

Dakota Dilemmas:

Navigating the Complaint
Process (Extended Cut)



ND | ETHICS
COMMISSION

MEET THE MEMBERS OF THE ETHICS COMMISSION



Vice Chair
Ron Goodman



Commissioner
Pamela Sharp



Chairwoman
Dr. Cynthia Lindquist



Commissioner
Mark Western



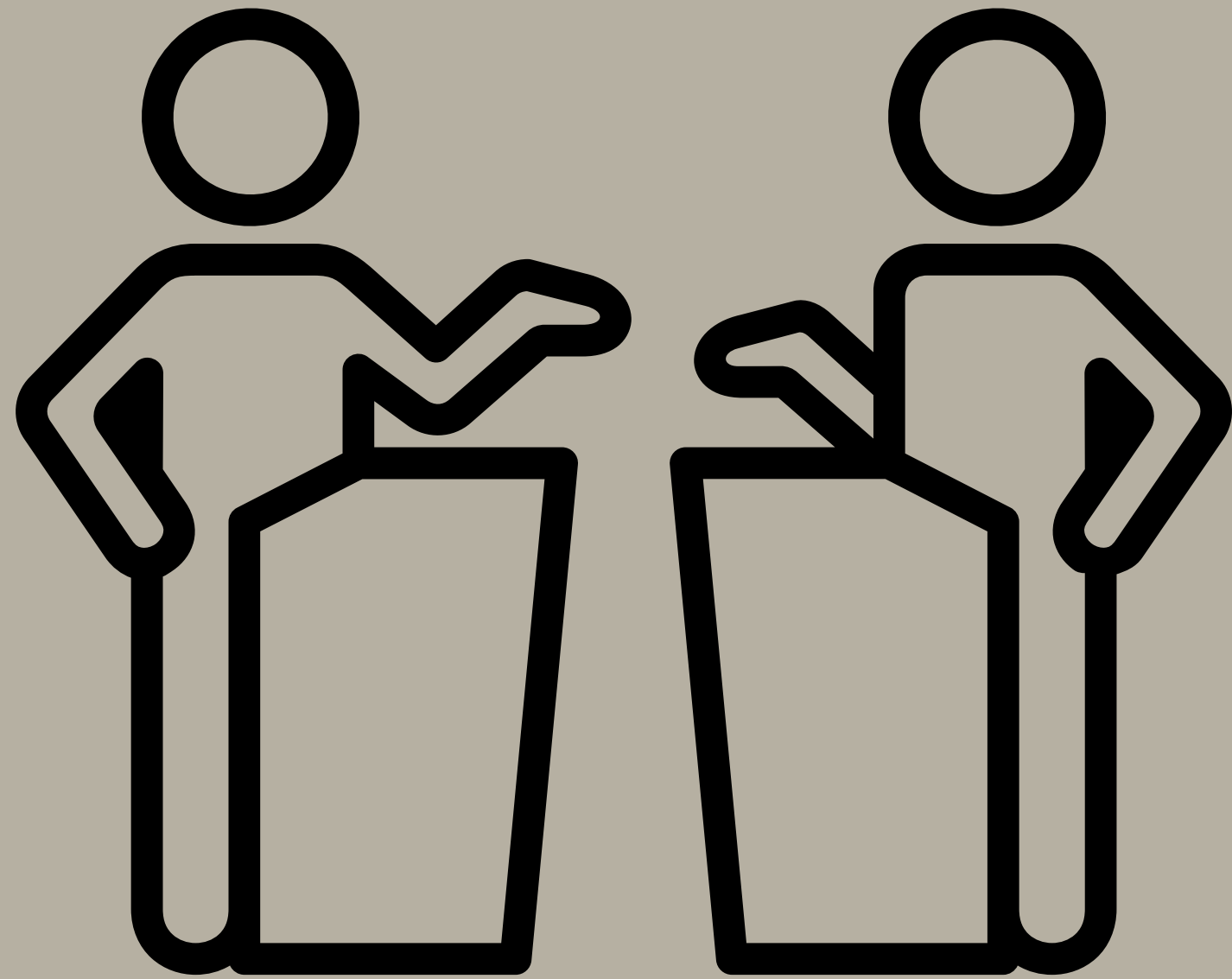
Commissioner
Jared Huibregtse

Agenda



- 01 Setting the Stage
- 02 Confidentiality
- 03 Filing Complaints
- 04 Four Steps
- 05 Complaint Resolution

