

RULES REVIEW COMMISSION MEETING
MINUTES
September 21, 2023

The Rules Review Commission met on Thursday, September 21, 2023, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina, and via WebEx.

Commissioners Wayne R. Boyles III, Jeanette Doran, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell were present in the Commission Room. Commissioner Jay Hemphill was present via WebEx.

Staff member Alexander Burgos, Commission Counsel Seth Ascher, Brian Liebman, and Bill Peaslee were present in the room.

The meeting was called to order at 9:01 a.m. with Chair Doran presiding.

The Chair read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearance of conflicts of interest.

The Chair read into the record the Evaluation of Statement of Economic Interest for Bill Nelson, which states the NC Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Chair read into the record the Evaluation of Statement of Economic Interest for Jake Parker, which states the NC Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Chair Doran introduced Administrative Law Judge Linda F. Nelson, to the Commission.

Administrative Law Judge Linda F. Nelson administered the Oath of Office to newly appointed Commissioners Bill Nelson, Jake Parker, and reappointed Commissioners Wayne R. Boyles III and Barbara Jackson.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Follow up matter Tab B for the Private Protective Services Board and permanent rules for the Department of Revenue 17 NCAC 07B .0100 - .4100 and 17 NCAC 07B .4200 - .5000.

APPROVAL OF MINUTES

The Chair asked for any discussion, comments, or corrections concerning the minutes of the August 17, 2023, meeting. There were none and the minutes were approved as distributed.

Upon the call of the Chair, the minutes were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

FOLLOW UP MATTERS

Sheriffs' Education and Training Standards Commission

Upon the call of the Chair, 12 NCAC 10B .0402, .0403, .0404, and .0503 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde,

Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

12 NCAC 10B .0604, .0605, .0606, .0607, .0704, .0714, .1302 – These Rules have staff opinions recommending objection and the Commission extended the period of review for these Rules at the August meeting. No action was required by the Commission.

12 NCAC 10B .1302 was withdrawn at the request of the agency. No further action was required by the Commission.

Private Protective Services Board

14B NCAC 16 .1503, .1504, .1702, .1703, .1704, .1705, and .1708 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 14B NCAC 16 .0201, .0205, .0403, .0807, .1101, .1501, .1502, .1601, .1701, .1706, and .1707 for lack of clarity pursuant to G.S. 150B-21.9(a)(2) and to 14B NCAC 16 .0201, .0403, and .1501 for failure to comply with the APA pursuant to G.S. 150B-21.9(a)(4) by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

14B NCAC 16 .1709 was withdrawn at the request of the agency. No further action was required by the Commission.

Environmental Management Commission

15A NCAC 02D .0503, .0506, .0532, .0614, .0918, .0926, .0927, .0928, .0932, .0960, .0961, .0964, .1403, and .1708; 15A NCAC 02Q .0102, and .0706 - The Commission extended the period of review for these Rules at the August meeting. No action was required by the Commission.

Environmental Management Commission

Prior to the review of rules from the Environmental Management Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict of interest.

15A NCAC 02H .1301, .1401, .1402, .1403, .1404, and .1405 - The Commission objected to these Rules at the May 2022 meeting. The agency has not responded to the Commission's objection since August 2022. No action was required by the Commission.

Marine Fisheries Commission

15A NCAC 03M .0101 - The Commission objected to this Rule at the June meeting. The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

Prior to the review of rules from the Coastal Resources Commission, Commissioner Parker recused himself and did not participate in any discussion or vote concerning these Rules because of a conflict of interest.

15A NCAC 07H .0208, .0308; and 07M .0603 - The Commission objected to these Rules at the August meeting. The agency has not responded to the Commission's objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510; 07I .0406, .0506, .0702; 07J .0203, .0204, .0206, .0207, .0208, and .0312 – At the February 2023 meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07H .2305 – At the February 2023 meeting, the Commission continued its objection to this Rule from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

Coastal Resources Commission

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0701, .0703, .0704, .1001, .1002, and .1101 – At the February 2023 meeting, the Commission continued its objection to these Rules from the September 2022 meeting pursuant to G.S. 150B-21.12(c). The agency has not responded to the Commission's continued objection. No action was required by the Commission.

The Chair notified the Commissioners that the following items on the agenda would be taken up out of order at the end of the agenda: Permanent rules for the Department of Revenue 17 NCAC 07B .0100 - .4100 and Department of Revenue 17 NCAC 07B .4200 - .5000.

