

# North Dakota Ethics Commission Meeting

Minutes of August 17, 2022

Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Vice-Chair Cynthia Lindquist, at 9:02 a.m. The following members of the Ethics Commission were present: Chair, Ron Goodman, Vice-Chair Cynthia Lindquist and Commissioners Paul Richard, Ward Koeser and David Anderson. Also present were Ethics Commission Legal Counsel Allyson 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 22 and 23 June 2022 meeting were discussed with no changes.

**Motion:** Commissioner Richard moved to approve the minutes of June 22 and 23, 2022 with no corrections. Motion was seconded by Commissioner Anderson. Vice-Chair Lindquist 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 July 31, 2022. Gaugler reported July 2022 expenditures of \$21,385 and total expenditures for the biennium of \$293,968 leaving a remaining biennial budget of \$330,016. Gaugler also reported projected expenditures for the remainder of the biennium (August 1, 2022 through June 30, 2023) at an estimated \$309,037 which would leave an approximate ending balance of \$20,979 on June 30, 2023. Gaugler briefed the Commission that all accounts are just estimates and the ending balance may change depending on level of activity particularly with the larger accounts for travel expenditures and investigation costs.
5. **Proposed 2023-25 Biennial Budget:** Office Manager Holly Gaugler provided an outline of the proposed 2023-25 Biennial Budget. Gaugler explained that the current base budget for the Commission had been increased from \$623,984 to \$635,930. This total increase of \$11,946 included \$3,072 for legislative salary increases provided during the 2021 legislative session and \$8,874 for projected NDIT costs for the 2023-25 biennium. Gaugler recommended the Commission approve the new base budget amount of \$635,930 but stressed the importance that this level of funding be preserved through legislative session as projected budget numbers were very conservative. Gaugler also stressed that the newly formed Commission's level of activity in the 2023-25 could very likely increase.

**Motion:** Commissioner Koeser moved to approve the Commission's proposed 2023-25 budget. Motion was seconded by Commissioner Anderson. Vice-Chair Lindquist called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.

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

- Thiele briefed proposed legislation for consideration/discussion by the Commission for the upcoming 2023 legislative session:
  - a. Allowing non-residents to file complaints in instances where they are subject to a ND licensing board. The Commission also discussed allowing non-residents that are not necessarily licensed but impacted as a party by the decision of a board, commission, or state entity. Legal Counsel, Allyson Hicks is going to consult with the attorneys with the ND Public Service Commission and the ND Industrial Commission to draft language for the board.
  - b. Adding language in NDCC 54-66 that allows the Commission jurisdiction over employees of the executive branch of state government. Hicks advised caution of expanding jurisdiction to the broad population of employees of the executive branch as well as those employees being part of a union. Hicks will work with current Executive Director Dave Thiele, incoming Executive Director Rebecca Binstock and Commissioner Anderson in research as well as developing language for Commission review at an upcoming meeting.
  - c. Eliminating language in NDCC 54-66-04(5) regarding Commission's office space. The Commission was not in favor of eliminating the NDCC language but agreed that further review and analysis of space requirements need to be reviewed for other options and discussed in the near future. Thiele will be relaying that to the Government Admin Committee on August 24, 2022.
- Thiele discussed state records retention overall and specifically records retention of the ND Ethics Commission email records. Thiele explained that as he vacates his position in September, his email will be saved through NDIT as well as a second back-up to ensure records are saved for open record requests and the in-coming Executive Director. Legal Counsel, Allyson Hicks suggested that the Commission consider a more generic email address that can be passed on as directors leave. The Commission agreed that records retention policies need to address emails of all employees and Commissioners. Gaugler added that she has been working with NDIT and has implemented a retention schedule which includes unique records for the Ethics Commission as well as having adopted the State's general retention schedule. She added that the Commission can add to the existing schedule at any time. Commissioner Richard suggested that Commission may want to re-look at the Commission's ability to file a complaint when evidence of a rule or law has been broken without a complaint by an outside party or allowing an anonymous source. The Commission also discussed having more public interaction to further clarify

the process and role of the Commission. Vice-Chair Lindquist also suggested that the Commission develop a biennial report that includes processes and accomplishments.