Important Terms



Complainant - the person who files a complaint with the Ethics Commission against a certain individual

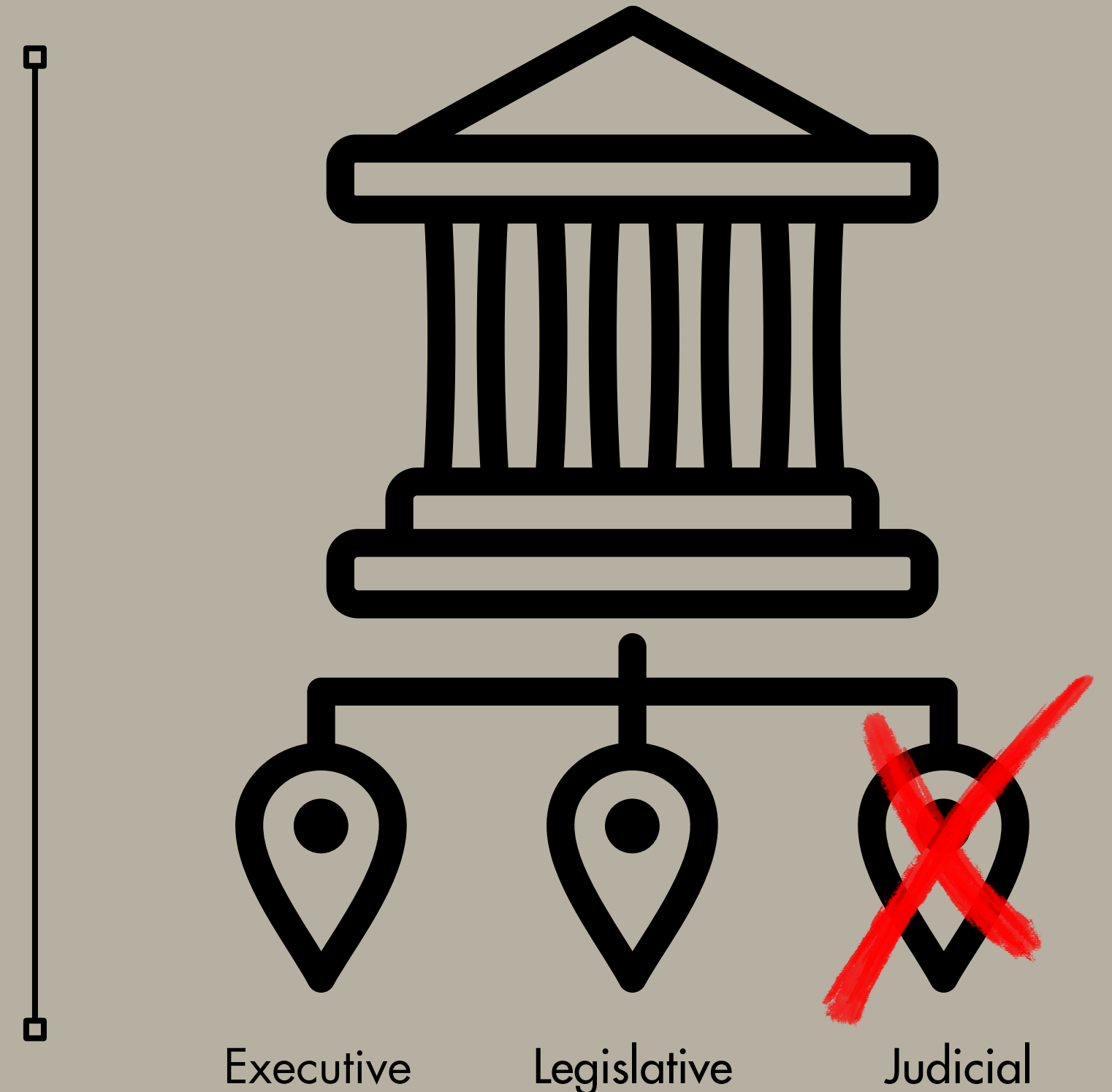
Respondent - the person a complaint is filed against, accused of ethical violation

