

North Dakota Ethics Commission Regular Meeting

Minutes of February 28, 2024

MS Teams

1. **Call to Order:** The meeting was called to order by Chair Paul Richard at 9:00 a.m. The following members of the Ethics Commission were also present: Commissioners Ward Koeser, Cynthia Lindquist, and Ron Goodman, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Executive Assistant Alisha Maier.
2. **Agenda Additions:** Chair Richard advised he would be resigning from the Commission by the end of August 2024, but will stay longer until the Governor's office has found a replacement, if needed.
3. **Approval of Minutes:** The Commission discussed regular meeting minutes from January 17, 2024.

Motion: Commissioner Koeser moved to approve regular meeting minutes from January 17, 2024. Motion was seconded by Commissioner Goodman. 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 January 2024 for the 2023-25 biennium budget. She noted the following totals: current appropriation for the 2023-2025 biennium is \$1,155,297, expenditures in January were \$46,818, total expenditures for the current biennium have been \$309,144, leaving a remaining appropriation for the 2023-2025 biennium of \$846,153. EA Maier presented an estimated ending balance for the biennium on June 30, 2025, at \$16,924, explaining this number will fluctuate as we move through the biennium. EA Maier noted the commissioner's salary line in the projections was increased to account for one regular and one special meeting per month for the remainder of the biennium.
 - ED Binstock provided an update on the Commission's social media. Commission staff have continued sharing information about the Commission and directing the public to additional information available on the Commission's website through its Facebook page.

ED Binstock advised earlier this week, the "Meet the Commission Monday" series began and will continue for the next 5 weeks.

ED Binstock advised that Commission staff have created a North Dakota Ethics Commission YouTube channel and the Commissions content moderation guidelines and media disclaimer have been posted to the channel.

- ED Binstock provided an update on policies & procedures. ED Binstock requested the Commission adopt substitution policies to manage instances when the Executive Director and/or a majority of the Commissioners has a potential conflict of interest and in a matter.

GC Carpenter summarized the drafted policy presented to the Commissioners. GC Carpenter further advised that Commission staff has discussed these policies with the Office of Administrative Hearings, and that office has advised they would be able to assist the Commission in these situations.

Motion: Commissioner Koeser moved to adopt the Executive Director Substitution Policy and Commission Substitution Policy. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- ED Binstock provided an update on the online forms project. The Commission's 5 forms have been tested and are now going through the final edits process. Once these forms are ready, they will be presented to the Commission for approval.
- ED Binstock provided an update to the Commission on internships. Commission staff worked with UND School of Law to coordinate internship opportunities for the summer and legislative session on a continuing basis.

ED Binstock advised the summer externship has been posted. That position would likely start at the end of May and wrap up in August. Interviews will be conducted by ED Binstock and GC Carpenter after March 1, 2024. The summer externship will not be a paid position, but there will be around \$300 in monthly fee associated with NDIT.

ED Binstock advised she is also working on a Legislative Internship that would start during the 2025 session. With this internship, the Commission does not

complete a formal interview process and the intern is paid a stipend, if approved by the Commission. There will again be the monthly NDIT costs associated with this internship.

ED Binstock advised that whether the Commission has a legislative intern is subject to available funding. Externs and interns will be expected to follow all Commission policies and procedures as well as the Commission's Internal Code of Ethics. Commissioners Lindquist and Goodman recommended the summer internship be paid as well in the future. ED Binstock noted funds will be added to the budget for next biennium for this purpose.

- ED Binstock provided an update to the Commission on education and outreach initiatives.

Events: ED Binstock advised there are several upcoming education and outreach events planned for February, March, and April:

Conflicts-of-Interest Month (March 2024): During March 2024, Commission staff will focus on educating citizens of North Dakota, public officials, and lobbyists about the Commission's conflicts-of-interest rules. The Commission is offering 2 webinars in March: March 14 and March 28. These webinars have each been approved for 1.5 hours of CLE credit. The first webinar will focus the history of ethics laws in North Dakota. The second webinar will focus on the process of disclosing a potential conflict-of-interest. GC Carpenter put together a conflict-of-interest video that was played for the Commission for feedback.

February 26, 2024: ED Binstock advised she, along with GC Carpenter, presented at the North Dakota Kennedy Center in Bismarck as part of the North Dakota Kennedy Center Foundation's community conversation series. An estimated 30 North Dakota residents attended the event and had a lot of questions.

