

North Dakota Ethics Commission Regular Meeting

Minutes of January 17, 2024

MS Teams

1. **Call to Order:** The meeting was called to order by Chair Paul Richard at 9:02 a.m. The following members of the Ethics Commission were also present: Vice Chair Dave Anderson, Commissioners Ward Koeser and Cynthia Lindquist, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Executive Assistant Alisha Maier.
2. **Agenda Additions:** No additions were made.
3. **Approval of Minutes:** The Commission discussed regular meeting minutes from November 29, 2023, special meeting minutes from December 29, 2023, and January 9, 2024. One formatting change was made.

Motion: Commissioner Koeser moved to approve regular meeting minutes from November 29, 2023, and special meeting minutes from December 29, 2023, and January 9, 2024. Motion was seconded by Commissioner Lindquist. Chair Richard called for a voice vote. The motion was approved by unanimous voice vote.

4. **Executive Director Update:**
 - Executive Assistant Alisha Maier provided a budget update through the end of November 2023 for the 2023-25 biennium budget. She noted the following totals: current appropriation for the 2023-2025 biennium is \$1,155,297, expenditures in November were \$59,158, total expenditures for the current biennium have been \$218,578, leaving a remaining appropriation for the 2023-2025 biennium of \$936,718. EA Maier presented an estimated ending balance for the biennium on June 30, 2025, at \$24,737.
 - EA Maier provided a budget update through the end of December 2023 for the 2023-25 biennium budget. She noted the following totals: current appropriation for the 2023-2025 biennium is \$1,155,297, expenditures in December were \$43,747, total expenditures for the current biennium have been \$262,325, leaving a remaining appropriation for the 2023-2025 biennium of

\$892,871. EA Maier presented an estimated ending balance for the biennium on June 30, 2025, at \$24,547.

- ED Binstock provided an update on the Commission's social media. Commission staff started posting communication on social media on December 22, 2023. Thus far, there have been no content moderation issues.

ED Binstock advised on Monday, January 22, 2024, Commission staff will start a series entitled "Meet the Commission Monday." The series will share information about each of the Commissioners and staff.

- ED Binstock provided an update on policies & procedures for advisory opinions. Based upon the discussion during the January 9, 2024 Special Meeting, Commission staff would like to update the Advisory Opinion Process Information available on the Commission's website to articulate that requests must relate to actions by the individual requesting the advisory opinion.

Motion: Commissioner Lindquist moved to adopt the changes to the Advisory Opinion Process Information. Motion was seconded by Vice Chair Anderson. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- ED Binstock provided another update on policies & procedures. In December, HRMS notified ED Binstock that the Executive Assistant position with the Commission has been classified as non-exempt under the Fair Labor Standards Act. The General Counsel and Executive Director positions are exempt from FLSA.

ED Binstock explained that under FLSA, team members in non-exempt roles are entitled to overtime or compensatory time off for hours worked beyond 40 hours during a work week.

ED Binstock recommended the Commission adopt a policy that allows compensatory time off for non-exempt Commission team members when non-exempt team members work beyond 40 hours during a work week. ED Binstock further recommended non-exempt team members be compensated for up to 80 hours of overtime from January to May for years the legislative assembly meets with additional overtime paid out as compensatory time.

Motion: Commissioner Koeser moved to adopt the overtime and compensatory policy to non-exempt Commission team members. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- EA Maier provided an update on the online forms project. Three of the five forms have been tested and NDIT is continuing to work with staff on finalizing them. NDIT has advised the remaining two forms should be sent to staff for testing within the next week.
- ED Binstock provided an update to the Commission on education and outreach initiatives. Commission staff is in a season of planning and have broken out different focus areas.

The ND Poll: ED Binstock advised on January 8, 2023, she and GC Carpenter met with Brian Lunde with the ND Poll. The ND Poll is a regular, non-partisan statewide survey of eligible North Dakota voters and consumers. The ND Poll is a survey providing media organizations, businesses, government agencies, and other interested groups with an affordable opportunity to survey the citizens of North Dakota on their own issues.

ED Binstock advised she and GC Carpenter inquired about whether they would consider asking questions to the citizens of ND regarding how confident they are in state government. Mr. Lunde has since reached out for input on some questions that he is considering for another survey.

Northern Plains Ethics Institute: ED Binstock advised the Northern Plains Ethics Institute is located at North Dakota State University and their mission is to promote democratic participation in social and ethical issues affecting the Northern Plains and the region.

ED Binstock advised Commission staff met with Dr. Dennis Cooley, director of NPEI to discuss a potential event. The meeting resulted in an in-person event, as well as online, at NDSU for September 2024. The event will include a presentation and a panel discussion.

High School Presentations: ED Binstock advised Commission staff will be reaching out to high school principals throughout North Dakota to participate in the Commission's educational initiative. Letters will go out to principals in North Dakota's larger cities first before Commission staff reaches out to smaller towns.

Conflicts-of-Interest Awareness Month: ED Binstock advised Commission staff has designated March 2024 as Conflicts-of-Interest Awareness Month. Commission staff are planning on holding two lunch and learn sessions. The first session will focus on the history of conflict-of-interest rules or laws in North Dakota and the second session on the process. Staff will also post conflict-of-interest rules information on the Commissions social media.

