

North Dakota Ethics Commission Regular Meeting

Minutes of October 25, 2023

MS Teams

1. **Call to Order:** The meeting was called to order by Vice Chair Dave Anderson at 9:03 a.m. The following members of the Ethics Commission were also present: Chair Paul Richard, Commissioners Ward Koeser and Ron Goodman, as well as Executive Director Rebecca Binstock, Special Assistant Attorney General Patricia Monson, General Counsel Logan Carpenter, Office Manager Holly Gaugler, and Executive Assistant Alisha Maier.
2. **Agenda Additions:** No additions were made.
3. **Approval of Minutes:** The Commission discussed meeting minutes from August 30 and September 27, 2023. No changes were made.

Motion: Commissioner Koeser moved to approve meeting minutes from August 30 and September 27, 2023. Motion was seconded by Commissioner Goodman. Vice Chair Anderson called for a voice vote. The motion was approved by unanimous voice vote.

4. **Executive Director Update:**

- Office Manager Holly Gaugler provided a budget update through the end of September 2023 for the 2023-25 biennium budget. She noted the following totals: current appropriations for the 2023-2025 biennium is \$1,149,181.00, expenditures in September were \$42,926.12, total expenditures for the current biennium have been \$110,514.37, leaving a remaining appropriation for the 2023-2025 biennium of \$1,038,666.63. Gaugler presented an estimated ending balance for the biennium on June 30, 2025, at \$25,582.43, explaining this amount will fluctuate as the Commission proceeds through the biennium. Gaugler also noted the \$54,682.00 listed as a portion of the appropriations total is just an estimate of what we will receive back from the FTE funding pool, but the Commission will likely receive more than that.
- ED Binstock provided an update on social media. ED Binstock advised that the Ethics Commission staff created a Facebook page earlier this month. Prior to posting any information on this social media platform, commission staff is addressing the required “impressum” or content guidelines. Commission staff has reviewed content guidelines language used by other state agencies and has reviewed applicable laws and case law.

An additional consideration for the Commission’s consideration is how to respond when information suggestive of a complaint is made to the Commission through social media. ED Binstock recommends adoption of an internal policy (with public communication) for how to handle those situations.

ED Binstock will present both content guidelines and internal policies regarding social media at the next Commission meeting. ED Binstock wishes to proceed cautiously in this arena and be thorough up front to prevent issues in the future.

Team ND's marketing team created a logo for the Ethics Commission to use across social media platforms. Ethics Commission staff will also utilize the state's Asset Bank, which is an online media gallery.

ED Binstock advised staff plans to launch the informational survey when the Commission begins communicating through social media in the coming months.

Commissioner Anderson questioned how the Ethics Commission will monitor the page for comments and posting. ED Binstock advised staff will set up rules that help eliminate profanity, etc. and EA Maier will be monitoring comments. The content guidelines will also advise that the page is being used as a communication tool.

- ED Binstock provided an update on the special legislative session. On October 17, 2023, Governor Burgum issued an Executive Order to convene the Legislative Assembly for a special session. This action was taken in light of the North Dakota Supreme Court's decision in *Bd. Of. Trustees of the N.D. Public Employees Retirement System v. N.D. Legislative Assembly* which voided SB 2015 as enacted during the 2023 Legislative Session.

ED Binstock advised Section 68 of SB 2015 affected the Ethics Commission as it contained an emergency provision that declared the budget to be an emergency. This emergency clause was placed in SB 2394 for the Special Session. A hearing on SB 2394 was held on October 23, 2023, before the Joint Appropriation Committee. Commission staff prepared testimony in support of SB 2394. ED Binstock testified and answered only minimal questions. SB 2394 received a Do Pass recommendation from the Joint Appropriation Committee. SB 2394 passed the Senate on October 24, 2023 and the House will take it up on October 25, 2023.

Ethics Commission staff is closely monitoring bills related to the structure of the PERS Board. Specifically, commission staff is engaged in conversations with legislators regarding an amendment introduced which contains language relating to conflicts of interest for legislators serving on the PERS Board. Commission staff will continue to provide advice to the legislative assembly as conflicts of interest falls within the Commission's constitutional authority.