March 6, 2024: ED Binstock advised she will be a panelist for the Bismarck Mandan Chamber EDC's Leadership Bismarck Mandan Faith, Value & Ethics Panel.

March 16, 2024: ED Binstock advised she will be presenting at Civics West's inaugural Fireside Chat in West Fargo. Civics West is a new organization in West Fargo organized for the purpose of increasing civic knowledge and engagement.

April 9, 2024: ED Binstock advised she will teach Ethics in Government lessons to 4 classes at Dickinson High School. Commission staff will reach out to schools

again this fall as the spring outreach initiative did not have as much response as anticipated.

April 18, 2024: ED Binstock advised GC Carpenter will present to Inns of Court in Bismarck to local attorneys. This presentation will be a Q&A panel facilitated by a local attorney.

April 22, 2024: ED Binstock advised she is again presenting to the Bismarck Lions as they have asked her to come back to provide an update on the Commission.

ED Binstock advised Commission staff has tentatively decided to hold another webinar series in May focusing on the complaint process.

Contact & Email Lists: ED Binstock advised staff is working with HRMS to compile several lists to help better direct communications to those appropriate in the future. ED Binstock identified 7 groups needed for this working list: statewide elected officials, legislative employees, appointed full-time state employees, cabinet members, lobbyists, points-of-contacts for state boards and commissions, and points-of-contacts for state agencies. ED Binstock expressed there are challenges in receiving some of these contact types.

ED Binstock advised that Commission staff would also like to create an email group to which members of the public can subscribe to receive information. This subscription would be completed through the Commission's website. Commission staff has been exploring the best platform to facilitate communications, with input from NDIT. At this time, Commission staff believes the best platform may be a subscription-based service such as Constant Contact, but there may also be a resource available through NDIT. ED Binstock requested authority to procure a platform for the Commission to utilize.

Motion: Commissioner Goodman moved to authorize ED Binstock to procure an email distribution platform service to communicate information. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

Inter-Agency Communications: ED Binstock advised that Commission staff has begun working with OMB to align the state's procurement rules with the Commission's rules as there are inconsistencies. ED Binstock noted that one comment that came from these discussions is the fact that the Commission's rules are not going to apply to everybody who is in procurement because some of them are executive branch individuals who are not appointed or elected. ED

Binstock advised OMB is going through a rulemaking amendment where they are changing their administrative rules that apply to procurement, so Commission staff is hopeful that discussions were started early enough to assist them in changing or modifying these rules.

- ED Binstock provided an update to the Commission on HR. Both GC Carpenter and EA Maier will be wrapping up their probationary period in March 2024. ED Binstock has completed the evaluation for GC Carpenter and EA Maier's will be completed soon.

ED Binstock advised that based upon the probationary evaluations and discussions with HRMS, she would like to update EA Maier's job title to Operations Administrator and reclassify her position based upon an updated job description. The job duties EA Maier currently completes are more than those of an Executive Assistant and don't typically fall on an Executive Assistant role. The reclassification process is completed by HRMS, and the determination is made by that office.

Motion: Commissioner Goodman moved to direct ED Binstock to request reclassification of EA Maier's position. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

5. **Discussion of Strategy Review for 2025-2027 Biennium:** ED Binstock provided an update on the upcoming strategy review. The Commission's Strategic Review meeting with the Office of the Governor is set for March 13, 2024. Commission staff is in the process of completing the Strategic Review presentation. ED Binstock presented the long-term goals she is exploring for this Strategic Review:

1. Creation of Case Management and Filing System: Once the online forms project is completed, there will still be significant legwork for tracking and the potential of receiving statement of interest forms. There are platforms available for these purposes and some other state agencies already use them.
2. Biannual Ethics Summit: This would focus on ethics, good governance, democracy, and civic engagement. Other ethics commissions do these across the country and bring the whole community together to have these ethical conversations.
3. Creation of Online Training Modules: This was a common theme learned about during COGEL where many other ethics commissions were moving to online mandatory trainings.

4. Additional FTEs for Educational Administrator and additional Counsel: ED Binstock would like to continue to ask for an Educational Administrator due to the importance of the communication and education parts of the Commission. ED Binstock would also like to ask for an additional General Counsel. Nearly every other ethics commission spoken with at COGEL has separate compliance and enforcement counsel. This way, you do not have the same person prosecuting complaints as you do providing advice.
5. Contingency reserve funding for potential litigation: This is needed for the potential of the Commission going through litigation in an appeals process or potential litigation in general. In the past, there has not been any reserve or contingency funding set aside for this. There is contingency funding for legal services if the Commission needs to hire outside counsel, but not for if the Commission is ever pulled into litigation. The \$50,000 currently for contingency funding would likely not be enough for this situation. Commission staff will look at what other small agencies have in this bucket to determine what this number could be.
6. Full review of rules adopted by the Commission and rules to be adopted by the Commission.

