

CONFIDENTIAL

I. INTRODUCTION

In October 2022, the North Dakota Ethics Commission (“Commission”) received a series of complaints against Representative Jason Dockter. The complaints relate to his involvement in the lease and renovation of real property located at 1720 Burlington Drive (“Burlington property”) in Bismarck, North Dakota to the Office of the Attorney General. The complaints generally allege Representative Dockter’s involvement in the lease and renovation of the Burlington property violated ethical obligations he has as a public official.

Upon receiving these complaints, the Commission was required to hire an independent and unconflicted attorney to assist the Commission in its review of the complaints due to the attorney general’s inherent conflict of interest in the matter. Then-general counsel for the Commission, Assistant Attorney General Allyson Hicks, formally recused from the complaints on November 14, 2022. Also on November 14, 2022, the Commission appointed Patricia Monson to serve as the Commission’s counsel for the complaints filed against Representative Dockter. The appointment of Ms. Monson to serve as a special assistant attorney general was approved in December 2022.

Following the receipt of the complaints, the Commission began its required process of initially reviewing the complaints to ensure they contained information that alleged: (1) a violation against a public official under the Commission’s personal jurisdiction; and (2) a violation of ethics rules and/or related laws invoking the Commission’s subject-matter jurisdiction. During its initial review, the Commission established it had personal jurisdiction over Representative Dockter and the complaints contained sufficient information to believe violations had occurred.

Following the initial review, the Commission offered each complainant and Representative Dockter an opportunity to informally resolve the complaints. This opportunity is required by N.D.C.C. § 54-66-07 and the Commission’s rules in N.D. Admin. Code § 115-02-01-05. For an informal resolution to occur, both parties to a particular complaint must agree to the informal resolution process. The informal resolution process did not go forward because the parties to the complaints did not agree. This informal resolution process is required to occur before the Commission can begin its formal investigation of any complaint.

The Commission began its formal investigation of the complaints on July 6, 2023, after providing all complainants and Representative Dockter notice of the formal investigation. The following is a synopsis of the factual background, the Commission’s investigation to date, and the process the Commission undertook to refer the matter for criminal review.

II. FACTUAL BACKGROUND

A. Related Investigations by Other Entities

On January 28, 2022, former Attorney General Wayne Stenehjem passed away. Governor Doug Burgum appointed Drew Wrigley as attorney general on February 8, 2022. Attorney General Wrigley learned of substantial cost overruns associated with the Burlington property in March of 2022 and contacted the State Auditor's Office on March 18, 2022. At a June 28, 2022, meeting of the legislative assembly's interim Budget Section Committee Attorney General Wrigley provided testimony regarding the cost overruns.¹ After his testimony, the Budget Section Committee voted to request the Legislative Audit and Fiscal Review Committee ("LAFRC") review the Burlington property lease agreement.²

On June 29, 2022, LAFRC met and reviewed further information related to the Burlington property presented by State Auditor Joshua Gallion, C.J. Schorsch, and Director John Boyle from the Facilities Management Division of the Office of Management and Budget.³ The committee voted to direct that State Auditor Gallion work with Attorney General Wrigley "to gather and review documentation and other information related to the lease agreement and the remodeling and construction of facilities leased by the Attorney General located at 1720 Burlington Drive, Bismarck, and to report the findings to the Legislative Audit and Fiscal Review Committee at its next meeting."⁴

LAFRC held its next meeting on September 27, 2022.⁵ At that meeting, the committee toured the building located at 1720 Burlington Drive, led by Director Lonnie Grabowska from the Office of the Attorney General's Bureau of Criminal Investigation, Director Parrell Grossman from the Office of the Attorney General's Consumer Protection and Antitrust Division, and Director Lance Gaebe from the Office of the Attorney General's Lottery Division.⁶ Following the tour, State Auditor Gallion presented LAFRC with the report completed by his office regarding the cost overruns of the Burlington property.⁷ Director Boyle provided information regarding the role of the Office of Management and Budget in agency leases and the specific lease for the Burlington property.⁸

Based on the information provided by State Auditor Gallion's report, the then-chairman of LAFRC, Senator Jerry Klein, noted LAFRC has authority to ask the attorney general to conduct an additional investigation of the cost overrun.⁹ Attorney General Wrigley indicated if directed to investigate the issue further, he would have an independent organization conduct the

¹ *Legis. Budget Section Comm. June 28, 2022 Meeting Minutes*, 67th Legis. Assemb. Interim Sess. (2022).

² *Id.*

³ *Legis. Audit and Fiscal Rev. Comm. June 29, 2022 Meeting Minutes*, 67th Legis. Assemb. Interim Sess. (2022).

⁴ *Id.*

⁵ *Legis. Audit and Fiscal Rev. Comm. Sept. 27, 2022 Meeting Minutes*, 67th Legis. Assemb. Interim Sess. (2022).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

investigation.¹⁰ LAFRC voted 13-1 to direct Attorney General Wrigley to investigate the matter further and encouraged him to arrange for an independent organization to conduct the investigation.¹¹

Stealth Properties, LLC, the owner of the Burlington property, provided a nine-page memo and voluminous attachments to LARFC following State Auditor Gallion's release of his report.¹² The memo was drafted as a response to State Auditor Gallion's report and was provided by Stealth Properties' attorney, Monte Rogneby.¹³ Representative Dockter is a member of Stealth Properties.

Following LAFRC's directive at its September 2022 meeting, Attorney General Wrigley requested the Montana Department of Justice's Division of Criminal Investigation "investigate the circumstances surrounding and giving rise to a construction cost overrun associated with the leasing and remodeling of 1720 Burlington Drive, Bismarck, North Dakota, including whether any related emails from the deleted email accounts of Wayne Stenehjem and Troy Seibel may be retrieved."¹⁴ The agreement for the joint exercise of peace officer duties was approved on December 2, 2022.¹⁵ The agent from the Montana Division of Criminal Investigation completed his report ("Montana Report") on the matters on May 25, 2023.¹⁶ The Commission received a copy of the Montana Report in September 2023. The Commission used the Montana Report to supplement the facts from its own investigation to date.

B. Chronological Events from the Commission's Investigation

On October 21, 2022, during the initial review of the complaints, Commission staff requested all working documents from the State Auditor's Office related to its report. Commission staff then received and reviewed these documents as well as documents provided to the Commission on January 10, 2023, by Representative Dockter related to cost overruns on the Burlington building project.

1. Representative Dockter's Purchase and Lease of the 1720 Burlington Drive Property

In 2016, the Office of the Attorney General began discussions to relocate and consolidate several divisions of the office under one roof.¹⁷ Former Attorney General Wayne Stenehjem appointed

¹⁰ *Id.*

¹¹ *Id.*

¹² *See generally* Memo Response of Stealth Properties, LLC to the Investigative Rep. of the Off. of the Att'y Gen. Dated Sept. 27, 2022 ("Vogel Memo") (Oct. 28, 2022).

¹³ *Id.*

¹⁴ Agreement for the Joint Exercise of Peace Officer Duties Between the Mont. Dep't of Just., Div. of Crim. Investigation, and the N.D. Att'y Gen., Bureau of Crim. Investigation 1 (Dec. 12, 2022).

