

North Dakota Ethics Commission Regular Meeting

Minutes of August 23, 2023

MS Teams

1. **Call to Order:** The meeting was called to order by Chair Paul Richard at 9:03 a.m. The following members of the Ethics Commission were also present: Vice Chair Dave Anderson, Commissioners Ward Koeser and Cynthia Lindquist, as well as Executive Director Rebecca Binstock, Assistant Attorney General Patricia Monson, in-coming General Counsel Logan Carpenter, and Office Manager Holly Gaugler.
2. **Agenda Additions:** No additions were made.
3. **Approval of Minutes:** The Commission discussed meeting minutes from July 18 and August 3, 2023. No changes were made.

Motion: Commissioner Koeser moved to approve meeting minutes from July 18 and August 3, 2023. Motion was seconded by Vice Chair Anderson. Chair Richard called for a voice vote. The motion was approved by unanimous voice vote.

4. **Executive Director Update:**

- Office Manager Holly Gaugler provided a final budget update for the end of 2021-23 biennium budget. A preliminary end of biennium update was provided at the July 18, 2023, meeting with an estimated ending balance of \$27,983.93. Gaugler reported that final ending balance was \$27,836.15 after the final June payment for copier rent was made for \$147.78 before the financials were closed for the biennium.

Gaugler also provided a financial update as of July 31, 2023, the first month of the 2023-25 biennium. Gaugler explained appropriation adjustments made after the budget bill SB 2024 was passed at \$1,138,242 which included: a) \$1,957 for increased employer retirement contributions per SB 2015, Section 23; b) a reduction of \$45,700 for monies spent during the 2021-23 biennium pursuant to an emergency clause contained in SB 2015, Section 65(5), for \$25,000 in office remodeling and \$20,700 on SAAG costs; c) an increase of \$54,682 that will be requested at the time the new executive assistant is hired to partially recoup funding removed from SB 2024 before its passage for the new funding equity pool. These three adjustments will bring the current appropriation to a total of \$1,149,181. Gaugler also added that during the legislative session a total of \$71,907 was removed for the new equity funding pool and the Commission would request additional funding be restored after March 1, 2025 according to rules established through SB 2015, Section 22. A total of \$27,619.36 was spent in July during the new biennium leaving a remaining appropriation of \$1,121,561.64 as of July 31, 2023.

Gaugler provided an overview of budget projections for the remainder of the biennium totaling \$1,096,195 which would leave an estimated ending balance for the biennium at June 30, 2025 of \$25,366.64, explaining this amount will likely change as the Commission proceeds through the biennium.

- Executive Director Binstock made a request to the Commission to purchase an Executive Assistant desk to fit the new office space. The existing desk did not meet ADA requirements for space. A quote for the desk, without additional attachments, from Fireside is \$1,588.56. A request from Fireside was obtained in order to match the existing desks as they were the vendor for the original furniture purchase.

Motion: Vice Chair Anderson moved to authorize Executive Director Binstock to purchase the executive assistant desk. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- Executive Director Binstock requested that the Commission authorize the purchase of a legal research subscription allowing Mr. Carpenter the ability to conduct legal research. Executive Director Binstock evaluated, with input from Mr. Carpenter, the available legal research subscriptions and recommended Westlaw legal research subscription for the Commission. The estimated cost of the subscription is \$284 per month. The subscription will allow Mr. Carpenter, Executive Director Binstock, and an executive assistant access.

Motion: Commissioner Lindquist moved to authorize Executive Director Binstock to purchase Westlaw legal research subscription. Motion was seconded by Vice Chair Anderson. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- Executive Director Binstock provided an update on the hiring of a General Counsel and an Executive Assistant. Mr. Carpenter accepted the position as General Counsel on August 3, 2023 and will begin on September 5, 2023.

The Executive Assistant position was posted on August 14, 2023. The application deadline is August 28, 2023. HR will perform an initial evaluation to determine the qualified applicants. At that time, Executive Director Binstock and Ms. Gaugler will conduct interviews of the qualified applicants. ED Binstock requested confirmation from the Commission that she has authority to offer the best qualified applicant the position without needing additional approval from the Commission. Commissioner Richard confirmed ED Binstock has authority to hire without the approval of the Commission as this position will report directly to the Executive Director.

- ED Binstock provided an update on the appointment of new Commissioners. Commissioners Lindquist and Goodman's terms will be expiring on August 31, 2023. Upon request of Commissioner Goodman, she has asked the Governor, Senate Minority Leader, and Senate Majority Leader to reinstate Commissioner Goodman for another term. She also requested that a new Commissioner be selected to fill the vacancy left by the expiration of Commissioner Lindquist's term with the Commission. She has been informed that the Governor, Senate Minority Leader, and Senate Majority Leader will be meeting on September 8, 2023, regarding the appointments. She also noted that the Commission's internal code of ethics stated that the Commissioners whose terms were expiring will stay on the Commission until a replacement is found.
- Executive Director Binstock asked the Commission to consider an additional policy to the Commission's policies and procedures regarding the length of officer terms. The Commission had approved a 3-year term for officers at the August 17, 2022. She asked that the Commission approve the policy which reduces the officer terms to 2 years which would better align with the Commissioners' four-year terms.

