall be notified of the Commission's dismissal.

State Ethics Commission Proposed Rules
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(c) 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 .0108 of this Subchapter;
- (3) The respondent's right to appeal the determination by filing a petition with the Office of Administrative Hearings and that the Commission's determination will become final upon a failure to appeal; and,
- (4) The requirement that pursuant to G.S. 120C-603(a) apparent criminal violations of Chapter 120C of the General Statutes must be reported to the district attorney.

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

(13) Whether the respondent has received advice, informal or formal, from the Commission regarding the conduct or activity giving rise to the violation.

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

30 NCAC 10D .0108 SANCTION CRITERIA AND IMPOSITION OF SANCTIONS

(a) The Commission shall issue only a warning letter if it finds the violation:

- (1) Involves a violation of G.S. 120C-303 and the prohibited gift had a fair market value of less than ten dollars (\$10.00); and,
- (2) The violation is the respondent's first violation of G.S. 120C-303.

(b) For all other violations, the Commission may elect to impose one or both of the following of the following sanctions:

- (1) A letter of warning.
- (2) A fine ranging in the amount of two hundred fifty dollars (\$250.00) to five thousand dollars (\$5,000) per violation.

(c) 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 Chapter 120C of the North Carolina General Statutes.
- (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 3, Article 5, or Article 7 of Chapter 120C.
- (8) The nature and number of violations in the matter.
- (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.