¹⁵ *Id.*

¹⁶ *See generally* Mont. Dep't of Just. Cost Overrun Investigative Report ("Mont. Overrun Report") 10 (May 25, 2023).

¹⁷ *Id.* at 3.

Troy Seibel as Chief Deputy Attorney General on December 1, 2016.¹⁸ Mr. Seibel led the efforts to relocate the various divisions. In 2018, staff from the Office of the Attorney General toured the former Saxvik Elementary School.¹⁹ Plans for a renovation of the school were completed as former Attorney General Wayne Stenehjem was interested in moving the divisions to it.²⁰ However, before the state could acquire the building a private entity purchased it. Director Boyle noted the Office of the Attorney General could not buy the school without legislative approval.²¹ The Office of the Attorney General also became interested in the former Sears building located in the Gateway Mall in Bismarck; however, following a tour the office determined the Sears building did not meet its needs.²²

On January 3, 2019, the 66th Legislative Assembly convened at the state capitol in Bismarck. At some point during this legislative session, Representative Dockter had a discussion with Director Grabowska. It is unclear on what exact date this conversation took place or where it took place. According to Director Grabowska he was getting into his car and was approached by Representative Dockter in a parking lot outside the capitol.²³ In his statement to the Montana agent, Director Grabowska said he knew Representative Dockter for most of his life and described the meeting as “unremarkable.”²⁴ He also informed the agent he did not recall discussing specifics regarding the office relocation and Representative Dockter would have known the attorney general was looking to relocate offices before their conversation.²⁵ However, it does not appear he indicated how Representative Dockter knew this information.²⁶

In a memo provided to LAFRC, Mr. Rogneby stated Director Grabowska informed Representative Dockter the Bureau of Criminal Investigation was looking for a new building to lease.²⁷ According to these documents, Representative Dockter apparently asked whether Director Grabowska wanted assistance looking for a building, and Director Grabowska responded that was “acceptable.”²⁸

On April 22, 2019, the North Dakota House took a roll call vote on the final passage of House Bill 1004—the bill including the appropriation for the Department of Health.²⁹ This bill included the appropriation to allow the Department to pay its rent at the Burlington property. Representative Dockter voted “yea.”³⁰

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Interview by Special Assistant Attorney General Patricia Monson, Executive Director Rebecca Binstock, and General Counsel Logan Carpenter with Director John Boyle (“Boyle Interview”) (Oct. 25, 2023).

²² Mont. Overrun Report, *supra* note 16, at 3.

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *See id.*

²⁷ Vogel Memo, *supra* note 12, at 2.

²⁸ *Id.*

²⁹ H.J. 1990, 66th Legis. Assemb., Reg. Sess. (Apr. 22, 2019); H.B. 1004 § 1, 66th Legis. Assemb., Reg. Sess. (N.D. 2019).

³⁰ H.J. 1990, 66th Legis. Assemb., Reg. Sess. (Apr. 22, 2019).

On April 25, 2019, the House took a roll call vote on the final passage of Senate Bill 2003—the bill including the appropriation for the Office of the Attorney General.³¹ Representative Dockter voted “yea.”³²

On April 26, 2019, the House took a roll call vote on the final passage of House Bill 1021, which included the appropriation for North Dakota Information Technology (“NDIT”).³³ Representative Dockter voted “yea.”³⁴ The 66th Legislative Assembly adjourned *sine die* on April 26, 2019.

On May 26, 2019, Director Grabowska emailed Representative Dockter a copy of the preliminary plans the Office of the Attorney General created for the Saxvik school.³⁵ He informed Representative Dockter of how much space some divisions currently had and said the office was looking at around 40,000 square feet to meet its needs. Mr. Seibel was copied on the email.³⁶ Director Grabowska emailed Representative Dockter again on June 6, 2019.³⁷ In that email Director Grabowska said, “[W]e would like to meet with you and see about the possibility of your business working with the [North Dakota Office of the Attorney General] on a public/private partnership for possible headquarters building for NDBCI, AGIT/CJIS and the Fire Marshal.”³⁸ Director Grabowska copied Mr. Seibel, Information Technology/CJIS Division Director Heidi Smith, State Fire Marshal Douglas Nelson, and former Executive Assistant to the Attorney General Elizabeth Bocker.³⁹ Director Grabowska asked Representative Dockter to bring his business partner to the meeting. It appears he was referring to C.J. Schorsch, as Representative Dockter forwarded the email message to Mr. Schorsch and had further email conversations with him about the meeting.⁴⁰

Representative Dockter is a member of several limited liability companies. These companies include Stealth Properties, LLC; D & S, LLC; and Frontier Contracting, LLC.⁴¹ D & S, LLC “conducts business in North Dakota under the tradenames Parkway Property Management and Frontier Contracting.”⁴² The other members of Stealth Properties, LLC, are Mr. Schorsch, Mike

³¹ H.J. 2111, 66th Legis. Assemb., Reg. Sess. (Apr. 25, 2019); S.B. 2003 § 1, 66th Legis. Assemb., Reg. Sess. (N.D. 2019).

³² H.J. 2111, 66th Legis. Assemb., Reg. Sess. (Apr. 25, 2019).

³³ H.J. 2252-53, 66th Legis. Assemb., Reg. Sess. (Apr. 26, 2019); H.B. 1021 § 1, 66th Legis. Assemb., Reg. Sess. (N.D. 2019).

³⁴ H.J. 2252-53, 66th Legis. Assemb., Reg. Sess. (Apr. 26, 2019).

³⁵ Vogel Memo, *supra* note 12, at Ex. 2.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ N.D. Off. of the State Auditor, Investigative Report of the Off. of Att’y Gen. (“Auditor Report”) 5 (Sept. 27, 2022); *see also* Vogel Memo, *supra* note 12, at 2.

⁴² Vogel Memo, *supra* note 12, at 2.

Gietzen, Jed Fluhrer, Craig Dockter, Mark Aurit, Alex Schmidt, and Mike Luther.⁴³ Representative Dockter and Mr. Schorsch are the sole members of D & S, LLC and Frontier Contracting, LLC.⁴⁴

Fourteen days after the Office of the Attorney General requested a meeting with Representative Dockter, Representative Dockter sent an email to Director Boyle inquiring about the square foot price for the state leasing space at 1720 Burlington Drive in Bismarck, ND.⁴⁵ At the time of this email, NDIT had a lease in the building at the Burlington property set to expire on May 31, 2020.⁴⁶ The other half of the Burlington building was occupied by the Department of Health.⁴⁷ The Department of Health continues to occupy half of the Burlington building, which houses the Department's health facilities unit.⁴⁸ In a follow-up email, Director Boyle emailed Representative Dockter legal information he received from the Office of the Attorney General regarding a public-private partnership for the Burlington property.⁴⁹ Director Boyle wrote the information he received was that "the legislature still needs to provide an agency the authority to pursue a [public-private partnership.]"⁵⁰ Representative Dockter responded inquiring "what kind of lease terms [they] could negotiate without the [public-private partnership]."⁵¹ Director Boyle provided the information and indicated a ten-year lease with at least one ten-year option to renew.⁵²

Throughout the months of June, July, and August 2019, Representative Dockter is in communication with Mr. Seibel regarding the Burlington property and on more than one occasion they set up in-person meetings.⁵³ A meeting on August 29, 2019, also included C.J. Schorsch and Kyle Holwagner, a real estate broker.⁵⁴ According to Mr. Rogneby's memo, these meetings included discussing options for "new construction and remodeling an existing building."⁵⁵ Because of the Office of the Attorney General's budget, the parties ultimately decided to pursue remodeling the existing Burlington building.⁵⁶ Bartlett and West prepared preliminary drawings for the Burlington property "based on information supplied by the Attorney General."⁵⁷ Parkway Property Management, presumably through its two members—Representative Dockter and Mr. Schorsch—started discussions with a group of investors to explore purchasing the Burlington property.⁵⁸

⁴³ Auditor Report, *supra* note 41, at 5.