LOG OF FILINGS (PERMANENT RULES)

Board of Agriculture

Upon the call of the Chair, the Commission voted to extend the period of review for 02 NCAC 52B .0214; 52J .0901, .0902, .0903, and .0904 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Child Care Commission

Upon the call of the Chair, 10A NCAC 09 .2703 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Medical Care Commission

Upon the call of the Chair, 10A NCAC 13A .0201 and 13G .0504 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to extend the period of review for 10A NCAC 13F .0702, .1307; 13G .0705 and .1301 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

RADIATION PROTECTION COMMISSION

Upon the call of the Chair, 10A NCAC 15 .1001, .1002, .1003, .1004, .1005, .1006, .1007, .1008, .1601, .1602, .1603, .1604, .1605, .1606, .1607, .1608, .1609, .1610, .1611, .1612, .1613, .1614, .1615, .1616, .1617, .1618, .1619, .1620, .1621, .1622, .1623, .1624, .1625, .1626, .1627, .1628, .1629, .1630, .1631, .1632, .1633, .1634, .1635, .1636, .1637, .1638, .1639, .1640, .1641, .1642, .1643, .1644, .1645, .1646, .1647, .1648, .1649, and .1653 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Commission for Public Health

Upon the call of the Chair, 10A NCAC 41A .0107 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Department of Justice

Upon the call of the Chair, the Commission voted to extend the period of review for 12 NCAC 02J .0201 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Criminal Justice Education and Training Standards Commission

Upon the call of the Chair, the Commission voted to extend the period of review for 12 NCAC 09B .0209, .0403, .0501, .0502; 09C .0306; 09G .0405 and .0406 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Commission for Public Health

Upon the call of the Chair, 15A NCAC 18A .1511 was approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Department of Revenue 17 NCAC 07B .0100 - .4100

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 17 NCAC 07B .0115, .3101, and .3107 by adopting the opinions incorporated in counsel's staff opinion finding that the rules are unnecessary pursuant to G.S. 150B-21.9(a)(3) and the rules are unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2) by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to extend the period of review for 17 NCAC 07B .0104, .0106, .0108, .0112, .0117, .0121, .0801, .0901, .0902, .0904, .1101, .1123, .1202, .1301, .1302, .1303, .1305, .1404, .1601, .1602, .1605, .1701, .1702, .1704, .1705, .1801, .1905, .1907, .2001, .2002, .2101, .2102, .2105, .2201, .2204, .2205, .2209, .2210, .2212, .2213, .2301, .2401, .2603, .2604, .2605, .2701, .2702, .2801, .2802, .2901, .3004, .3009, .3106, .3301, .3302, .3801, .3804, .3907, .3910, .4102, .4105, .4106 and .4109 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Department of Revenue 17 NCAC 07B .4200 - .5000

Upon the call of the Chair, the Commission voted to adopt staff's recommendation to object to 17 NCAC 07B .4206, .4415, and .5002 by adopting the opinions incorporated in counsel's staff opinion finding that the rules are unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2) and lack of authority pursuant to G.S. 150B-21.9(a)(1). The Commission objected to 17 NCAC 07B .4206 and .4415 pursuant to G.S. 150B-21.9(a)(3) for lack of necessity. The roll-call vote was ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, the Commission voted to extend the period of review for 17 NCAC 07B .4201, .4202, .4203, .4204, .4205, .4210, .4301, .4302, .4401, .4403, .4404, .4406, .4411, .4413, .4503, .4510, .4609, .4614, .4701, .4707, .4708, .4716, .4801, .4802, .4803, .5001, and .5004 by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff

Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Local Governmental Employees' Retirement System Board of Trustees

Upon the call of the Chair, 20 NCAC 02C .0210 and .0211 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

LOG OF FILINGS (TEMPORARY RULES)

Midwifery Joint Committee

Upon the call of the Chair, 21 NCAC 33 .0101, .0103, .0104, .0105, .0111, .0112, .0114, .0115, .0116, .0117, .0118 were approved by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

COMMISSION BUSINESS

The Commission's Bylaws require that elections be held at the September meeting. Upon the call of the Chair, the Commission voted to waive Article 5, paragraph (c) of its bylaws by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles, III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: none.


