

24 NCAC 06A .0321 DISQUALIFICATION OF COMMISSION MEMBER OR HEARING OFFICER

(a) A member of the Commission or the hearing officer may withdraw from a proceeding whenever the Commissioner or hearing officer deems themselves to be disqualified.

(b) Any party may request a Commissioner or hearing officer, before or at the time of the hearing, to withdraw on grounds of conflict, personal bias, or reason for disqualification, by filing a motion. Such motion shall set forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Commissioner or hearing officer, the motion referred to in Paragraph (b) of this Rule is filed with reasonable cause and is sufficient on its face, the Commissioner or hearing officer shall forthwith be disqualified and withdraw from the proceeding.

(d) When a Commissioner or the hearing officer is disqualified or withdraws from the proceeding, the Chair of the Commission, or the Chair of the Sports Betting Committee if the Chair of the Commission is unavailable, shall appoint a different hearing officer or Commissioner to participate in the proceeding.

(e) If the Commissioner or hearing officer denies the request for disqualification and does not withdraw from the proceeding, the Commissioner or hearing officer shall so rule upon the record, stating the grounds for ruling and shall proceed with the hearing, or, if the hearing has closed, the Commissioner or hearing officer shall proceed with the issuance of a written decision and the provisions of Rule .0329 of this Subchapter shall thereupon apply.

(f) A hearing officer shall not participate in a hearing under the following circumstances:

- (1) the hearing officer has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the hearing;
- (2) the hearing officer served as lawyer in the matter in controversy, or a lawyer with whom the hearing officer previously practiced law, served during such association as a lawyer concerning the matter, or the hearing officer or such lawyer has been a material witness concerning it;
- (3) the hearing officer knows that they, individually or as a fiduciary, or the hearing officer's spouse or minor child residing in the hearing officer household, has a financial interest in the subject matter in controversy or in a party to the hearing, or any other interest that could be substantially affected by the outcome of the hearing; or
- (4) the hearing officer or the hearing officer spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (A) is a party to the hearing, or an officer, director, or trustee of a party;
 - (B) is acting as a lawyer in the hearing;
 - (C) is known by the hearing officer to have an interest that could be substantially affected by the outcome of the proceeding;
 - (D) is to the hearing officer's knowledge likely to be a material witness in the hearing.

(g) A hearing officer should inform themselves about their own personal and fiduciary financial interests, and make a reasonable effort to inform themselves about the personal financial interests of the hearing officer's spouse and minor children residing in the hearing officer's household.

(h) At the initiation of a disciplinary proceeding, the designated hearing officer shall disclose whether or not they maintain an active interactive wagering account with a Commission licensee and identify the Commission licensee, to all parties to the hearing.

(i) For purposes of this Rule:

- (1) the degree of relationship is calculated according to the civil law system;
- (2) "fiduciary" includes such relationships as executor, administrator, trustee and guardian;
- (3) "financial interest" means ownership of a substantial legal or equitable interest (i.e., an interest that would be significantly affected in value by the outcome of the subject legal proceeding), or a relationship as director or other active participant in the affairs of a party, except that:
 - (A) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the hearing officer participates in the management of the fund;
 - (B) an office in an educational, cultural, historical, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

*History Note: Authority G.S. 18C-114(a)(14);
Previously adopted as Rule 1C-021;
Eff. January 8, 2024;
Readopted Eff. March 27, 2024;
Amended Eff. June 22, 2024.*