- Thiele discussed the Executive Director Performance Review as a good starting point that should be possibly modified and utilized by the Chairman and the incoming Executive Director Rebecca Binstock.
- Thiele reminded the Commission of the annual COGEL conference in Montreal, December 4-7, 2022. The early registration through October 28<sup>th</sup> is \$600 which will go to \$700 after October 28<sup>th</sup>. Further information will be provided to the Commission regarding any webcasts and on-line materials from the conference.
- Thiele asked that the Commission set dates for upcoming monthly meetings. The Commission agreed on the following dates: October 19, November 30, December 21, 2022, January 18, February 15, and March 15, 2023.

7. **Discussion of the General Conflict of Interest Rule Draft:** Executive Director Thiele briefed the Commission on the non-substantive changes made by Commissioner Richard in the current draft. He also discussed comments received from Mr. Zack Pelham dated August 15, 2022, regarding proposed changes to the rule draft. The Commission did not make any changes to the current draft with the exception of a minor change to correct the misspelling of “judgment” in 115-04-01-03(7)(b).

**Motion:** Commissioner Anderson moved to approve the General Conflict of Interest draft as amended. Motion was seconded by Chair Goodman. Vice-Chair Lindquist called for a roll-call vote on the motion. The motion was approved by unanimous roll call vote.

8. **Discussion of Commission involvement in quasi-judicial matters where the controversy is still pending before the board/commission.** Commission agreed there needs to be further discussion and research whereby a complaint filed by a party to a decision is made before final determination is made by the board/commission. Legal Counsel Hicks also advised that the Commission change the current complaint rules, specifically 115-02-01-03 changing to requiring the Commission to determine jurisdiction of a complaint which is currently delegated to the decision of the Executive Director. Commissioner Richard commented that he would work with Hicks, the incoming Executive Director Rebecca Binstock and the current Executive Director Dave Thiele on reviewing these issues before the next meeting.
9. **Status of request for Attorney General Opinion dated June 23, 2022:** Legal Counsel Allyson Hicks reported that she is not aware of any news regarding the timing for the completion of the pending legal opinion.
10. **Disclosure of Appearance of Bias Rule Form:** Executive Director Thiele briefed the Commission on the draft form. Legal Counsel Allyson Hicks suggested that the last two questions be removed as they were redundant of the prior question.

**Motion:** Commissioner Richard moved to approve the Appearance of Bias Rule Form draft as amended. Motion was seconded by Commissioner Koeser. Vice-Chair Lindquist called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.

11. **Commissioner Positions and Terms:** The Commission agreed to adopt three-year terms for the officer positions.


**Motion:** Commissioner Koeser moved to adopt a policy for three-year terms for officer positions. Motion was seconded by Commissioner Anderson. Vice-Chair Lindquist called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.

12. **Selection of Chair and Vice-Chair:** The Commission selected Commissioner Paul Richard as Chair and Dave Anderson as Vice-Chair for three-year terms, effective at the end of this meeting with the following actions:

**Motion:** Vice Chair Lindquist moved to nominate Commissioner Paul Richard as Chair, effective at the end of this meeting, seconded by Commissioner Dave Anderson. Commissioner Paul Richard moved to nominate Commissioner Dave Anderson to Vice-Chair, effective at the end of this meeting, seconded by Vice-Chair Lindquist. Vice-Chair Lindquist called for a roll call vote on the motion. The motion was approved by unanimous roll call vote.

13. **Further Business:** Commissioner Richard asked that Legal Counsel Allyson Hicks create the first draft of language for the next meeting regarding the timing of complaints in quasi-judicial proceedings discussed in #8 above.

14. **Adjourn:** Commission, having no further business, was adjourned at 12:15 p.m. The next meeting is scheduled for September 14, 2022, at 9:00 a.m.

Approved on September 20, 2022   
Rebecca Binstock, Executive Director, North Dakota Ethics Commission

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