

North Dakota Ethics Commission Meeting

Minutes of March 23, 2022

Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Chair Ron Goodman, at 9:02 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 Allyson M. Hicks, Executive Director Dave Thiele, and Office Manager Holly Gaugler.
2. **Approval of Agenda:** The agenda for this meeting was discussed with no additions.
3. **Approval of Minutes:** The minutes of the 23 February 2022 meeting were discussed with one revision. Commissioner Lindquist asked that the minutes be revised to include a definition of “bright-line campaign donations” on page four.

Motion: Commissioner Anderson moved to approve the minutes of February 23, 2022 amended to include a definition of “bright-line campaign donations” on page four. Motion was seconded by Commissioner Koeser. 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 February 28, 2022. Gaugler reported February 2022 expenditures of \$22,245 and total expenditures for the biennium of \$179,640 leaving a remaining biennial budget of \$444,344. Gaugler also reported projected expenditures for the remainder of the biennium (March 1, 2022 through June 30, 2023) at an estimated \$422,718 which would leave an approximate ending balance of \$21,626 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.
5. **Executive Director Dave Thiele Update:**
 - Thiele discussed the March 7th strategy review meeting with the Governor; attended by Commissioner Anderson, Thiele and Gaugler. During the meeting, Thiele had relayed the Commission’s desire for the reappointment of Commissioner Anderson as his initial appointment was for only three years and not a full term.
 - Thiele briefed the Commission on the upcoming April 11th meeting of the Government Administrative Committee where various state space leasing options would be discussed.

- Thiele briefed the Commission that a new complaint (22-001) had been received. He is waiting on the respondent to complete one task at which time he expected it to be resolved informally. Thiele will provide a full briefing to the Commission in executive session at the next Commission meeting.
- Thiele discussed staff performance reviews with the Commission. The Commission and legal counsel Allyson Hicks agreed that a performance review process for the Executive Director would be beneficial. The Commission agreed that this process would help document accomplishments and goals and the future direction for the Executive Director as well as the Commission as a whole. Commissioner Richard suggested that the Commission evaluate once a year in an in-person meeting and include it with a strategic plan for the future of the Commission. The Commission also agreed upon a manual evaluation form currently used by other state commissions that could be tailored to meet the needs of the Commission. Commissioner Lindquist suggested a review of current practices of other state commissions and their evaluation processes. In addition, Commissioner Lindquist suggested that the Commission also look at a process of self-evaluation for the five commissioners. There will be further discussion at the next meeting.
- Thiele discussed term limits for the Commission's chair and vice chair positions. His research of other state boards and commissions indicated many different practices depending on the specific positions with no real clear consensus for term limits. Thiele indicated many had implemented two one-year terms and he didn't recommend terms beyond three years. Commissioners were in favor of setting three-year terms for these positions with no limit for the number of terms.

Motion: Commissioner Richard moved to approve three year terms for chair and vice chair with no specific number of term limits. Motion was seconded by Commissioner Koeser. Chair Goodman called for a roll call vote on the motion. The motion was approved unanimously.

6. **Commission's Discussion of the Draft Conflict of Interest Rules:**

The Commission discussed the March 22, 2022, Conflict of Interest rule draft. Legal Counsel Allyson Hicks highlighted the substantive changes made by Thiele, Hicks and Richard from the February 22, 2022, draft rule. Changes were in response to many of the written as well as public comments made during the February 23, 2022, meeting. Major highlights were as follows:

- Changed all terminology of "Neutral Decisionmaker" to "Neutral Reviewer".
- Added 115-04-01-01(5)(e) whereby if none of the criteria to provide a "Neutral Review" applies, the Public Official shall make the determination with a reporting requirement.
- Definition in 115-4-01-01(8) removed campaign donations from definition of "Significant Financial Interest" for general conflict of interest rule.

- Added language for 115-04-01-02(1) for general conflicts of interest allowing agencies, boards, or commissions to have their own conflict of interest statute or rule.
- Moved language to 115-04-01-02(4) where a Public Official may elect to recuse themselves, therefore, eliminating the need for a Neutral Reviewer.
- Clarification of definition of Quasi-Judicial (115-04-01-04(2)(d) to include only adversarial administrative hearings, eliminating public hearings where there are not pre-identified parties, or those with public input only, and quasi-legislative hearings.
- Added language in 115-04-01-04 subsections (6), (7), and (8). This language not only allows directors, officers, commissioners, heads, or other executives to self-determine if potential conflicts of interest is a disqualifying conflict per Article 14, Section 2(5) but offers other options to include a Neutral Reviewer. It also allows the parties involved in the quasi-judicial hearing to consent to continued involvement of the individual with a potential conflict of interest in the Quasi-Judicial hearing.
- Added language in 115-04-01-04(2)(c) which excludes campaign or in-kind support that is below the reporting level set forth in NDCC 16.1-08.1 from the definition of “Campaign Monetary or In-Kind Support”.
- Changed language throughout 115-04-01-04 from “Public Officials” to “directors, officers, commissioners, heads, or other executives” to align with text in ND Constitution Article XIV.

The Commission discussed the changes included in the March 22, 2022 draft rules. The Commission also discussed using the current rule draft to split into two rules, one being a general conflict of interest rule and the other a quasi-judicial conflict of interest bias rule.

Commissioner Richard recommended that we proceed with splitting the current rule into general conflict of interest and Quasi-Judicial conflict of interest rule and proceed with finalizing the Quasi-Judicial rule. Commissioner Richard asked the Commission to consider further discussion on a “financial interest not shared by the general public” as set forth in Article XIV Section 2(5) before finalizing the general conflict of interest rule. Commissioner Richard also raised the question of what remedies and enforcements without express authority are available for violation of ND Ethics Commission’s rules. The Commission discussed approaching the Legislature to mutually amend NDCC 54-66 to provide authority for enforcement or consequences of rule violations.

Executive Director Thiele also recommended splitting the current rule into two rules and strongly encouraged public comment.

Commissioner Richard, Legal Counsel Hicks and Executive Director Thiele will continue working on the rules as discussed.

7. **Further Business:** Chair Goodman asked that the Commission look at a time in the upcoming months for an in-person meeting. Legal Counsel, Allyson Hicks advised the Commission that

she would not be able to attend the upcoming meeting on April 20, 2022 meeting. Chair Goodman asked that she provide another legal representative from the Attorney General's Office in her absence.

8. **Adjourn:** Commission, having no further business, was adjourned at 10:55 a.m. The next meeting is scheduled for April 20, 2022, at 9:00 a.m. by MS Teams.

Approved on April 20, 2022 
Dave Thiele, Executive Director, North Dakota Ethics Commission