- Executive Director Binstock provided an update to the Commission on education and outreach initiatives. Ethics Commission staff has been focusing on two components of our Educational Initiative this past month: updating the Frequently Asked Questions portion of the Ethics Commission's website and in-person presentations.

ED Binstock, along with General Counsel Carpenter, will be presenting a lesson on governmental ethics at Glen Ullin High School on November 15, 2023. EA Maier has begun reaching out to schools throughout the state to set-up presentations. These lessons will focus

on why we have the ethics commission, how public employees and officials need to conduct themselves, and why they are in those positions. The goals are to get kids more involved in civics and to help them become more informed voters. ED Binstock advised the Ethics Commission will also plan to post the lesson plan and PowerPoint to the website for the public to access.

GC Carpenter also submitted an article about the Ethics Commission for publication in the WDALA (Western Dakota Association of Legal Assistants) quarterly newsletter.

Commission staff began updating the “FAQs” on the Commission’s website, aimed at addressing the questions that frequently arise.

- Executive Director Binstock advised a hearing date for the hearing on the amendments to the Commission’s complaint rules has been set for December 8, 2023, and the comment period will close on December 18, 2023.
- Executive Director Binstock provided an update of policies & procedures regarding computing time. As the Commission works through pending complaints, Commission staff has observed there is no statute or rule which indicates how the Commission computes time. ED Binstock recommended the Commission adopt the proposed policy regarding the computation of time.

Motion: Commissioner Koeser moved to Motion to adopt the Computing Time Policy and include the policy in the Commission’s Policies and Procedures. Motion was seconded by Commissioner Goodman. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

5. **Advisory Opinion Request No. 23-03:** ED Binstock advised on September 25, 2023, the Ethics Commission received a request for an advisory opinion from Mona Rindy, Chair of NDPERS Board of Trustees. The request specifically relates to conflicts of interest of board members and when there is pending litigation. On October 2, 2023, ED Binstock informed Ms. Rindy the Commission will issue an opinion. ED Binstock further indicated to Ms. Rindy that her name will be an open record. The Commission has until December 31, 2023, to issue an advisory opinion.

6. **Strategic Plan Discussion:** ED Binstock addressed the 2023-2025 Strategic Plan. The Commission has reviewed the Strategic Plan at two of the Commission’s meetings. ED Binstock had since changed the names of strategic initiatives 1 and 2. ED Binstock provided an overview of the initiative focuses: Initiative 1 - education, providing materials, giving practical training, and creating supporting documents; Initiative 2 - relationships and communication; Initiative 3 - rules creation and review; Initiative 4 - creating a positive work culture; Initiative 5 – meaningful enforcement. ED Binstock recommends the Commission adopt the Strategic Plan for the 2023-2025 Biennium.

Motion: Commissioner Goodman moved to adopt and publish the Commission’s Strategic Plan. Motion was seconded by Commissioner Koeser. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

7. **Executive Session:** The Commission entered executive session during the general meeting at 9:08 a.m. to discuss Complaint Nos. 22-003 through 22-010, 22-013, 23-011, and 23-012 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, Vice Chair Dave Anderson, Commissioners Ron Goodman and Ward Koeser, Special Assistant Attorney General Pat Monson, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, Office Manager Holly Gaugler, and Executive Assistant Alisha Maier. Executive Session ended at 10:34 a.m. and all participants returned to the regular meeting. During the Executive Session, the Commission discussed Complaint Nos. 22-003 through 22-010, 22-013, 23-011, and 23-012.

Motion: Commissioner Goodman moved to appoint Special Assistant Attorney General Pat Monson on complaint No. 23-012. Motion was seconded by Commissioner Koeser. Vice Chair Anderson called for a voice vote. The motion was approved by unanimous voice vote.

8. **Meeting Dates for January 2024 through May 2024:** ED Binstock proposed the following potential dates.

January: 17, 24
February: 14, 28
March: 20, 27
April: 17, 24
May: 15, 22

The commission decided to table the meeting dates decision to the next meeting when more commissioners are present to make the final decision.

9. **Adjourn:** Having no further business, the meeting was adjourned at 11:30 a.m. The next regular meeting is scheduled for November 14, 2023, at 9:00 a.m., livestreamed with MS Teams.

Approved on  11/30/2023

Rebecca Binstock, Executive Director, North Dakota Ethics Commission