~~**Accused Individual** - the term in statute for the respondent~~



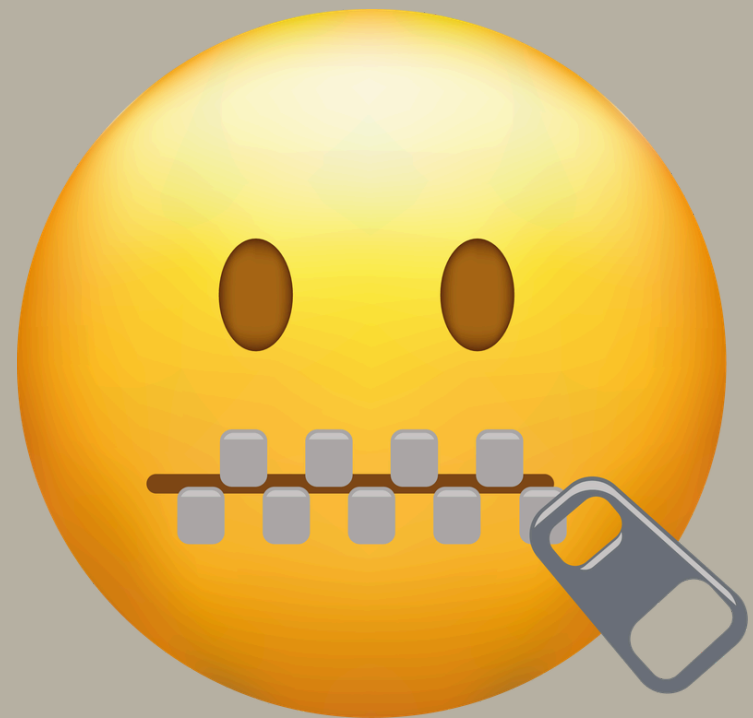
Who can be a respondent?

- Lobbyists
 - both registered and unregistered
- Public Officials
 - elected or appointed individuals of the executive and legislative branches
 - members of the Ethics Commission
 - legislative employees
 - others acting as a “director, officer, commissioner, head, or other executive” in a quasi-judicial proceeding
- Candidates for Public Office
- Political Committees
- Contributors



Setting the Stage

Strict Confidentiality



Confidential under N.D.C.C. § 54-66-12:

- (1) information revealing the contents of a complaint;
- (2) information that reasonably may be used to identify a respondent; and
- (3) information relating to or created as part of an investigation

Complainant can remain confidential from respondent

Confidentiality for respondents?

Respondents may publicly discuss complaints filed against them.

First Amendment Issue

New language - N.D.C.C. § 54-66-12(4)

“The information deemed confidential in subsections 1 and 2 may be disclosed by the respondent and the ethics commission if the respondent agrees to the disclosure.”



NEW

Confidentiality

Statutory Requirements for Filing

Only certain individuals can file a complaint

- ND Residents
- Individuals licensed in ND
- A party to a quasi-judicial proceeding

Required by statute to provide name, address, and telephone number to the Commission with the complaint

CHAPTER 54-66
STATE GOVERNMENT ETHICS

Filing a Complaint

Four different ways to file a complaint:

- (1) by phone
- (2) in writing - mail or email
- (3) in person; or
- (4) on our website (preferred method)

Confidential Hotline
(701) 328-6000
ethicshotline@nd.gov



SHSND 0310-00002

Capitol Switchboard Operators around 1940

Four Step Process

Step 1 - Initial Review



Step 2 - Informal Resolution



Step 3 - Settlement Opportunity
and Investigation



Step 4 - Commission Action



Step 1 - Initial Review

Initial review to determine two main things:

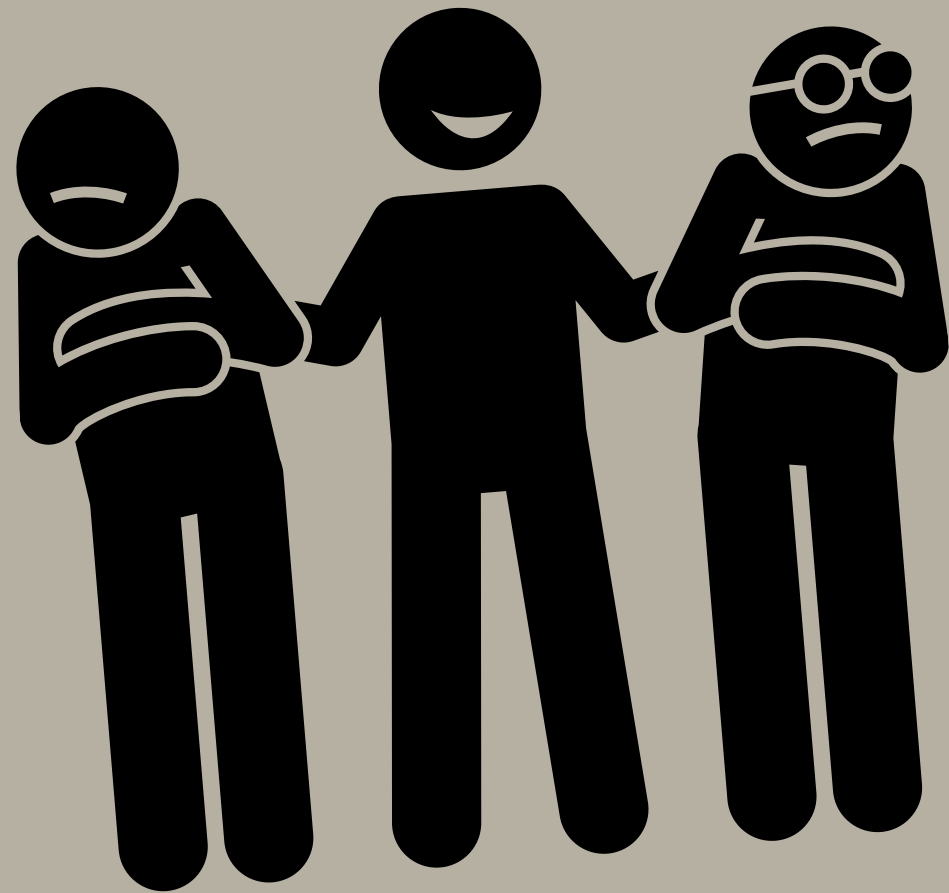
(1) if the Commission has complaint jurisdiction over the respondent (personal jurisdiction);

AND

(2) if the Commission has jurisdiction over the conduct alleged (subject matter jurisdiction)