⁴⁴ *Id.*; see also Vogel Memo, *supra* note 12, at 2.

⁴⁵ Email from Director Boyle to Representative Dockter (June 20, 2019, 9:53 AM).

⁴⁶ Auditor Report, *supra* note 41, at 9.

⁴⁷ Mont. Overrun Report, *supra* note 16, at 26.

⁴⁸ *Contact Health Facilities Unit*, N.D. Dep't of Health and Hum. Servs., <https://www.hhs.nd.gov/health/regulation-licensure-and-certification/health-facilities-unit/contact-health-facilities-unit> (last visited Nov. 28, 2023).

⁴⁹ Email from Director Boyle to Representative Dockter (July 2, 2019, 5:27 PM).

⁵⁰ *Id.*

⁵¹ Email from Director Boyle to Representative Dockter (July 3, 2019, 10:21 AM).

⁵² *Id.*

⁵³ Vogel Memo, *supra* note 12, at Ex. 2.

⁵⁴ *Id.* at Exs. 2, 5.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Just prior to the August 29, 2019 meeting, D & S, LLC, registered a contracting license with the North Dakota Secretary of State on August 23, 2019.⁵⁹ On September 5, 2019, Representative Dockter began an email conversation with Mr. Seibel asking to meet and receive a signed letter of intent from the Office of the Attorney General to lease the Burlington building.⁶⁰ On September 23, 2019, Representative Dockter informed Mr. Seibel that he has “an interim tax meeting” the next day at the capitol and could pick up a signed letter of intent.⁶¹ It appears Representative Dockter was referring to the legislative assembly’s interim Taxation Committee’s meeting on September 24, 2019.⁶² Representative Dockter served as chairman of that committee.⁶³

Assistant Attorney General Laura Balliett reported seeing a letter of intent presented to her by Mr. Seibel at some point.⁶⁴ The letter was written by “Stealth” and requested Attorney General Stenehjem’s signature “to confirm the Attorneys Generals [sic] intention of leasing the Burlington building.”⁶⁵ Ms. Balliet returned the letter to Mr. Seibel after making edits to the document. It is unclear when this letter of intent was circulated within the Office of the Attorney General.

Parkway Property Management made an offer to purchase the Burlington property in November 2019 through its real estate broker, Mr. Holwagner.⁶⁶ On November 27, 2019, Representative Dockter emailed Mr. Seibel saying the seller accepted Parkway Property Management’s offer to purchase the Burlington property.⁶⁷ Representative Dockter informed Mr. Seibel they “are now in the due diligence phase of the project” and requested to set up a meeting with Mr. Seibel and an architect.⁶⁸

On December 5, 2019, Parkway Property Management, enters into a purchase agreement for the Burlington property for \$3,350,000 and placed \$30,000 in earnest money.⁶⁹ At the time the purchase agreement is entered, the Department of Health has a lease requiring rental payments of \$12.50 per square foot annually through June 2021 and then the price increased to \$13.00 per square foot annually.⁷⁰ NDIT also had a lease that required rental payments of \$14.75 per square foot.⁷¹

Stealth Properties, LLC is formed on December 10, 2019.⁷² According to the memo provided by Mr. Rogneby, Parkway Property Management assigned the purchase agreement to Stealth

⁵⁹ *Id.* at Ex. 1.

⁶⁰ *Id.* at Ex. 2.

⁶¹ *Id.*

⁶² *Taxation Committee*, N.D. Legis. Assemb., <https://www.ndlegis.gov/assembly/66-2019/committees/interim/taxation-committee> (last visited Nov. 30, 2023).

⁶³ *Id.*

⁶⁴ Mont. Overrun Report, *supra* note 16, at 30.

⁶⁵ *Id.*

⁶⁶ Vogel Memo, *supra* note 12, at 3, Ex. 5.

⁶⁷ *Id.* at Ex. 2.

⁶⁸ *Id.*

⁶⁹ *Id.* at Ex. 5.

⁷⁰ *Id.* at Ex. 3.

⁷¹ *Id.* at Ex. 4.

⁷² *Id.* at 4.

Properties, LLC, and Stealth needed to secure financing to pay for the new additions to the Burlington property as the Office of the Attorney General envisioned.⁷³ The memo says Stealth's bank, First International Bank and Trust, requested Stealth obtain an executed lease with the Office of the Attorney General to finance the new construction.⁷⁴

On February 24, 2020, Mr. Seibel informed the impacted division directors the Office of the Attorney General had been in talks to lease the Burlington property.⁷⁵ Representative Dockter provided a draft lease to Mr. Seibel and Director Boyle on March 1, 2020.⁷⁶ Director Boyle responded saying he will review the lease and try to meet with Mr. Seibel.⁷⁷ Representative Dockter later asked Director Boyle for his thoughts on the lease and Director Boyle responded, "I think the rent is still too high. I will email you my rate of return calculation for the property so you know how I am drawing my conclusions."⁷⁸ According to the Montana Report, Representative Dockter conducted a walkthrough of the Burlington property with others including former Attorney General Stenehjem and Mr. Seibel on April 22, 2020.⁷⁹

Representative Dockter continued to negotiate terms of the lease with Director Boyle and the Office of the Attorney General. On April 24, 2020, the lease is executed for the Burlington property by C.J. Schorsch who signed for Stealth Properties, LLC, Director Boyle, and Mr. Seibel.⁸⁰ Director Boyle said after he signed the lease that was the last time he was involved with the Burlington property, and he was surprised when he heard how the project turned into a substantial cost overrun.⁸¹

The lease required payment of \$9.50 per square foot plus common-area-maintenance ("CAM") charges, and the rate would increase fifty cents per square foot every five years.⁸² Additionally, the Office of the Attorney General was responsible for additional costs above \$50 per square foot on the remodeled portions of the Burlington property and costs above \$220 per square foot on the new construction.⁸³

On May 29, 2020, the purchase of the Burlington building was finalized.⁸⁴ NDIT vacated the Burlington building around June 30, 2020, before the next fiscal biennium began.⁸⁵

⁷³ *Id.*

⁷⁴ *Id.* at 4, Ex. 2.

⁷⁵ Email from former Chief Deputy Attorney General Troy Seibel to Division Directors (February 24, 2020, 8:08 AM).

⁷⁶ Vogel Memo, *supra* note 12, at Ex. 2.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Mont. Overrun Report, *supra* note 16, at 13.

⁸⁰ Vogel Memo, *supra* note 12, at Ex. 6.

