

A Quick Guide to the North Dakota Ethics Commission

By Attorney Logan Carpenter

On November 6, 2018, North Dakota voters went to the polls and approved initiated measure 1. As a result of this vote, the people added Article XIV to our state constitution creating the North Dakota Ethics Commission (“the Commission”). The constitutional provision explains the purpose of the Commission. It says, “In order to strengthen the confidence of the people of North Dakota in their government, and to support open, ethical, and accountable government, the North Dakota ethics commission is hereby established.” As a new constitutional entity, there are many questions about the Commission that come to mind.

Who serves on the Ethics Commission?

The Commission consists of five commissioners. The governor, the majority leader of the senate, and the minority leader of the senate must all agree on who to appoint as commissioners. Once appointed, commissioners serve four-year terms. The terms of the commissioners originally appointed have been staggered to ensure all the commissioners’ terms do not expire at the same time. The commissioners are not full-time employees but are paid for their participation at monthly regular and special meetings. The Commission also has three full-time staff members consisting of an executive director, general counsel, and an executive assistant.

Which of the three branches of government does the Ethics Commission fall under?

None! The Commission is an independent constitutional entity and is not part of any of the three branches of our state government.

What does the Ethics Commission do?

The Commission has two clear duties according to the North Dakota Constitution. First, it creates rules related to four distinct areas of state government: (1) transparency; (2) corruption; (3) elections; and (4) lobbying. Second, the Commission investigates complaints for alleged violations of its rules relating to these four areas, Article XIV, and related state laws. Another large portion of the Commission’s work is providing educational presentations and materials to those it oversees and North Dakota residents.

The Commission has adopted rules regarding the complaint process, gifts between lobbyists and public officials, conflicts of interest, and bias in quasi-judicial proceedings.

What can the Ethics Commission investigate?

The Commission can only investigate conduct covered by the four distinct areas listed in the North Dakota Constitution. Accordingly, the Commission has authority to investigate complaints in the areas of transparency, corruption, elections, and lobbying. The Commission refers to these four areas as its subject-matter jurisdiction.

Who can the Ethics Commission investigate?

The North Dakota Constitution authorizes the Commission to investigate lobbyists, state public officials, candidates for statewide public office, candidates for the legislature, elected or appointed officials of the executive or legislative branch, members of the Commission, members of the governor’s cabinet, and employees of the legislative branch. The Commission refers to its authority over these individuals as its personal jurisdiction.

Does the Ethics Commission need a complaint to investigate, and who can file a complaint with the Commission?

A law passed by the legislature requires the Commission to receive a complaint before it can investigate allegations of misconduct. There are three categories of people who can file complaints with the Commission: (1) a North Dakota resident; (2) a non-resident licensed in North Dakota by a state agency or state public official; and (3) a party to a quasi-judicial proceeding before a state agency or state public official. The person filing the complaint is referred to as the complainant. The person who the complaint is brought against is referred to as the respondent.



A complainant can choose to remain confidential. If the complainant chooses to remain confidential, the Commission cannot release the name of the complainant to the respondent.

How does someone file a complaint with the Ethics Commission?

You can file a complaint with the Commission in writing or orally. However, a complaint form is available on the Commission’s website that walks through the information required to make the complaint and tells you how to submit it. You can also make a complaint by contacting the Commission at (701) 328-5325 or ethicscommission@nd.gov. The Commission also maintains a confidential whistleblower hotline for

making complaints. You can contact the hotline at (701) 328-6000 or ethicshotline@nd.gov.

How does the Ethics Commission investigate complaints?

Once the Commission receives a complaint, it will inform the complainant the Commission has received it. The Commission will also inform the respondent that a complaint has been filed against the respondent with the Commission.