Step 2 - Informal Resolution



Opportunity offered to complainant and respondent

Ethics Commission acts as a third-party neutral

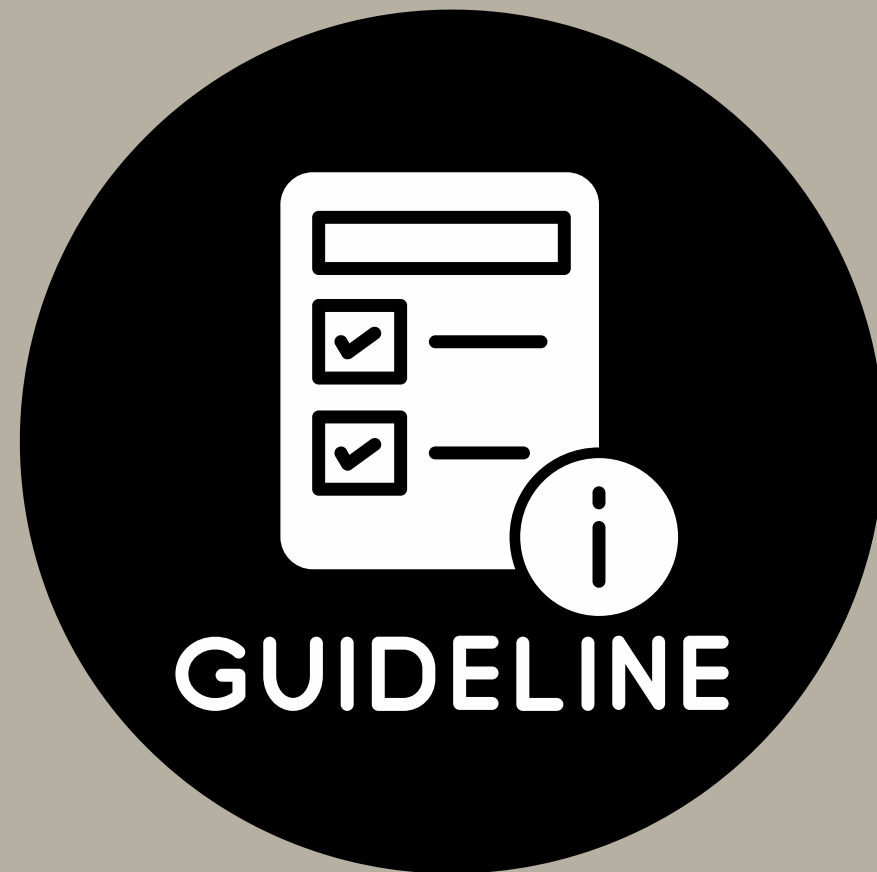
Successful? → Settlement Agreement

Unsuccessful? → Settlement Opportunity and Investigation

RARELY Successful

Four Steps

Step 3 - Settlement and Investigation



New language to N.D.C.C. § 54-66-07

“If the informal resolution process between the respondent and the complainant is unsuccessful, the commission may work with the respondent to settle and close the matter.”

Commission Settlement Guidelines for consistent and even handed settlement offers



Step 3 - Settlement and Investigation

Complainant no longer involved at this stage

Commission requests and reviews documents and conducts interviews

Commission requests for information are NOT open record requests



(Quick Detour) Criminal Conduct



SHSND 00024

Bismarck Police Department 1965

N.D.C.C. § 54-66-08 no longer requires the Commission to refer complaints with criminal conduct to law enforcement

Commission now has the discretion once belief of criminal allegations forms

Sixty-day clock

NEW

Four Steps

Step 4 - Commission Action

Preliminary Report & Recommendation

Request Commission issue alleged violation or close the complaint matter

Alleged Violation = "formal written allegation issued by a majority vote of the Commission, which alleges a respondent engaged in an ethical violation"

N.D. Admin Code § 115-02-01-01(1).

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Before the North Dakota Ethics Commission

In the Matter of:
John Doe

ALLEGED VIOLATION

Case No. 26-00

NEW

Step 4 - Commission Action

IN THE MATTER OF:
John Doe

Complaint No. 26-00

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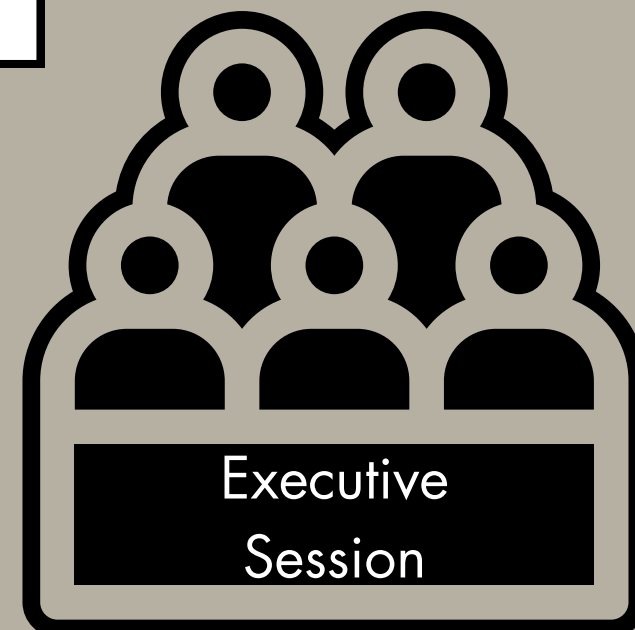
Final Report and Recommendation