Upon the call of the Chair, Jeanette Doran was re-elected as Chair by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

Upon the call of the Chair, Barbara Jackson and Randy Overton were elected as 1st and 2nd Vice-Chair, respectively, by roll call vote, ayes 8, noes 0 as follows. Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

The Commission voted to approve the request from the State Treasurer to remove the Supplemental Retirement Plan rules 20 NCAC 11 .0101 and 20 NCAC 11 .0102 from the 2024 – 2027 periodic review schedule by roll-call vote, ayes 8, noes 0 as follows: Voting in the affirmative: Wayne R. Boyles III, Jay Hemphill, Jeff Hyde, Barbara Jackson, Bill Nelson, Randy Overton, Jake Parker, and Paul Powell – 8. Voting in the negative: None.

The meeting was adjourned at 10:12 a.m.

The next regularly scheduled meeting of the Commission is Thursday, October 19, 2023, at 9:00 a.m.



Alexander Burgos, Paralegal



Minutes approved by the Rules Review Commission:
Jeanette Doran, Chair

Rules Review Commission Meeting September 21, 2023
Via WebEx

Name	Agency
Ann Elmore	Secretary of State
Reid Chisholm	Treasurer
Julie Ventaloro	OSBM
Jennifer Everett	DEQ
Virginia Niehaus	DHHS
Colin Dolan	reedsmith.com
Ren Larson	theassemblync.com
John Barkley	DOJ
Meredith Parris	mparris@ncbon.com
Meghan Cook	meghan.cook@ncfb.org
Anna Hayworth	Agriculture
Emery Milliken	DHHS
Executive Director	director@ncbdn.org
Helen Landi	HNTB.com
Erica Wilson	erica.wilson@dhhs.nc.gov
Lindsay Gomes	UNC
Larry Ascher	
Phillip Reynolds	DOJ
Anne Coan	NCFB
Violet Noe	Nursing
James Albright	DHHS
Megan Lamphere	DHHS
Carl Williams	DHHS
Emily Wiley	DOT
Ross Smith	myncma.org
Hope Ascher	
Zack Moore	DHHS
Leo John	SOSNC
John H Schaeffer	DOJ
Hyrum Hemingway	DOJ
Donna Powell	DOR
Libby Kinsey	DHHS
Shane Smith	DHHS
Kimberly Luisana	NCBON
Shalisa Jones	DHHS
Larry Michael	DHHS



STATE ETHICS COMMISSION

POST OFFICE BOX 27685
RALEIGH, NC 27611
PHONE: 919-814-3600

Via Email

September 13, 2023

The Honorable Tim Moore
Speaker of the House of Representatives
16 West Jones Street, Room 2304
Raleigh, North Carolina 27601-1096

**Re: Evaluation of Statement of Economic Interest Filed by Mr. Phillip Jacob Parker Jr.
Appointee to the Rules Review Commission**

Dear Speaker Moore:

Our office has received **Mr. Phillip Jacob Parker Jr.**'s 2023 Statement of Economic Interest as an appointee to the **Rules Review Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Rules Review Commission has authority to review all temporary and permanent rules proposed by North Carolina government agencies, including the authority to veto rules that fail to satisfy specific statutory criteria. Generally speaking, those rules are intended to implement or interpret laws adopted by the General Assembly or Congress or certain federal regulations. Temporary or permanent rules approved by the Commission are filed with the Office of Administrative Hearings to be included in the North Carolina Administrative Code.

The Act establishes ethical standards for certain public servants and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

Mr. Parker is the Secretary and General Counsel for the North Carolina Farm Bureau Federation, Inc. In addition, he is a governing board member for the Farm Bureau Insurance of N.C. and the North Carolina Farm Bureau Mutual Insurance Co, Inc. which are regulated by the North Carolina Department of Insurance (DOI). Because DOI could present rules for approval by the Commission, Mr. Parker has the potential for a conflict of interest. Therefore, he should exercise appropriate caution in the performance of his public duties should issues involving DOI or issues relevant to his industry come before the Commission for official action.


In addition to the conflicts standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,



Mary Roerden, SEI Unit
State Ethics Commission

cc: Phillip Jacob Parker Jr.
Alexander Burgos, Ethics Liaison

Attachment: Ethics Education Guide



STATE ETHICS COMMISSION

POST OFFICE BOX 27685
RALEIGH, NC 27611
PHONE: 919-814-3600

Via Email

September 11, 2023

The Honorable Phil Berger
President Pro Tempore of the Senate
16 West Jones Street, Room 2008
Raleigh, North Carolina 27601

**Re: Evaluation of Statement of Economic Interest Filed by Mr. William W. Nelson
Appointee to the Rules Review Commission**

Dear Senator Berger:

Our office has received **Mr. William W. Nelson's** 2023 Statement of Economic Interest as an appointee to the **Rules Review Commission (the "Commission")**. We have reviewed it for actual and potential conflicts of interest pursuant to Chapter 138A of the North Carolina General Statutes ("N.C.G.S."), also known as the State Government Ethics Act (the "Act").