⁸¹ Boyle Interview, *supra* note 21.

⁸² Vogel Memo, *supra* note 12, at Ex. 6.

⁸³ *Id.* at Ex. 2.

⁸⁴ *Id.* at 4.

⁸⁵ *Id.* at 3.

2. \$1.7 Million Cost Overrun

The remodel of the Burlington property began in July 2020.⁸⁶ Construction on the new addition began in December 2020.⁸⁷ The Office of the Attorney General divisions communicated differing needs and wants for the space to Stealth and Parkway Property Management. The parties originally expected costs to equal \$2,767,600 for the additions and \$1,021,000 for the remodel.⁸⁸ However, the actual costs were \$3,681,749.63 for the additions and \$1,849,060.04 for the remodel.⁸⁹ The actual costs created a \$1,742,209.70 cost overrun. Stealth argues because construction began around July 1, 2020, COVID-19 restrictions and material shortages caused delays and increased material costs.⁹⁰ The state auditor found the increase in costs was directly related to the change requests that continued to come in during the project.⁹¹ Both State Auditor Gallion's report and the Montana Report revealed there were substantial record keeping issues, including a lack of or insufficient records for the cost overruns.⁹²

In January 2021, Mr. Schorsch informed Mr. Seibel the project cost was approaching \$5 million, which would result in an additional \$1 million in costs.⁹³ By June 2021, Mr. Seibel is aware there is a \$1,742,209.70 cost overrun and accounting staff worked on finding money within the Office of the Attorney General's budget to pay for the cost overrun.⁹⁴ Ultimately, the Office of the Attorney General paid \$1,342,210 out of existing budget funds taken from the Operating, Law Enforcement, Criminal Justice Information Systems, and North Dakota Lottery portions of its budget.⁹⁵ The Office of the Attorney General could not find the remaining \$400,000 in its budget, and Mr. Seibel apparently negotiated to roll the remainder into the lease, which resulted in a nearly \$7,000 increase in the monthly rent.⁹⁶ State Auditor Gallion noted the money paid out of the Office of the Attorney General's budget, if not paid for the overrun, would have went back into the state's general fund.⁹⁷ However, paying the cost overrun depleted the Office of the Attorney General's funds for the 2019-2021 fiscal biennium which were originally appropriated with Senate Bill 2003 in 2019.⁹⁸

3. 67th Legislative Assembly

At the same time Mr. Seibel is made aware of the \$1.7 million cost overrun, the North Dakota Legislative Assembly convenes at the state capitol on January 5, 2021. During this session, the legislative assembly approved a new budget for the Office of the Attorney General with House

⁸⁶ Auditor Report, *supra* note 41, at 10.

⁸⁷ *Id.*

⁸⁸ Vogel Memo, *supra* note 12, at Ex. 11.

⁸⁹ *Id.*

⁹⁰ *Id.* at 5.

⁹¹ Auditor Report, *supra* note 41, at 11-12.

⁹² See generally Auditor Report, *supra* note 41; Mont. Overrun Report, *supra* note 16.

⁹³ Auditor Report, *supra* note 41, at 12.

⁹⁴ *Id.*

⁹⁵ Mont. Overrun Report, *supra* note 16, at 20-21; Auditor Report, *supra* note 41, at 13.

⁹⁶ Mont. Overrun Report, *supra* note 16, at 21.

⁹⁷ Auditor Report, *supra* note 41, at 13.

⁹⁸ See Mont. Overrun Report, *supra* note 16, at 21.

Bill 1003. The bill included operating expenses for the office, which would allow the office to pay for rent at its facilities—including the property at 1720 Burlington Drive.⁹⁹ Representative Dockter voted “yea” on the final passage of the bill on April 23, 2021.¹⁰⁰

On April 29, 2021, the House voted on the final passage of Senate Bill 2004, the new budget for the Department of Health. This bill included operating expenses for the Department, which would include money to pay rent at its facilities—including the property at 1720 Burlington Drive.¹⁰¹ Representative Dockter voted “yea” on the final passage of the bill.¹⁰²

4. Cost Overrun Becomes Public

On November 1, 2021, the construction on the Burlington property was completed.¹⁰³ Former Attorney General Wayne Stenehjem passed away on January 28, 2022. A day later, Ms. Brocker sent a request to the Office of the Attorney General’s IT department requesting the deletion of former Attorney General Stenehjem’s emails on the coming Monday.¹⁰⁴ Ms. Brocker explained why she wanted the emails deleted stating, “We want to make sure no one has an opportunity to make an Open Record request for his emails, especially as he kept EVERYTHING.”¹⁰⁵ The email account was confirmed deleted on January 31, 2022.¹⁰⁶

On February 8, 2022, Governor Burgum appointed Drew Wrigley as Attorney General. Mr. Seibel resigned and left the Office of the Attorney General on March 16, 2022.¹⁰⁷ Promptly after Mr. Seibel left the office, the Office of the Attorney General’s Director of Finance, Becky Keller, informed Attorney General Wrigley of the cost overrun.¹⁰⁸ Attorney General Wrigley then contacted State Auditor Gallion to inform him of the issue.¹⁰⁹

On May 23, 2022, Ms. Brocker directed the deletion of Mr. Seibel’s email account and NDIT deletes the emails.¹¹⁰

On June 28 and 29, 2022, Attorney General Wrigley informed meetings of the legislative assembly’s Budget Section and LAFRC of the cost overrun on the Burlington building. LAFRC then directed State Auditor Gallion to prepare a report. On June 30, 2022, open records requests

⁹⁹ H.B. 1003 § 1, 67th Legis. Assemb., Reg. Sess. (N.D. 2021).

¹⁰⁰ H.J. 1937-38, 67th Legis. Assemb., Reg. Sess. (Apr. 23, 2021).

¹⁰¹ S.B. 2004 § 1, 67th Legis. Assemb., Reg. Sess. (N.D. 2021).

¹⁰² H.J. 2077, 67th Legis. Assemb., Reg. Sess. (Apr. 29, 2021).

¹⁰³ Mont. Dep’t of Just. Timeline (“Mont. Timeline”) 20 (Sept. 6, 2023).

¹⁰⁴ Email from Elizabeth Brocker to Heidi Smith (January 29, 2022, 8:51 PM).

¹⁰⁵ *Id.*

¹⁰⁶ Email from Joe Schell to Elizabeth Brocker (January 31, 2022, 12:19 PM).

¹⁰⁷ Auditor Report, *supra* note 41, at 30.

¹⁰⁸ Mont. Dep’t of Just. Email Deletion Investigative Report (“Mont. Email Report”) 2 (April 3, 2023).

¹⁰⁹ *Id.*

¹¹⁰ Auditor Report, *supra* note 41, at 30.

for former Attorney General Stenehjem's emails are made by members of the press which results in the discovery of the email deletions.¹¹¹

Following the email situation, Ms. Brocker resigned and left the Office of the Attorney General on July 15, 2022.¹¹² On August 2, 2022, the State Auditor's Office requested former Attorney General Stenehjem and Mr. Seibel's emails from NDIT.¹¹³ NDIT informed the State Auditor's Office it could not provide the information because the emails belonged to the Office of the Attorney General and it had "exhausted all retrieval efforts of Wayne Stenehjem's emails from Microsoft."¹¹⁴ The State Auditor's Office received additional correspondence between NDIT and Microsoft requesting confirmation that the emails could not be retrieved.¹¹⁵

On September 27, 2022, State Auditor Gallion presented his report to LAFRC. Following this presentation, LAFRC directed Attorney General Wrigley to investigate the issue further, which led Attorney General Wrigley to request the Montana Department of Justice's Division of Criminal Investigation investigate the overrun and email deletions.