Final Report and Recommendation includes all of the investigation's findings

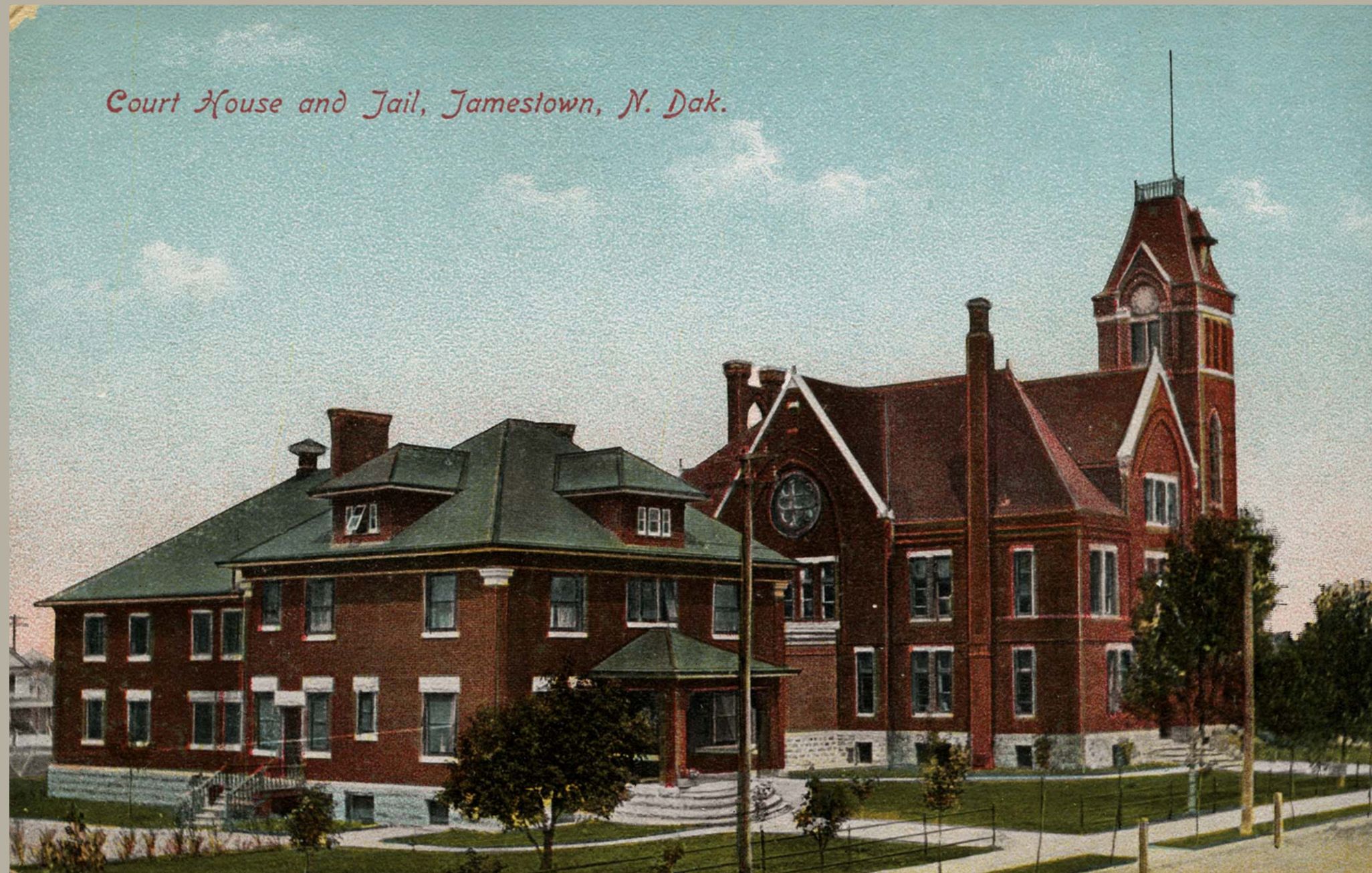
Respondent may respond in writing and in person

Commission conducts a hearing

Commission deliberates to determine if violation took place and what penalty to impose, if any



