

# North Dakota Ethics Commission Meeting

Minutes of April 20, 2022

Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Chair Ron Goodman, at 9:00 a.m. The following members of the Ethics Commission were present: Cynthia Lindquist, Paul Richard, Ward Koeser and David Anderson. Also present were Ethics Commission legal counsel Mary Kae Kelsch. Hicks, Executive Director Dave Thiele, and Office Manager Holly Gaugler.
2. **Approval of Agenda:** No additions were made.
3. **Approval of Minutes:** The minutes of the 23 March 2022 meeting were discussed with no changes.

**Motion:** Commissioner Koeser moved to approve the minutes of March 23, 2022 with no corrections. Motion was seconded by Commissioner Anderson. Chair Goodman called for a voice vote on the motion. The motion was approved by unanimous voice vote.

4. **Budget Update:** Office Manager Holly Gaugler provided a budget update as of March 31, 2022. Gaugler reported March 2022 expenditures of \$22,606 and total expenditures for the biennium of \$202,246 leaving a remaining biennial budget of \$421,738. Gaugler also reported projected expenditures for the remainder of the biennium (April 1, 2022 through June 30, 2023) at an estimated \$401,145 which would leave an approximate ending balance of \$20,593 on June 30, 2023. Gaugler advised the Commission that the ending balance would likely rise as the Commission continues to have MS Teams virtual meetings rather than in-person meetings along with other potential budget savings. Gaugler also stated that the Governor's budget guidelines would be released on May 5<sup>th</sup> for the new biennial budget which is due on July 15, 2022 and the Commission will need to review the new budget draft at the June 2022 meeting.

5. **Executive Director Dave Thiele Update:**

- Thiele discussed the April 11<sup>th</sup> Government Administrative Committee meeting where agency office space was discussed. No actions were made or discussed to end agency office lease agreements to include the ND Ethics Commission.
- Thiele briefed the Commission on the reappointment of Commissioner Dave Anderson. He indicated that the Governor's Office had spoken with the Senate

Majority Leader and the Senate Minority Leader and that Commissioner Anderson would be reappointed for a full four year term effective September 1, 2022.

- Thiele announced his retirement effective August 1, 2022. He has been working with Commissioner Anderson on the position description and job announcement. Changes made to the position would be the requirement for a licensed lawyer with five years of experience preferencing state government work to include experience with the state legislature and not stating a salary that would be dependent on experience. Thiele and Commissioner Anderson discussed some options for the interview process, much which depends on the number of qualified applicants. Legal Counsel Mary Kae Kelsch advised the board that HRMS normally screens applicants that meet the minimum qualifications set by the Commission and at that point the Commission would review full applications and determine the preferred interview process. She also suggested a subcommittee agreed upon by the Commission for initial review and screening. Commissioner Richard suggested, with concurrence from the Commission, changing the five-year work experience to a preference rather than a requirement as well as requiring the physical location for Bismarck as a preference, not a requirement. Thiele will work with HRMS to ensure the Commission has access to review, in-full, the qualified applicants.
- Thiele informed the Commission that he will provide a full briefing on Complaint #22-001 in executive session at the next Commission meeting (May 25<sup>th</sup>).

6. **Commission’s Discussion of the 3/29/22 Draft Quasi-Judicial Bias Rule:**

Executive Director Thiele received only one public comment on the Quasi-Judicial Bias Rule since the last meeting. He recommended that the Commission modify the rules to ensure language is gender-neutral. After further discussion, the Commission agreed to approve the current draft with the gender-neutral changes.

**Motion:** Commissioner Richard moved to approve the Quasi-Judicial Proceeding Rule as set out in NDAC 115-05-01 with gender neutral modifications. Commissioner Lindquist seconded the motion. Chair Goodman called for a voice vote on the motion. The motion was approved unanimously.

7. **Commission’s Discussion of the 3/25/22 General Conflict of Interest Rule:**

Commissioner Richard noted this is a rule separate from the Quasi-Judicial Rule under the Commission’s authority for transparency. Richard led the Commission through areas of concern from public comment and Commission discussions:

- 115-04-01-03(5) does not allow the individual with a potential conflict to be counted in the determination of a quorum for the governing body. Richard

suggested that the Commission receive additional legal analysis/input on the matter.

- Should this rule mirror the Quasi-Judicial rule in first allowing the public official to determine if the potential conflict is disqualifying and also have the ability to rely upon a neutral reviewer absent pre-existing conflict rules by the public body?
- This rule draft currently excludes campaign donations. Should there be a level at which campaign donations should be considered?
- Can a public official be precluded from voting on an issue when it is a function of their elected position?

The Commission discussed the above areas of concern and agreed to have Executive Director Thiele, Commissioner Richard and legal counsel Allyson Hicks gather further legal analysis, provide edits, and advise the Commission of any changes at the next meeting.

Executive Director Thiele will start the process to advertise the notice of rule publication for the Quasi-Judicial Bias Rule and also the change to the Complaint Rule NDAC 115-02-01-03(7) eliminating "in executive session". Thiele will provide the timeline for this process to the Commission at the May 25, 2022, meeting.

The Commission agreed to conduct the normal administrative public hearing procedure as set forth in NDCC 28-32 where Executive Director Thiele will accept all public comment and Commissioners will not be in attendance.

8. **Further Business:** Commissioner Lindquist noted that she will not be available to attend the May 25<sup>th</sup> meeting. The Commission agreed to an in-person meeting on June 22<sup>nd</sup> beginning at 1:00 pm and June 23<sup>rd</sup> from 9:00 am to noon. The Commission also set regular meeting dates for July 12<sup>th</sup>, August 17<sup>th</sup>, and September 14<sup>th</sup>.
9. **Adjourn:** Commission, having no further business, was adjourned at 11:08 a.m. The next meeting is scheduled for May 25, 2022, at 9:00 a.m. by MS Teams.

Approved on

25 May 22



Dave Thiele, Executive Director, North Dakota Ethics Commission