During October 2022, the Ethics Commission received eight complaints against Representative Dockter. On October 28, 2022, Stealth Properties, LLC, submitted a response to State Auditor Gallion's report.¹¹⁶

On November 2, 2022, Representative Dockter appeared on Forum Columnist Rob Port's podcast, Plain Talk.¹¹⁷ On this podcast, Mr. Port asked Representative Dockter if he became involved in the Office of the Attorney General's building project when he was approached by Director Grabowska and the two of them had an informal conversation.¹¹⁸ Representative Dockter responded, "That's correct."¹¹⁹ Representative Dockter later suggested in the podcast this conversation took place in a hallway in the capitol, contrary to Director Grabowska's statement that it took place outside in a parking lot.¹²⁰

Later in Mr. Port's podcast, Representative Dockter stated:

So half of it would, when we executed the purchase agreement was already leased out by the health department. The other half was leased out by ITD because they have the debacle with their building where they have all those issues and they had to move out. So, when we did the purchase agreement, our, and we already talked

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 30, 33.

¹¹⁴ *Id.* at 30.

¹¹⁵ *Id.* at 40-43.

¹¹⁶ See generally Vogel Memo, *supra* note 12.

¹¹⁷ Plain Talk: Lawmaker Involved in AG's Office Space Scandal Rips Auditor for "Gotcha Audit," FORUM COMM'NS CO. (Nov. 2, 2022).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

to the AG, our intent was okay, we're gonna buy this building, we know that half of it's gonna be leased no matter what to the health department. We know that ITD is, is gonna move out cause they, I, I can't remember the end date but that would be month to month but they already knew that they were moving out cause they were going to go back to their building. That was their whole intent. And so when we went to the bank, you go, so they go on the numbers and they say okay what, what are you gonna, you know, so we have, we have, half of it leased out and they are okay, yep, numbers work. Well, then when we got farther along with the AG and AG says yep we're gonna go along with this but we want these remodeling costs and then we want to do an addition. Well, once that triggered the bank says okay you're gonna have to have a lease because we're not gonna give you an operating loan or extra funding to do a build out and do a new, um, building without having a lease.

. . . .

And that was our whole thing is that we were going to buy the building and *we could have made a cash flow just with the health department* but once the AG established that they want, they need the remodeling, we had to get a signed agreement, or the bank wouldn't give you the extra funds to do the remodeling.¹²¹

Representative Dockter stated in the podcast the Office of the Attorney General would get \$224,000 back from overpaying his business entities for the Burlington building project.¹²² This new information surprised the State Auditor's Office as it was the first any mention of a refund was made.¹²³ The memo from Mr. Rogneby also mentioned this "overpayment."¹²⁴

An agreement with the Montana Department of Justice was signed on December 2, 2022, and Agent Guiberson from the Montana Division of Criminal Investigation began interviewing witnesses. On December 29, 2022, Ms. Keller attended a meeting with the involved parties.¹²⁵ The meeting purpose, as described to Ms. Keller, was to reconcile CAM fees.¹²⁶ However, after the meeting Ms. Keller was approached by Mr. Schorsch who apparently told her the State no longer had to pay the \$400,000 the parties rolled into the lease agreement. He also handed her a binder with the response from Stealth Properties, LLC, and a check for \$224,854.93.¹²⁷ At the time Agent Guiberson wrote the Montana Report, the Office of the Attorney General had not cashed the check. Ethics Commission staff learned through its investigation the Office of the Attorney General later cashed the check.

¹²¹ *Id.* (emphasis added).

¹²² *Id.*

¹²³ Mont. Overrun Report, *supra* note 16, at 9-10.

¹²⁴ Vogel Memo, *supra* note 12, at 7.

¹²⁵ Mont. Overrun Report, *supra* note 16, at 32.

¹²⁶ *Id.*

¹²⁷ *Id.*

5. 68th Legislative Assembly

The 68th Legislative Assembly convened on January 3, 2023, at the state capitol. On March 30, 2023, Executive Director Rebecca Binstock spoke with counsel for Representative Dockter, Lloyd Suhr. During that conversation, Executive Director Binstock directed Mr. Suhr to both the Commission and Legislative Assembly's conflict-of-interest rules.

On April 11, 2023, the House of Representatives takes a final vote on House Bill 1004. This bill includes operating expenses for the public health division of the newly combined Department of Health and Human Services.¹²⁸ The operating expenses appropriation includes funding for the Department's lease for half the property at 1720 Burlington Drive, as the Department of Health and Human Services exercises its option to extend the lease at the Burlington property.¹²⁹ Representative Dockter votes "yea" to pass the bill.¹³⁰

On April 27, 2023, the House of Representatives takes a final vote on Senate Bill 2003, the appropriation bill for the Office of the Attorney General. The bill includes operating expenses, which would include lease payments for the property at 1720 Burlington Drive.¹³¹ Representative Dockter was absent from the vote.¹³²

III. ETHICS COMMISSION INVESTIGATIVE PROCESS AND CRIMINAL REFERRAL

Following the Ethics Commission initially reviewing each complaint and allowing Representative Dockter and each complainant an opportunity for informal resolution during the spring of 2023,¹³³ the Commission begins its formal investigation on July 6, 2023.¹³⁴ At that time, Executive Director Binstock requested all documents in Representative Dockter's possession related to the Burlington property that had not already been provided to the State Auditor's Office.¹³⁵ Executive Director Binstock also requested any and all documents complainants may have in their possession to support their allegations. Attorney Lloyd Suhr responded on July 26, 2023, that after discussing

¹²⁸ H.B. 1004 § 1, 68th Legis. Assemb., Reg. Sess. (N.D. 2023).

¹²⁹ It is unclear when the option was exercised. The original lease was set to expire at the end of the 2021-2023 biennium; however, the Health Facilities Unit continues to occupy the Burlington property into the current biennium. *Contact Health Facilities Unit*, N.D. Dep't of Health and Hum. Servs., <https://www.hhs.nd.gov/health/regulation-licensure-and-certification/health-facilities-unit/contact-health-facilities-unit> (last visited Nov. 28, 2023).

¹³⁰ H.J. 1827, 68th Legis. Assemb., Reg. Sess. (Apr. 11, 2023).

¹³¹ S.B. 2003 § 1, 68th Legis. Assemb., Reg. Sess. (N.D. 2023).

¹³² H.J. 2438-39, 68th Legis. Assemb., Reg. Sess. (Apr. 27, 2023).

¹³³ The 68th Legislative Assembly commenced on January 3, 2023. The Ethics Commission staff, consisting of an executive director and temporary executive assistant, was required to shift its primary focus to the session during the winter and spring of 2023.

¹³⁴ Letter from Executive Director Rebecca Binstock to Representative Jason Dockter In Care of Attorney Lloyd Suhr (July 6, 2023).