ED Binstock requested Chair Richard call a special meeting prior to the March 13, 2024, meeting with the Office of the Governor for the Commission to approve the 2025-2027 Strategic Review Presentation. ED Binstock advised she would let Chair Richard know when the Strategy review is ready for Chair Richard to call the meeting.

6. **Discussion of Proposed Legislative Rule Amendments to House and Senate Rules 321 and 322 and Creation of Joint Rule 1005:** ED Binstock advised that GC Carpenter prepared a letter for the Commissions review to be sent to John Bjornson. The letter provides advice and commentary on a set of rules that is being considered by the legislative procedure and arrangements committee. In January 2024, John Bjornson requested the Commissions comments and direction. The Commission discussed the letter.

Motion: Commissioner Koeser moved to direct ED Binstock to communicate the position of the Commission by letter to John Bjornson, Director of Legislative Council related to the proposed amendments to House and Senate Rules 321 and creation of Joint Rule 1005. Motion was seconded by Commissioner Goodman.

Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- 7. Discussion of Potential Financial and Travel Disclosure Requirements for Public Officials:** ED Binstock advised that Commission staff has completed draft proposed rules related to financial and travel disclosures. The rules are currently drafted to apply to all public officials with progressive start dates for filing so not all public officials would start right away in 2026. This would provide a starting point with elected officials and members of the Ethics Commission. Then in 2028, members of boards and commissions and all remaining public officials would be added.

GC Carpenter explained the proposed rules and the Commissioners discussed several components to consider and discuss. The rules would require a disclosure statement on an annual basis. This would also allow these documents to be searchable on our website.

ED Binstock advised that Commission staff will continue to update the proposed rules, definitions, and compile logistics moving forward. Staff will also start reaching out to members of the legislature and other public officials to request informal feedback.

- 8. Executive Session:** The Commission entered executive session during the general meeting at 11:51 a.m. to discuss Complaint Nos. 22-003, 22-004, 22-005, 22-006, 22-007, 22-008, 22-009, 22-010, 23-004, 23-005, 23-006, 23-007, 23-008, 23-012, 23-013, 23-014, 24-001, 24-005, 24-006, and 24-007 and consideration of Appeal from Summary Dismissal for Complaint No. 23-011. 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, Cynthia Lindquist, and Ron Goodman, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Executive Assistant Alisha Maier.

Executive Session ended at 12:53 p.m. and all participants except for Chair Richard returned to the regular meeting.

During the Executive Session, the Commission discussed Complaint Nos. 22-003, 22-004, 22-005, 22-006, 22-007, 22-008, 22-009, 22-010, 23-004, 23-005, 23-006, 23-007, 23-008, 23-012, 23-013, 23-014, 24-001, 24-005, 24-006, and 24-007.

During Executive Session, Chair Richard recused on Complaint No. 23-011 and left the meeting during that complaint discussion and Commissioner Goodman recused on Complaint No. 24-001 and no further discussion was held on that complaint.

Motion: Commissioner Koeser moved to direct ED Binstock to proceed as directed during executive session regarding Complaint No. 23-011. Motion was seconded by Commissioner Lindquist. Commissioner Lindquist called for a roll call vote. The motion was approved by unanimous roll call vote.

Chair Richard returned and Commissioner Koeser left the regular meeting at 12:56 p.m.

Motion: Commissioner Lindquist moved to direct ED Binstock to summarily dismiss Complaint No. 23-004. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

Motion: Commissioner Goodman moved to direct ED Binstock to summarily dismiss Complaint No. 23-008. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

Motion: Commissioner Goodman moved to direct ED Binstock to summarily dismiss in part Complaint No. 23-013. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

Motion: Commissioner Lindquist moved to direct ED Binstock to proceed as directed during executive session regarding Complaint Nos. 24-005, 24-006, and 24-007. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

9. **Adjourn:** Having no further business, the meeting was adjourned at 12:59 p.m. The next regular meeting is scheduled for March 27, 2024, at 9:00 a.m., livestreamed with MS Teams.

Approved on  3/27/2024

Rebecca Binstock, Executive Director, North Dakota Ethics Commission