State Agencies Education: ED Binstock advised the Commission has identified gaps, incorrect information, and items needing additional clarification in training materials across different state agencies. Commission staff has begun reaching out to state agencies regarding updating internal information for state employees to align with Commission rules.

5. **Administrative Rules Adoption:** ED Binstock advised a public hearing regarding the proposed rule amendments to N.D.A.C. § 115-02-01 was held on January 3, 2024. Written comments could have been submitted until January 15, 2024. There were no comments at the hearing or submitted. The amendments to N.D.A.C. § 115-02-01 will be forwarded to Legislative Council for publication after the amendments are adopted.

Motion: Vice Chair Anderson moved to adopt the proposed rule amendments to N.D.A.C. § 115-02-01. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

6. **COGEL Conference Presentation:** ED Binstock provided an update on COGEL. In December 2023, ED Binstock, GC Carpenter, and Commissioner Lindquist attended the Annual COGEL conference Kansas City, MO. ED Binstock shared and discussed the compiled takeaways with the Commissioners. ED Binstock also shared that many other ethics commissions were amazed at how far the ND Ethics Commission has come given the time since the commissions was established. Commissioner Lindquist also shared her takeaways from the COGEL conference.
7. **Proposed Legislative Rule Amendments to House and Senate Rules 321 and 322 and Creation of Joint Rule 1005:** ED Binstock advised she received a phone call in early January, from John Bjornson, Director of the Legislative Council. Mr. Bjornson informed Ms. Binstock there are going to be some amendments to Senate and House rules 321 and 322. ED Binstock advised those rules deal substantially with how legislators disclose potential conflicts of interest and the process for the legislative body on how to deal with those. The Legislative Procedure in Arrangements Committee approved a draft amendment that amends Senate and House rules 321 and 322 and creates joint rule

1005. Because these rules are so closely related to the mission of the Ethics Commission, Mr. Bjornson has asked that the Commission give a position of what the Commission takes on these amendments to help the legislature craft them.

Motion: Vice Chair Anderson moved to direct Executive Director Binstock to prepare a letter for the Commission's review at the next meeting in February regarding the proposed legislative rules changes. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

8. **Potential Financial and Travel Disclosure Requirements for Public Officials:** ED Binstock advised that Commission staff has begun drafting proposed travel disclosure rules for public officials per the Commission's instruction at the October Regular Meeting.

ED Binstock asked for direction from the Commission on adopting statement of interest forms and travel disclosure forms which could be combined into one form. Currently, statements of interest are only filed with the Secretary of State once, not annually. These statements are stored on paper, not electronically, and are not available online for public review. In order to review the filed statements of interest at the Secretary of State's office, the public needs to make an open record request. There is also a fee associated with these requests under North Dakota's open records laws. According to the Secretary of State's office, there has been only one or two open record requests for any statements of interest in the last year. The Secretary of State collects these statements of interest from approximately 1750 individuals.

The Commission directed staff to continue to focus on drafting proposed third party funded travel rules. The Commission also directed staff regarding financial disclosures to meet with the Secretary of State, Attorney General, and Legislative Council on the current process and how to address the issue at hand.

9. **Appeal to the Commission from Summary Dismissal Process:** ED Binstock advised that pursuant to N.D.A.C. § 115-02-01-03(6)(c), a 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. ED Binstock recommended the Commission adopt a policy to process these appeals in a fair manner that allows both the respondent and complainant to respond. This is not clearly outlined in the administrative rules.

Motion: Commissioner Lindquist moved to approve the draft policy as presented for the appeal from summary dismissal. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

10. **Request for Advisory Opinion 23-03:** Chair Richard reiterated from the January 9, 2024 special meeting that he is rescinding his initial approval for this advisory opinion request due to no indication that this had been requested through the PERS Board Chair at that time. ED Binstock confirmed that Commission staff had reviewed minutes from the PERS Board meetings and there was never a motion or a request from the individuals that the board or board chair make this request on its behalf.

Motion: Commissioner Koeser moved to rescind the prior approval of the issuance of the advisory opinion and to communicate with Ms. Rindy by letter that the Commission will not be issuing an advisory opinion. Motion was seconded by Vice Chair Anderson. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

11. **Executive Session:** The Commission entered executive session during the general meeting at 12:21 p.m. to discuss Complaint Nos. 22-003 through 22-010, 23-005, 23-011, 23-012, 23-013, 23-014, and 24-001. Information regarding the content and parties to a complaint to the Ethics Commission is confidential. The following participants entered the executive session: Chair Paul Richard, Commissioners Ward Koeser and Cynthia Lindquist, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Executive Assistant Alisha Maier.

Executive Session ended at 1:02 p.m. and all participants returned to the regular meeting. During the Executive Session, the Commission discussed Complaint Nos. 22-003 through 22-010, 23-005, 23-011, 23-012, 23-013, 23-014, and 24-001.

Motion: Commissioner Lindquist moved dismiss Complaint No. 23-012 under N.D.C.C. § 54-66-08(1)(a). Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

12. **Adjourn:** Having no further business, the meeting was adjourned at 1:04 p.m. The next regular meeting is scheduled for February 28, 2024, at 9:00 a.m., livestreamed with MS Teams.

Approved on RB 2/28/2024

Rebecca Binstock, Executive Director, North Dakota Ethics Commission