

ARTICLE 115-02 COMPLAINTS

Chapter
115-02-01 Complaint Process

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115-02-01-01. Definitions.

1. "Complainant" means a North Dakota resident who, in writing or by other electronic means, submits a complaint to the commission.
2. "Confidential complaint" means a complaint by a North Dakota resident submitted through the confidential hotline or other methods designated by the commission as confidential. In the case of a confidential complaint within the jurisdiction of the commission and where there is a reasonable belief that a violation has occurred, the commission will be the complainant.
3. "Anonymous or nonresident complaint" means a person who does not provide their name or contact information or a nonresident will not be considered a complainant for any purpose. The commission may review information provided anonymously or by a nonresident. After review by the commission the information may be summarily dismissed or, by a majority vote, the commission may initiate a commission complaint and the commission will be the complainant.
4. "Executive director" is the individual appointed by the ethics commission as the executive director and authorized to carry out the duties and functions delegated by the ethics commission in these rules.
5. "Respondent" means the individual or entity who is the subject of the complaint.

History: Effective June 17, 2020.

115-02-01-02. Jurisdiction.

1. The commission has authority to investigate complaints against a lobbyist, public officials, candidate for statewide public office, candidate for state legislative assembly, an elected or appointed official of the state's executive or legislative branch, members of the ethics commission, members of the governor's cabinet, or employees of the legislative branch.

2. The commission has no authority to investigate personnel matters or matters for which other remedies exist. These matters include grievances, appointments, promotions, reprimands, suspensions, dismissals, harassment, and discrimination.
3. The commission has no authority over city, county, or other political subdivision or local officials, employees of the state's executive branch, or members or employees of the state's judicial branch.
4. A complaint must be filed within three years of the date of the alleged violation. Violations occurring prior to January 5, 2019, the effective date of article XIV of the Constitution of North Dakota, will not be considered.

History: Effective June 17, 2020.

115-02-01-03. Submission of a complaint.

1. Any individual may submit information to the North Dakota ethics commission alleging a violation of article XIV of the Constitution of North Dakota, related North Dakota laws, and rules or regulations adopted by the commission.
2. A complaint will be denied if there is not sufficient information to create a reasonable belief that a violation within the jurisdiction of the commission has occurred. Mere speculation is insufficient to proceed with a complaint.
3. The commission maintains a confidential whistleblower hotline for the submission of relevant information. Complaints and relevant information may be submitted to the commission through the hotline or through any other medium, i.e. written, oral, or electronic.
4. No specific format is required for complaints and relevant information.
5. Information may be submitted anonymously or by nonresidents of North Dakota but in such cases the information will be reviewed by the commission.
 - a. The commission will assess the veracity of the information, the seriousness of the alleged offense, and the likelihood of proving the allegation with or without further investigation.
 - b. After review the information will either be summarily dismissed or, if approved by a majority of the commission, the commission will initiate a complaint and will be the complainant.
6. To enable the commission to more effectively evaluate and investigate a complaint, it is strongly recommended that the following information be provided:
 - a. Name and contact information for the individual submitting the complaint or information. Information from an anonymous source may be considered but will impede the ability of the commission to investigate the matter and the ability of the commission to provide any followup regarding the matter to the individual;
 - b. Clearly identify each person, entity, committee, or group that is alleged to have committed a violation;
 - c. Clearly recite the facts that show specific violations under the commission's jurisdiction. Citations to the constitution, North Dakota law, or rules or regulations are not required but helpful. The individual submitting the complaint or information should be as specific as possible as it relates to dates, times, and individuals involved;

- d. Differentiate between statements based on the individual's personal knowledge and those based on information and belief. Statements not based on the individual's personal knowledge should identify the source of the information, if known; and
 - e. Include any and all documentation supporting the allegations, if available.
 7. The executive director shall conduct an initial review of any complaint or information received by the commission.
 - a. If the executive director determines that the matter falls within the jurisdiction of the commission and contains sufficient information to believe a violation has occurred, the executive director shall prepare a written summary of the complaint along with a notice to the respondent.
 - b. If the matter does not fall within the jurisdiction of the commission, the executive director shall inform the complainant that the matter is being summarily dismissed. The complainant may appeal the decision to summarily dismiss a complaint to the commission by appealing in writing within twenty calendar days of the notice by the executive director.
 - c. If the executive director determines that the matter falls within the jurisdiction of another agency, the executive director may refer the complainant to the relevant agency.
 - d. If the matter contains allegations of criminal conduct, the matter shall be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution the commission will take no further action on the complaint until resolved. If the law enforcement agency declines a referral for prosecution the commission will proceed with the complaint process. Absent rejection by the referring entity, the executive director shall inform the complainant and respondent as soon as reasonably possible by registered mail of a referral and the nature of the referred allegations.
 8. The executive director shall report all summarily dismissed or referred complaints and report to the commission at the commission's next regular meeting in executive session. The commission shall consider any appeals of a summarily dismissed complaint and vote to either reopen or deny the appeal. The commission shall ratify or direct reopening the actions of the executive director.

History: Effective June 17, 2020.

115-02-01-04. Notice to respondents.