Compliance with the Act and avoidance of conflicts of interest in the performance of public duties are the responsibilities of every covered person, regardless of this letter's contents. This letter, meanwhile, is not meant to impugn the integrity of the covered person in any way. This letter is required by N.C.G.S. § 138A-28(a) and is designed to educate the covered person as to potential issues that could merit particular attention. Advice on compliance with the Act is available to certain public servants and legislative employees under N.C.G.S. § 138A-13.

We did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

The Rules Review Commission has authority to review all temporary and permanent rules proposed by North Carolina government agencies, including the authority to veto rules that fail to satisfy specific statutory criteria. Generally speaking, those rules are intended to implement or interpret laws adopted by the General Assembly or Congress or certain federal regulations. Temporary or permanent rules approved by the Commission are filed with the Office of Administrative Hearings to be included in the North Carolina Administrative Code.

The Act establishes ethical standards for certain public servants and prohibits public servants from: (1) using their positions for their financial benefit or for the benefit of their extended family or business, N.C.G.S. § 138A-31; and (2) participating in official actions from which they or certain associated persons might receive a reasonably foreseeable financial benefit, N.C.G.S. § 138A-36(a). The Act also requires public servants to take appropriate steps to remove themselves from proceedings in which their impartiality might reasonably be questioned due to a familial, personal, or financial relationship with a participant in those proceedings. N.C.G.S. § 138A-36(c).

Mr. Nelson is a partner with the law firm of Smith Anderson and his spouse is an Administrative Law Judge at the N.C. Office of Administrative Hearings. Because the law firm of Smith Anderson could represent clients that come before the commission during the rulemaking process, he has the potential for a conflict of interest. In addition, he is a registered lobbyist. As such, Mr. Nelson should exercise appropriate caution in the performance of his public duties should the business of the law firm of Smith Anderson, their clients or issues involving any entity he represents as a lobbyist come before the Commission for official action.

In addition to the conflicts standards noted above, the Act prohibits public servants from accepting gifts from (1) a lobbyist or lobbyist principal, (2) a person or entity that is seeking to do business with the public servant's agency, is regulated or controlled by that agency, or has financial interests that might be affected by their official actions, or (3) anyone in return for being influenced in the discharge of their official responsibilities. N.C.G.S. § 138A-32. Exceptions to the gifts restrictions are set out in N.C.G.S. § 138A-32(e).

When this letter cites an actual or potential conflict of interest under N.C.G.S. § 138A-24(e), the conflict must be recorded in the minutes of the applicable board and brought to the membership's attention by the board's chair as often as necessary to remind all members of the conflict and to help ensure compliance with the Act. N.C.G.S. § 138A-15(c).

Finally, the Act mandates that all public servants attend an ethics and lobbying education presentation. N.C.G.S. § 138A-14. Please review the attached document for additional information concerning this requirement.

Please contact our office if you have any questions concerning our evaluation or the ethical standards governing public servants under the Act.

Sincerely,



Mary Roerden, SEI Unit
State Ethics Commission

cc: William W. Nelson
Alexander Burgos, Ethics Liaison

Attachment: Ethics Education Guide

MEMORANDUM OF ABSTENTION FROM
PARTICIPATION IN OFFICIAL ACTION
RULES REVIEW COMMISSION

In accordance with N.C. General Statute G.S. 138A-15(e), I have abstained from taking any verbal or written action, including voting, on the agenda item regarding

EMC Tab D and ~~EMC~~ RC Tab F

I have abstained because of a potential conflict of interest.

This the 21st day of September, 20223



Signature of Commission Member

No public servant authorized to perform an official action requiring the exercise of discretion shall knowingly participate in an official action by the board if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated has an economic interest in, or a reasonably foreseeable benefit from, the matter under consideration, which would impair the public servant's independence of judgment or from which it could be reasonably inferred that the interest or benefit would influence the public servant's participation. A potential benefit includes a detriment to a business competitor or (1) the public servant; (2) a member or the public servant's extended family, or (3) a business with which the public servant is associated. The public servant shall abstain from taking any verbal or written action and shall submit in writing to the board the reasons for the abstention.