Motion: Commissioner Koeser moved to approve the new policy as drafted by Executive Director Binstock which reduces the offer terms from 3 years to 2 years. Motion was seconded by Commissioner Lindquist. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- Executive Director Binstock provided an update to the Commission on education and outreach activities. Executive Director Binstock will be presenting to the North Dakota CPAs on August 29, 2023. Her presentation will be aimed at general information about the Ethics Commission and gifting rules. With Mr. Carpenter joining the Ethics Commission in September, they will begin preparing information sheets that explain specific detailed areas of the Ethics Commission.
5. **Administrative Rules Revision:** ED Binstock led the discussion with the assistance of General Counsel Monson on proposed changes to the Complaint Rules. The primary changes were made within Title 115-02. There was also a typo correction made to Title 115-05-01 (Quasi-Judicial Proceedings). Changes to Title 115-02 mirror changes made to N.D.C.C. Ch. 54-66 pursuant to SB 2048 after the 2023 legislative session. The following are the specific changes to Title 115-02:
- A.) Addition of the definition of a complaint, (115-02-01-01(1));
 - B.) Changes to the definition of a complainant to allow certain non-residents of North Dakota to file a complaint, (115-02-01-01(2));
 - C.) Defined when and how a complaint is considered "filed", (115-02-01-03); and
 - D.) Changes to the time-line and information provided by the Commission when notifying a respondent that a complaint has been filed, (115-02-01-04)

Executive Director Binstock asked the Commission to approve her to contact stakeholders before the September 27, 2023 meeting to make them aware of proposed changes to make sure the rule making

process goes smoothly. The Commission approved Executive Director Binstock to reach out to stakeholders and report back to the Commission at the September meeting.

Chair Richard asked that clarification be added to Title 115-02-01-03, that a respondent will not be notified if the complaint has been summarily dismissed due to lack of personal jurisdiction.

6. **Strategic Plan Discussion:** Executive Director Binstock presented a second draft of the Commission's strategic plan which was initially discussed at the July 18, 2023 meeting. The second draft included some additions from comments made by the Commissioners after the July meeting.

Chair Richard asked that under Rules Review and Creation, Strategic Initiative #3, an emphasis be placed on the Commission's broad scope of authority on lobbying, elections, and transparency. To review existing statutory laws and rules that pertain to those issues and identify gaps and what authority the Commission has in developing rules in accordance with the ND Constitution as well as N.D.C.C. 54-66. He also asked that the Commission review other states' rules regarding those areas.

The Commission agreed to approve the strategic plan at the October meeting to allow a review time for the new in-coming Commissioner anticipated in September. The Commission also agreed that the strategic plan be reviewed with an update every two months.

7. **Discussion of Advisory Opinion #23-02:** ED Binstock briefed the Commission on the request for advisory opinion received on May 17, 2023. This request for advisory opinion related to out-of-state travel for public officials attending lobbying and educational events. Work is continuing and will be completed within the next week. Executive Director Binstock requested that Chair Richard call a special meeting for the Commission to review and approve the advisory opinion. The Commission set the date for Tuesday, September 29th at 9:00 a.m. CST.
8. **Executive Session:** The Commission entered executive session during the general meeting at 10:48 a.m. to discuss Complaint Nos. 23-009 and 23-010 under the authority of N.D.C.C. Sections 54-66-12(1), 54-66-12(3), and 44-04-19.2(1) – 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, Ward Koeser, and Cynthia Lindquist, Special Assistant Attorney General Pat Monson, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Executive Session ended at 10:55 a.m. and all participants returned to the regular meeting. During the Executive Session, the Commission discussed Complaint Nos. 23-009 and 23-010. After Executive Session discussion, the following motion was made:

Motion: Commissioner Koeser moved to authorize Executive Director Rebecca Binstock to summarily dismiss Complaint Nos. 23-009 and 23-010 due to lack of personal jurisdiction as discussed in Executive Session. Motion was seconded by Commissioner Anderson. 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 10:52 a.m. A special meeting is set for August 29, 2023, at 9:00 a.m., livestreamed with MS Teams. The next regular meeting is scheduled for September 27, 2023, at 9:00 a.m., livestreamed with MS Teams.

Approved on  9/27/2023

Rebecca Binstock, Executive Director, North Dakota Ethics Commission