1. The respondent shall be informed of any complaint that the commission receives. The executive director shall prepare the notice which shall include the identity of the complainant who submitted the complaint unless the complaint or information was submitted anonymously. The notice shall include the written complaint or written summary of the complaint. The respondent will receive a copy of all evidence and witness statements to include names.
2. Notice to the respondent shall be provided as soon as reasonably possible but no later than twenty calendar days after the complaint or relevant information was received by the commission. Notice shall be mailed to the respondent by registered mail.
3. The respondent may respond to the complaint within twenty calendar days of receipt of the complaint or summary of the complaint. In the executive director's discretion, the respondent may be granted an extension of time to provide any written response to the complaint or summary of the complaint.

History: Effective June 17, 2020.

115-02-01-05. Informal resolution of complaint.

1. Prior to any investigation of a complaint, the executive director shall afford the complainant and respondent the opportunity to informally negotiate or mediate a resolution of the complaint. The negotiation or mediation shall be conducted by the executive director in an informal manner with the goal of resolving the matter without further investigation. If the commission is the complainant, the commission must approve the resolution at the next meeting.
2. The commission may engage outside counsel or mediator to conduct the informal negotiation or mediation.
3. If the complaint is resolved through informal negotiation or mediation, the executive director shall document the resolution and report the resolution to the commission at a special or regular meeting during executive session.
4. The complainant and respondent may be accompanied by legal counsel in any informal negotiation or mediation.
5. Complaints resolved through informal negotiation or mediation shall not be further investigated and the complaint shall be deemed closed.
6. If the complaint is not resolved through informal negotiation or mediation, the complaint shall be investigated as provided in section 115-02-01-06.

History: Effective June 17, 2020.

115-02-01-06. Complaint investigation.

The executive director shall conduct the investigation of any complaint which is not summarily dismissed or resolved through informal negotiation or mediation. With the approval of the commission, the executive director may refer the matter to an outside attorney or investigator in lieu of the executive director completing the investigation. The executive director shall determine the manner in which the complaint will be investigated. Investigations conducted by an outside attorney or investigator shall be supervised and under the direction of the executive director. The investigation may include the following:

1. Review of any documents provided to the commission by the complainant or respondent;
2. Review of publicly available documents or documents maintained by the state;
3. Request for documents from individuals or entities with knowledge or relevant information;
4. Written interrogatories submitted to individuals or entities with knowledge or relevant information;
5. Interviews with legislators, employees, or other appointed or elected officials;
6. Interviews with the complainant and individuals identified by the complainant as having knowledge or relevant information;
7. Interviews with the respondent; and
8. Any other information deemed relevant.

History: Effective June 17, 2020.

115-02-01-07. Investigation report.

Upon completion of the investigation, the executive director or outside investigator shall prepare written findings. The findings shall include relevant documents, interview transcripts or summaries, respondent written response, and other relevant information necessary for the commission to be fully informed on the matter. The executive director shall prepare the investigation report for presentation to the commission. The report shall include the written findings of any outside counsel or investigator who conducted the investigation. The executive director shall include the executive director's recommendation to the commission with respect to commission action on the complaint.

History: Effective June 17, 2020.

115-02-01-08. Commission review and action on complaint.

1. The executive director's investigation report shall be provided to the respondent at least ten calendar days prior to any special or regular commission meeting at which the report and recommendation will be considered by the commission in executive session. The respondent may submit to the commission a written response to the executive director's report and recommendation no later than five days prior to the special or regular commission meeting in which the commission will take action on the matter. Any written response must be submitted to the executive director at the commission's office and not directly to the commissioners. The executive director will provide copies to the commission. The commission chair may grant an extension of any time periods required by these rules.
2. In lieu of a written response to the executive director's investigation report and recommendation, respondent may provide an in-person response at the special or regular meeting of the commission at which the commission will take action on the complaint. At the commission meeting, at least a quorum of commissioners must be present. The commissioner chairing the meeting shall determine the order of presentations and the time allotted to the respondent. The commissioner chairing the meeting shall also determine any other procedural matters necessary for an orderly conduct of the commission meeting. The respondent shall meet separately with the commission in closed executive sessions to present their in-person responses to the executive director's report and recommendation. The respondent may be accompanied by legal counsel when appearing before the commission to provide an in-person response to the executive director's report and recommendation.
3. Upon the completion of any in-person response to the commission, the commission shall deliberate on the complaint in executive session. The commission shall determine whether a violation of article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying occurred. The commission shall determine what penalty, if any, authorized under North Dakota law will be imposed upon the respondent. In lieu of a penalty authorized under North Dakota law, the commission may refer the matter to another agency with enforcement authority over the violation.
4. The respondent shall be informed of the commission's decision. The complainant and others shall be provided information regarding the commission's decision only as permitted under applicable North Dakota law.

History: Effective June 17, 2020.

115-02-01-09. Appeal to district court.

The respondent may appeal a finding of the commission to the district court of the county where the respondent resides.

History: Effective June 17, 2020.

115-02-01-10. Rules of evidence and procedure.

The commission and its investigators shall not be bound by the rules of evidence or procedure under North Dakota or federal law. Any oral or documentary evidence which is relevant to the case before the commission may be admitted and considered. Effect shall be given to the rules of privilege recognized by North Dakota and federal law.

History: Effective June 17, 2020.