After the Decision



SHSND 0691-00001

1883 Stutsman County Courthouse

May appeal to district court

No appeal or court affirms?
Commission's findings
become public

Complaint Resolution

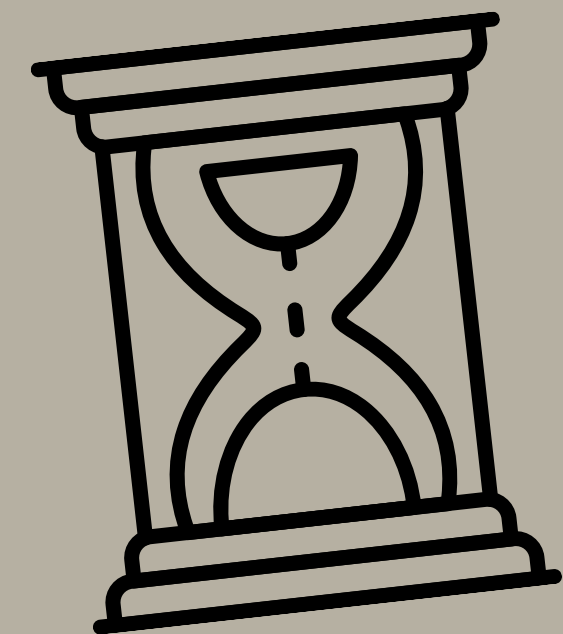
Time Standards

N.D.C.C. § 54-66-10.1 directs the Commission to adopt time standards for complaints

Determine no jurisdiction? 60 days

Pending 180 days? Report at March, June, September, and December meetings

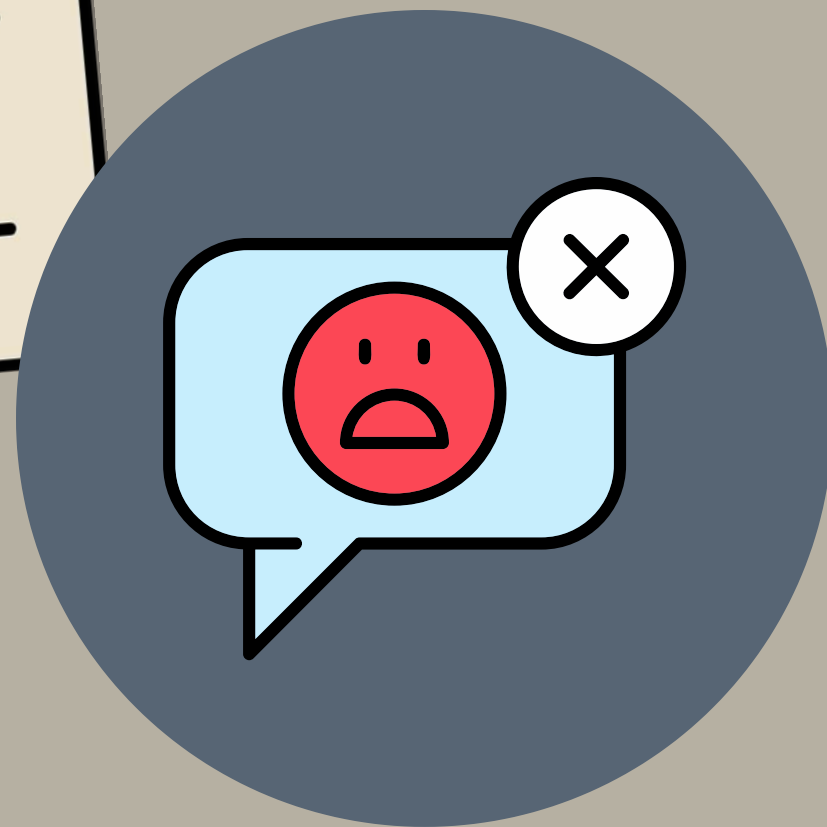
Pending 365 days? Report at every meeting



Complaint Resolution

NEW

Bad Faith Complaints



New process in the Commission's rules

Complaints that are filed to harass, impugn the reputation of a respondent, or otherwise filed in bad faith

Commission notified and may order complainant to show cause

Commission may impose a sanction on bad faith complainant



Questions?





Thank
you!

ethicscommission@nd.gov

or

701.328.5325

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