¹³⁵ *Id.*

the request with his client, Representative Jason Dockter, they determined all available information was included in Stealth Properties, LLC's response to the state auditor's report.¹³⁶

Special Assistant Attorney General for the Ethics Commission, Patricia Monson, then completed an extensive review of documents from Stealth Properties, LLC's response as well as the working papers received from the State Auditor's Office. Special Assistant Attorney General Monson created an independent timeline of events, determined what documents the Commission still needed to obtain, and created a list of individuals to interview. Based on this work, she, along with General Counsel Logan Carpenter and Executive Director Binstock determined three individuals had foundational information for the Commission's investigation and should be interviewed first. The Commission then sent letters requesting in-person interviews to Director Boyle, Director Grabowska, and Ms. Keller on September 22, 2023.¹³⁷ Later that day, the Montana Report became public, and Commission staff learned about the Montana Report when the Commission received a copy in the afternoon.

After receiving no response from the Office of the Attorney General, Ethics Commission Office Manager Holly Gaugler emailed both Director Grabowska and Ms. Keller on September 28, 2023.¹³⁸ Ms. Gaugler asked both Director Grabowska and Ms. Keller to respond with their availability for interviews. After again receiving no response, Executive Director Binstock, left a voicemail for both Director Grabowska and Ms. Keller requesting they contact the Ethics Commission office to schedule an interview.¹³⁹

Director Grabowska responded by email and informed Ethics Commission staff he received Executive Director Binstock's voicemail and was waiting to hear advice back from an assistant attorney general.¹⁴⁰ After some further communication, Director Grabowska directed all further communication about the interview request to Ms. Kelsch.¹⁴¹ On September 29, 2023, Assistant Attorney General Mary Kae Kelsch called General Counsel Carpenter regarding the interviews the Commission requested for Director Grabowska and Ms. Keller.¹⁴² Ms. Kelsch informed General Counsel Carpenter during the call that Attorney General Wrigley had referred the Montana Report to Grand Forks County State's Attorney Haley Wamstad for review.¹⁴³ Commission staff then reached out to Ms. Wamstad to gather more information, but she informed staff the matter had not been referred.¹⁴⁴ Ms. Wamstad later informed Commission staff she spoke with Ms. Kelsch and learned Ms. Kelsch had not realized the matter had not been referred to Ms. Wamstad.¹⁴⁵

¹³⁶ Letter from Attorney Lloyd Suhr to Executive Director Rebecca Binstock (July 26, 2023).

¹³⁷ Letters from Executive Director Rebecca Binstock to Director John Boyle, Director Lonnie Grabowska, and Ms. Becky Keller (Sept. 22, 2023).

¹³⁸ Emails from Office Manager Holly Gaugler to Director Lonnie Grabowska and Ms. Becky Keller (Sept. 28, 2023, 3:45 and 3:50 PM).

¹³⁹ Email from Director Lonnie Grabowska to Executive Director Rebecca Binstock (Oct. 9, 2023, 1:34 PM).

¹⁴⁰ *Id.*

¹⁴¹ Email from Director Lonnie Grabowska to General Counsel Logan Carpenter (Oct. 9, 2023, 3:14 PM).

¹⁴² Memorandum from General Counsel Logan Carpenter to File (Oct. 3, 2023).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

On October 3, 2023, General Counsel Carpenter called Ms. Kelsch. Ms. Kelsch also informed General Counsel Carpenter she had spoken with Ms. Wamstad and had not realized the matter was not yet referred. Ms. Kelsch informed General Counsel Carpenter that Representative Emily O'Brien, chair of LAFRC, requested the attorney general not refer the matter until LAFRC had a chance to review the Montana Report.¹⁴⁶ Commission staff understood, as LAFRC had originally directed the additional investigation. However, General Counsel Carpenter informed Ms. Kelsch the Commission's investigation would continue to move forward, and the Commission would still like to interview Director Grabowska and Ms. Keller.¹⁴⁷

After not hearing from Ms. Kelsch, General Counsel Carpenter left her a voicemail on October 11, 2023, and requested she call back.¹⁴⁸ On October 12, 2023, General Counsel Carpenter received a call from Chief Deputy Attorney General Claire Ness. Ms. Ness informed General Counsel Carpenter, like Ms. Kelsch previously did, that Representative O'Brien had requested the attorney general not refer the matter until LAFRC reviewed it.¹⁴⁹ Ms. Ness requested the Commission's interviews take place after any potential prosecutorial review.¹⁵⁰ General Counsel Carpenter informed her, while the Commission did not want to impede any criminal review of the matter, the Commission would like to proceed with the requested interviews.¹⁵¹ General Counsel Carpenter informed Ms. Ness he would relay the attorney general's request. Ms. Ness also offered to provide her office's position in writing.

Attorney General Wrigley sent a letter addressed to Ethics Commission Chair Paul Richard on October 12, 2023.¹⁵² In that letter Attorney General Wrigley states, "To avoid any interference or conflicts with a potential prosecutorial review, I must ask that the Commission schedule the interviews with staff from [the Office of the Attorney General] only after a state's attorney has had an opportunity to evaluate [the Montana] report and complete the investigation and make any charging determinations."¹⁵³

On October 16, 2023, Executive Director Binstock spoke with Representative O'Brien to inquire whether she, as chair of LAFRC, would take issue with the Commission proceeding with its investigation.¹⁵⁴ Representative O'Brien responded that she was okay with the Commission proceeding and understood it had a duty to investigate the separate complaints.¹⁵⁵

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Memorandum from General Counsel Logan Carpenter to File (Oct. 12, 2023).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* This conversation included discussion of N.D.C.C. § 54-66-08, and General Counsel Carpenter informed Ms. Ness the Commission interpreted this statute as pausing the Commission's investigations only when the Commission has made a criminal referral and it has been accepted. *Id.*

¹⁵² Letter from Attorney General Drew Wrigley to Chair Paul Richard (Oct. 12, 2023).

¹⁵³ *Id.*

¹⁵⁴ Memo from Executive Director Rebecca Binstock to File (Oct. 12, 2023).

¹⁵⁵ *Id.*

On October 17, 2023, Executive Director Binstock sent a letter to Attorney General Wrigley in response to his letter to Chair Richard.¹⁵⁶ In that letter, Executive Director Binstock informed Attorney General Wrigley the scope of the Commission’s investigation “is distinct and separate from the scope of the Legislative Audit and Fiscal Review Committee’s (“LAFRC”) investigative authority or any potential criminal prosecution by a state’s attorney.”¹⁵⁷ Executive Director Binstock requested the Office of the Attorney General direct Director Grabowska and Ms. Keller to schedule interviews with the Commission as soon as practicable because Representative O’Brien, as chair of LAFRC, had no issue with the Commission proceeding and the matters were separate and distinct.¹⁵⁸ Attorney General Wrigley requested a meeting with Executive Director Binstock following his receipt of the letter.¹⁵⁹

Also on October 17, 2023, Executive Director Binstock sent a letter to North Dakota Information Technology Chief Information Officer Kuldip Mohanty.¹⁶⁰ In that letter, Executive Director Binstock requested emails from the accounts of former Attorney General Wayne Stenehjem and Mr. Seibel related to the Burlington property and the Office of the Attorney General’s appropriation bills in 2019 and 2021.¹⁶¹