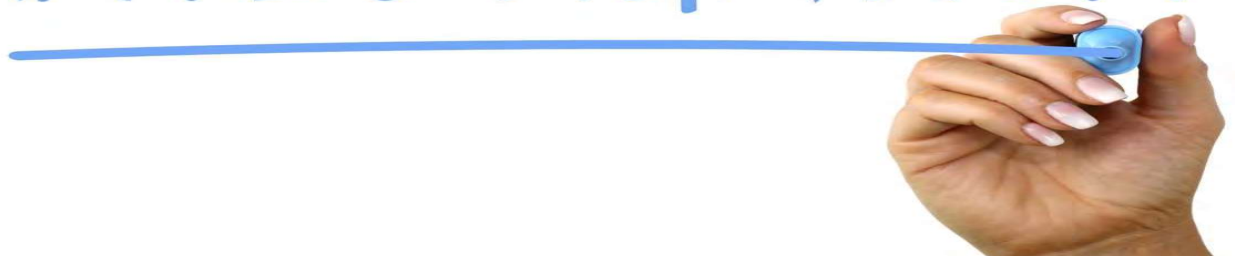
After the Commission notifies the complainant and respondent, there are two essential steps. First, the Commission will do an initial review of the complaint. This initial review involves determining if the Commission has personal jurisdiction over the respondent. The Commission will also determine if it has subject-matter jurisdiction over the conduct alleged in the complaint.

During the initial review, if the Commission lacks personal or subject-matter jurisdiction the Commission will summarily dismiss the complaint, meaning it will not investigate the matter further. If the Commission determines it has personal and subject-matter jurisdiction, it will ask the parties if they would like to informally resolve the complaint. This process is similar to a mediation. However, the parties are not required to participate in an informal resolution. If the complaint is not informally resolved, the Commission will move on to the second step.

The second step commences when the Commission begins its formal investigation of the complaint. This process involves collecting information and documents, conducting interviews, and gathering testimony. Once the investigation is complete, the executive director prepares an investigation report and recommendations for the entire Commission's consideration. The Commission then determines if a violation occurred and what penalty should be imposed, if any.

If at any time the Commission believes a complaint contains allegations of criminal conduct, the Commission must refer the matter to the appropriate law enforcement agency with jurisdiction. If the law enforcement agency agrees to investigate the matter, the Commission cannot proceed with its own investigation until the criminal matter is complete.

INVESTIGATION



Can the Commission talk about the complaints it receives and the investigations it conducts?

No, state law makes all information related to the substance of a complaint confidential, unless the Commission needs to disclose information as part of its investigation. The Commission cannot even confirm or deny whether a complaint exists against a particular respondent. However, if the matter is not informally resolved and the Commission determines a violation has occurred, the complaint is no longer confidential.

Where do I go if I have more questions about the Ethics Commission?

Please visit the Commission’s website at ethicscommission.nd.gov, as it is regularly updated with the most current information. The Commission is also in the process of creating social media to communicate important updates with the public. Additionally, we encourage you to attend our meetings, which are livestreamed through Microsoft Teams. The links for our meetings can be found on the meeting agendas on our website. We are always happy to help with any questions you may have. You can contact us at (701) 328-5325 or ethicscommission@nd.gov. The Commission also regularly sends a speaker to various professional and civic organizations throughout the state to speak about the Commission’s work. If you would like us to come speak to your group about the Commission, please contact us.



Logan Carpenter serves as general counsel for the North Dakota Ethics Commission. He received his Bachelor of Arts degree in Political Science, magna cum laude, from the University of Jamestown in 2017. While at the University of Jamestown, Logan played alto saxophone in the concert and jazz bands, worked as a teaching assistant, and was selected as a College Fellow in Political Science. Following his undergraduate studies, Logan attended law school at the University of North Dakota School of Law where he graduated magna cum laude in 2020. During law school, he was actively involved as a member of the

International Legal Honor Society of Phi Delta Phi, as a lawyering-skills teaching assistant, and as the Managing Editor and Co-Symposium Editor of the North Dakota Law Review. Logan was inducted into the Order of the Coif and the Order of Barristers upon graduation.

After law school, Logan served as a judicial law clerk to the Honorable Gerald VandeWalle at the North Dakota Supreme Court. Thereafter, he continued his career as a judicial law clerk to the Honorable Clare Hochhalter, Magistrate Judge for the District of North Dakota.