

§ 138A-36. Public servant participation in official actions.

(a) Except as permitted by subsection (d) of this section and under G.S. 138A-38, no public servant acting in that capacity, authorized to perform an official action requiring the exercise of discretion, shall participate in an official action by the employing entity if the public servant knows the public servant or a person with which the public servant is associated may incur a reasonably foreseeable financial benefit from the matter under consideration, which financial benefit would impair the public servant's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant's participation in the official action.

(b) A public servant described in subsection (a) of this section shall abstain from taking any verbal or written action in furtherance of the official action. The public servant shall submit in writing to the employing entity the reasons for the abstention. When the employing entity is a board, the abstention shall be recorded in the employing entity's minutes.

(c) A public servant shall take appropriate steps, under the particular circumstances and considering the type of proceeding involved, to remove himself or herself to the extent necessary, to protect the public interest and comply with this Chapter from any proceeding in which the public servant's impartiality might reasonably be questioned due to the public servant's familial, personal, or financial relationship with a participant in the proceeding. A participant includes (i) an owner, shareholder, partner, member or manager of a limited liability company, employee, agent, officer, or director of a business, organization, or group involved in the proceeding, or (ii) an organization or group that has petitioned for rule making or has some specific, unique, and substantial interest in the proceeding. Proceedings include quasi-judicial proceedings and quasi-legislative proceedings. A personal relationship includes one in a leadership or policy-making position in a business, organization, or group.

(d) If a public servant is uncertain about whether the relationship described in subsection (c) of this section justifies removing the public servant from the proceeding under subsection (c) of this section, the public servant shall disclose the relationship to the individual presiding over the proceeding and seek appropriate guidance. The presiding officer, in consultation with legal counsel if necessary, shall then determine the extent to which the public servant will be permitted to participate. If the affected public servant is the individual presiding, then the vice-chair or any other substitute presiding officer shall make the determination. A good-faith determination under this subsection of the allowable degree of participation by a public servant is presumptively valid and only subject to review under G.S. 138A-12 upon a clear and convincing showing of mistake, fraud, abuse of discretion, or willful disregard of this Chapter.

(e) This section shall not allow participation in an official action prohibited by G.S. 14-234. (2006-201, s. 1; 2007-347, s. 12; 2007-348, s. 42; 2008-213, s. 84(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)