On October 18, 2023, at Attorney General Wrigley’s request, Executive Director Binstock and General Counsel Carpenter met with him and Ms. Ness.¹⁶² At the meeting, Attorney General Wrigley informed Commission staff he would be referring the Montana Report to Grand Fork’s County State’s Attorney Haley Wamstad that day, if she would accept the matter.¹⁶³ He also indicated he would inform Representative O’Brien that he was taking that action.¹⁶⁴ He further informed Commission staff he would not make Director Grabowska or Ms. Keller available for interviews with the Commission until such a review was completed.¹⁶⁵ He estimated that process would take thirty days.¹⁶⁶ Executive Director Binstock informed Attorney General Wrigley and Ms. Ness the Commission would not pause its investigation because no criminal referral had been made by the Commission and the Commission had a duty to proceed with its investigation.¹⁶⁷ During this meeting, Executive Director Binstock and General Counsel Carpenter requested the Office of the Attorney General make the supporting documentation from the Montana Report available to the Commission. Although the Commission would be required to maintain these items

¹⁵⁶ Letter from Executive Director Rebecca Binstock to Attorney General Drew Wrigley (Oct. 17, 2023).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Email from Executive Assistant to the Attorney General Suzie Weigel to Executive Director Rebecca Binstock (Oct. 17, 2023, 3:46 PM).

¹⁶⁰ Letter from Executive Director Rebecca Binstock to Chief Information Officer Kuldip Mohanty (Oct. 17, 2023).

¹⁶¹ *Id.*

¹⁶² Memo from General Counsel Logan Carpenter and Executive Director Rebecca Binstock to File (Oct. 18, 2023).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

as confidential records, Attorney General Wrigley declined to make them available to the Commission until after a criminal review was completed.¹⁶⁸

Following the October 18, 2023 meeting, Executive Director Binstock sent a letter to Attorney General Wrigley reiterating the Commission's requests for interviews of Director Grabowska and Ms. Keller. She also included new requests for the records created during the Montana Report investigation, Ms. Brocker's emails, and all records the Office of the Attorney General had previously sent to the State Auditor's Office.¹⁶⁹

On October 23, 2023, Executive Director Binstock sent a letter to North Dakota Legislative Council Director John Bjornson requesting copies of any and all email communications from January 2016 to March 2022 within Representative Dockter's legislative account relating to C.J. Schorsch, Stealth Properties, LLC, Parkway Property Management, the lease and renovation of the Burlington property, and Senate Bill 2003 from the 66th Legislative Assembly and House Bill 1003 from the 67th Legislative Assembly.¹⁷⁰ Director Bjornson later responded saying in part, "without additional details regarding the nature of the request and not having consulted with Representative Dockter relating to either a waiver of the provisions of Section 44-04-18.6 or of legislative privilege, we are obligated to respect the privacy of the records absent a waiver from Representative Dockter or a subpoena and an explanation of why legislative privilege would not apply."¹⁷¹

Also on October 23, 2023, General Counsel Carpenter emailed Ms. Ness inquiring if Attorney General Wrigley was able to refer the Montana Report to Ms. Wamstad following their October 18, 2023 meeting.¹⁷² General Counsel Carpenter did not receive a response.

North Dakota Information Technology responded to Executive Director Binstock's request for former Attorney General Stenehjem and Mr. Seibel's emails on October 24, 2023.¹⁷³ Aimee Bader from NDIT said:

The email accounts for these individuals were deleted by IT Staff at the Attorney General's Office in early 2022. This received much news coverage when the missing information was discovered in July 2022. At that time, NDIT and the AGO made an active effort to recover these accounts, including bringing in an outside consultant, but the data was deemed unrecoverable, therefore we cannot provide the information requested.¹⁷⁴

¹⁶⁸ *Id.*

¹⁶⁹ Letter from Executive Director Rebecca Binstock to Attorney General Drew Wrigley (Oct. 23, 2023).

¹⁷⁰ Letter from Executive Director Rebecca Binstock to Director John Bjornson (Oct. 23, 2023).

¹⁷¹ Letter from Director John Bjornson to Executive Director Rebecca Binstock (Oct. 31, 2023).

¹⁷² Email from General Counsel Logan Carpenter to Chief Deputy Attorney General Claire Ness (Oct. 23, 2023, 12:15 PM).

¹⁷³ Email from Aimee Bader to Executive Director Rebecca Binstock (Oct. 24, 2023, 12:41 PM).

¹⁷⁴ *Id.*

On October 24, 2023, Special Assistant Attorney General Monson, Executive Director Binstock, and General Counsel Carpenter met to discuss the Representative Dockter complaints before the Commission's October 25th meeting. During this meeting, Commission staff discussed the potential applicability of N.D.C.C. § 12.1-13-02. Commission staff recently learned of Section 12.1-13-02 during research of a separate issue. Section 12.1-13-02 states:

1. A person is guilty of a class A misdemeanor if during employment as a public servant, or within one year thereafter, in contemplation of official action by himself as a public servant or by a government agency with which he is or has been associated as a public servant, or in reliance on information to which he has or had access only in his capacity as a public servant, he:
 - a. Acquires a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action;
 - b. Speculates or wagers on the basis of such information or official action;
 - or
 - c. Aids another to do any of the foregoing.
2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

Commission staff concluded the statute may apply but needed to discuss the matter with the Commission to receive direction on how to proceed. The Commission met the next day, October 25, 2023, for its October 2023 meeting. During executive session, Commission staff informed the Commission of its analysis related to N.D.C.C. § 12.1-13-02. The Commission considered the information the investigation had revealed to-date but directed staff to proceed with an interview already scheduled with Director Boyle that same day. The Commission wished to acquire more information to aid in the analysis of whether the statute may apply, requiring a criminal referral.

On October 25, 2023, Special Assistant Attorney General Monson, Executive Director Binstock, and General Counsel Carpenter interviewed Director Boyle.¹⁷⁵ During this interview, information provided by Director Boyle demonstrated Representative Dockter knew state agencies occupied the property at 1720 Burlington Drive.¹⁷⁶ Staff also obtained information that although NDIT was moving out of the Burlington property, Representative Dockter knew the selling price for the Burlington property would be low enough to provide a decent rate of return just with the Department of Health as a tenant.¹⁷⁷ This information was corroborated by Representative Dockter's interview on Mr. Port's podcast where he said, "And that was our whole thing is that we were going to buy the building and we could have made a cash flow just with the health

¹⁷⁵ Boyle Interview, *supra* note 21.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

department”¹⁷⁸ Director Boyle also informed Commission staff it was not public knowledge the Office of the Attorney General was looking for new office space.¹⁷⁹

Following this interview, Commission staff believed the allegations contained in the complaints, together with information obtained through the Commission’s investigation, implicated a potential violation of N.D.C.C. § 12.1-13-02. As a result, the Commission scheduled a special meeting for that afternoon. At the special meeting, the Commission discussed the matter in executive session and voted to refer the matter to the law enforcement agency with jurisdiction, as mandated by N.D.C.C. § 54-66-08(2).

On October 26, 2023, Executive Director Binstock sent a letter to Burleigh County State’s Attorney Julie Lawyer regarding the criminal referral.¹⁸⁰ In that letter, Executive Director Binstock noted the Commission was aware one of Ms. Lawyer’s employees, Ms. Brocker, created a direct conflict for Ms. Lawyer’s office to review the referral.¹⁸¹ Because of this conflict, Executive Director Binstock requested Ms. Lawyer “refer this matter to an independent and unconflicted state’s attorney.”¹⁸²

Ms. Lawyer worked to find a state’s attorney to review the referred matter. One state’s attorney initially accepted the request but had to withdraw due to staffing issues. On November 6, 2023, Ms. Lawyer informed Commission staff McLean and Sheridan County State’s Attorney Ladd Erickson had agreed to review the matter.¹⁸³

On November 8, 2023, Executive Director Binstock sent an email to Ms. Ness and inquired if Attorney General Wrigley had referred the Montana Report to a state’s attorney for review.¹⁸⁴ If Attorney General Wrigley had referred the Montana Report, Commission staff wished to relay the information to Mr. Erickson so he could communicate with the other state’s attorney reviewing the separate matter.

On November 9 and 10, 2023, Executive Director Binstock sent letters to Representative Dockter and the complainants informing them of the Commission’s criminal referral of the complaints, as required by N.D.C.C. § 54-66-08(2).¹⁸⁵ Executive Director Binstock also emailed Grand Forks County State’s Attorney Haley Wamstad to determine if Ms. Wamstad had been referred the

¹⁷⁸ Plain Talk, *supra* note 117.

¹⁷⁹ Boyle Interview, *supra* note 21.

¹⁸⁰ Letter from Executive Director Rebecca Binstock to Burleigh County State’s Attorney Julie Lawyer (Oct. 26, 2023).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Email from Burleigh County State’s Attorney Julie Lawyer to Executive Director Rebecca Binstock (Nov. 6, 2023, 1:34 PM).

¹⁸⁴ Email from Executive Director Rebecca Binstock to Chief Deputy Attorney General Claire Ness (Nov. 8, 2023, 9:33 AM).

¹⁸⁵ Letters from Executive Director Rebecca Binstock to Representative Jason Dockter and Complainants (Nov. 9, 2023).

Montana Report.¹⁸⁶ Ms. Wamstad responded and informed Executive Director Binstock that while she had spoken with Attorney General Wrigley, her office had not accepted a criminal referral.¹⁸⁷

On November 10, 2023, KFGO Radio Hosts Joel Heitkamp and Tyler Axness reported on the Commission's referral of the complaints to Mr. Erickson. Both Mr. Heitkamp and Mr. Axness filed complaints against Representative Dockter and received letters notifying them of the referral. Later that afternoon, it appeared KFGO had spoken with Attorney General Wrigley. At that point, KFGO reported Attorney General Wrigley had then referred the Montana Report to Morton County State's Attorney Allen Koppy. KFGO then appeared to misreport the entire matter had been referred to Morton County; however, the Commission's investigation and referral were and remain separate from the Office of the Attorney General's referral. The Commission's referral remains with Mr. Erickson.

On November 13, 2023, Ms. Ness sent an email to Executive Director Binstock and informed her the Office of the Attorney General would be sending the documents she had requested on October 23, 2023.¹⁸⁸ Ms. Ness also informed Executive Director Binstock that Attorney General Wrigley "referred the building matter to State's Attorney Al Koppy in Morton County and the email matter to State's Attorney Haley Wamstad in Grand Forks County after our discussion with you."¹⁸⁹ Later that morning, Executive Assistant to the Attorney General Suzie Weigel sent compiled documents the Office of the Attorney General had previously provided to the State Auditor's Office.¹⁹⁰ Ms. Weigel also informed Executive Director Binstock, "Ms. Brocker's emails were retained for a year after her departure and were substantially reviewed and managed before deletion in accordance with our policy."¹⁹¹

During the week of November 13, 2023, Attorney General Wrigley called Ethics Commission Chair Paul Richard.¹⁹² Attorney General Wrigley inquired of the Commission's referral of its complaints. Chair Richard directed Attorney General Wrigley to contact General Counsel Carpenter to discuss the matter, if needed. On November 15, 2023, Ms. Weigel sent General Counsel Carpenter an email to set up a meeting at Attorney General Wrigley's request.¹⁹³

On November 16, 2023, General Counsel Carpenter and Executive Director Binstock met with Attorney General Wrigley and Ms. Ness.¹⁹⁴ During the meeting, Attorney General Wrigley asked

¹⁸⁶ Email from Executive Director Rebecca Binstock to Grand Forks County State's Attorney Haley Wamstad (Nov. 9, 2023, 11:08 AM).

¹⁸⁷ Email from Grand Forks County State's Attorney Haley Wamstad to Executive Director Rebecca Binstock (Nov. 9, 2023, 4:18 PM).

¹⁸⁸ Email from Chief Deputy Attorney General Claire Ness to Executive Director Rebecca Binstock (Nov. 13, 2023, 9:52 AM).

¹⁸⁹ *Id.*

¹⁹⁰ Email from Executive Assistant to the Attorney General Suzie Weigel to Executive Director Rebecca Binstock (Nov. 13, 2023, 10:05 AM).

¹⁹¹ *Id.*

¹⁹² Memo from General Counsel Logan Carpenter to File (Nov. 16, 2023).

¹⁹³ Email from Executive Assistant to the Attorney General Suzie Weigel to General Counsel Logan Carpenter (Nov. 15, 2023, 12:06 PM).

¹⁹⁴ Memo from General Counsel Logan Carpenter to File (Nov. 16, 2023).

how the Commission's referral was made to Mr. Erickson.¹⁹⁵ General Counsel Carpenter informed him the Commission must follow N.D.C.C. § 54-66-08(2) and refer any potential criminal matter to the law enforcement agency with jurisdiction, in this instance Ms. Lawyer, and she had to make a determination on where to send matters when her office has a conflict.¹⁹⁶ Commission staff also reemphasized to Attorney General Wrigley and Ms. Ness that while the matters overlapped, the Commission's investigation was separate and distinct from the Montana Report.¹⁹⁷ They also reiterated the Commission could not take any action on the complaints until the criminal review was completed as required by N.D.C.C. § 54-66-08(2).¹⁹⁸ At the conclusion of the meeting, Attorney General Wrigley informed Commission staff he may call Ms. Lawyer to inquire how the referral process worked on her end.¹⁹⁹

After discussions with Mr. Erickson and at his request, Commission staff prepared this narrative of events and findings from its investigation to aid in his review. The Commission was provided an update of recent developments in executive session at its November 2023 meeting, including the request for this narrative.

Pursuant to N.D.C.C. § 54-66-12(1), this narrative is a confidential record as defined in N.D.C.C. § 44-04-17.1. The Commission is disclosing this narrative to Mr. Erickson pursuant to N.D.C.C. § 44-04-18.10(4) "for the purpose of law enforcement." Once disclosed to Mr. Erickson, this narrative is "not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota" as it is criminal intelligence information in accordance with N.D.C.C. § 44-04-18.7.

Commission staff completed this narrative on December 15, 2023.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*