

North Dakota Ethics Commission Regular Meeting

Minutes of November 30, 2022

MS Teams

1. **Call to Order:** The meeting was called to order by Chairman Paul Richard at 9:02 a.m. The following members of the Ethics Commission were also present: Vice Chair David Anderson, Commissioners Ron Goodman, Ward Koeser, Legal Counsel Allyson Hicks, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Commissioner Cynthia Lindquist was not present.
2. **Approval of Agenda:** No additions were made.
3. **Approval of Minutes:** The Commission discussed meeting minutes from October 19 and 24, 2022, and November 7, 14, and 18, 2022, with no changes made.

Motion: Commissioner Koeser moved to approve meeting minutes from October 19 and 24, and November 7, 14, and 18, 2022, with no changes. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

4. **Budget Update:** Office Manager Holly Gaugler provided a budget update as of October 31, 2022, showing total expenses for October 2022 at \$27,062 and total expenditures for the biennium of \$378,423 leaving a remaining balance for the remainder of the biennium at \$245,561. She also briefed the Commission on projected expenditures for the remainder of the biennium of \$229,853 leaving a remaining balance at June 30, 2023, of \$15,708. She added that these projections did not include the costs of a newly appointed special assistant attorney general (SAAG), additional moving costs, and renovation costs at a new location. Executive Director Binstock also added that it did not include the cost of an on-line reporting system that the Commission is currently awaiting a cost estimate from NDIT.

In light of the need to hire a SAAG and costs of relocating to a new office space, Executive Director Binstock asked that the Commission approve a proposed deficiency appropriation to be submitted to OMB as part of its overall deficiency bill along with other agencies' requests for budget deficiencies. The proposed deficiency would include \$72,000 for SAAG costs and an estimated additional cost of \$25,000 for relocation and potential renovation costs for a total of \$97,000. She added that her hope for funding the on-line reporting system is that it would be purchased with any savings in the current budget depending on cost estimates from NDIT.

Motion: Commissioner Anderson moved to direct Executive Director Binstock to submit the deficiency amount of \$97,000 to OMB to be included in its deficiency bill. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

5. **Executive Director Binstock Update:**

- Executive Director Binstock updated the Commission on the progress of meetings with the NDIT project team to obtain an estimate for an on-line submission and file management program for the Commission's forms. Information on perceived on-line submission forms and file management has been provided to the NDIT team and we are now awaiting a cost estimate. The cost estimate will be provided to the Commission for approval before the project begins.
- Executive Director Binstock informed the Commission that the office space was vacated on November 23 and furniture, along with the copier, had been moved to the fifth floor of the capitol to be used for "hoteling" during the legislative session. By locating the furniture and copier, it prevented the Commission from having to incur storage costs until a new office location can be established. With the move, a mailbox has been established at the capitol mail room where the mail will be picked up by staff. The address on the website has been updated and the forms on the website will also be updated in the next few days. She also notified the Commission that the potential new location space on the fifth floor of the capitol may not be available; however, she was looking at other potential options at the capitol.
- Executive Director Binstock discussed the education and outreach calendar, noting that she had made a presentation to the ND Board of Nursing discussing gift rules, quasi-judicial rules, and the new conflict of interest rules. Their board showed a great interest in receiving training and guidance to implement their policies that coincide with the Commission's rules. She and Vice-Chair Anderson also met with lobbyists and PAC coordinators. Their discussion centered around the different types of PACs and how they relate to the Commission's quasi-judicial rules. She and Vice-Chair Anderson both expressed the value of this meeting and that further discussion is necessary to clarify our quasi-judicial rules and how they relate to different types of PACs.
- Executive Director Binstock noted that the Commission did not have formal policies and procedures in place and has initiated the process by adding policies for which issues have been raised. She recommended to the Commission that policies and procedures get added as needed rather than drafting policies and procedures that

may not yet be applicable to the Commission. To date, Binstock has drafted a Commission pay policy, a media relations policy, and a request for advisory opinion policy for the Commission's review. Executive Director Binstock explained all three policies to the Commission as follows:

- Commission Pay Policy –this was the policy and procedure the Commission has been following since it was formed three years ago and now it is formalized in writing.
- Media Relations Policy –this policy addresses how the Commission responds to media inquiries. As written, the policy designates the Executive Director as the media point or citizen request person and also makes the Executive Director responsible for media releases. The policy give the Executive Director authority to respond or release information only for which he or she has been provided authority to do so by the Commission.
- Request for Advisory Opinion Policy –this policy provides a further explanation of N.D.C.C. 54-66-04.2. It allows the Commission to determine if it is going to issue an advisory opinion and whether the names of persons in the opinion and request are open or closed records without bringing the entire Commission together. Instead, it allows the determination to made between the Executive Director and the Chairperson jointly. This allows the advisory opinion process to start much quicker and make the process more efficient. The policy does not allow the Executive Director and the Chairperson to issue an advisory opinion without the approval of the full Commission. It also allows the requester to appeal the decision to the full Commission. Legal Counsel Alyson Hicks asked that one change be made to this policy that designates the Executive Director make determinations in consultation with the Chairperson, thus eliminating this as potentially becoming a committee.

Motion: Commissioner Goodman moved to approve the Commission Pay Policy, the Media Relation Policy, and the Request for Advisory Opinion Policy with one change to the Request for Advisory Opinion Process where the determination is to be made by the Executive Director in consultation with the Chairperson. 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 informed the Commission that there was an opportunity to hire a UND law student intern for the upcoming legislative session and that OMB currently has a program that may fund from 75% to 100% of the cost depending on agencies' requirements. The intern would receive credit from UND and may or may not receive compensation. Binstock noted that due to budget constraints and not having a

current office space, the Commission would most likely not be able to hire an intern this legislative session. However, she asked that the Commission grant the Executive Director authority to pursue the hiring of an intern for future legislative sessions.

Motion: Commissioner Anderson moved to grant Executive Director Binstock authority to hire an intern for the upcoming and future legislative sessions to the extent necessary to assist the Commission provided the Commission has necessary funds to support the internship. 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 confirmed with the Commission that there would not be any attendance by the Commission at the annual COGEL conference in December due to current budget constraints.

6. **Discussion and Review of Proposed Legislation:** Chair Richard led the discussion with new proposed legislation that changed statutory deadlines in N.D.C.C. 54-66-06, allowing the time to notify the respondent (accused individual) within 20 days of receiving a complaint to 30 days. This amendment will help eliminate special meetings and also allow the Executive Director to thoroughly conduct an initial review that could possibly result a complaint being summarily dismissed. Proposed change also allows the accused individual to provide a written response to the complaint prior to receiving a request for written response from the Commission. Further, if the Commission has summarily dismissed the complaint under N.D.C.C. 54-66-05(2) prior to notifying the accused individual under Section 54-66-06(1), the notification to the accused individual shall include notice of the summary dismissal.

Motion: Commissioner Koeser moved to approve proposed amendments to N.D.C.C. 54-66-06. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

Executive Director Binstock added that proposed changes for the Commission to N.D.C.C. 28-32 would not be included in the upcoming legislative session. She also reminded the Commission of the prior Commission approved amendments for this legislative session: 1. To add executive branch employees to the Ethic's Commission's jurisdiction. 2. to allow individuals to be "complainants" regardless of their state residency as long as they were subject to the jurisdiction of a North Dakota board or commission. 3. As approved in agenda item #4 above, to add the deficiency to OMB's deficiency bill.

Executive Binstock and Legal Counsel Allyson Hicks will work together to submit the approved legislative changes by the deadline of December 8th.

7. **Discussion of “Party” as it relates to PACs under the Quasi-Judicial Rule:** Executive Director Binstock reiterated the open and fruitful discussion she and Vice-Chair Anderson had with PAC coordinators and lobbyists the previous week. She also provided an overview of their understanding gathered through the meeting pertaining to different types of PACs. The Commission agreed that further analysis and research will need to be ongoing of a “party” as it relates to a PAC before the quasi-judicial rule can be amended, if necessary, in its definition of “party”.
8. **Pending Attorney General Opinion Request:** After reviewing N.D.C.C. 54-66-01(3) and 54-66-04.2(1) Chair Richard asked the Commission to consider withdrawing its pending request for an Attorney General Opinion requested on June 23, 2022. The Commission concurred with Chair Richard.

Motion: Commissioner Anderson moved to withdraw pending request for an Attorney General Opinion submitted on June 23, 2022, and direct Executive Director Binstock to send a letter requesting a withdrawal of the opinion request. Motion was seconded by Commissioner Koeser. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

9. **Executive Session #1:** The Commission entered the first executive session at 11:00 a.m. to discuss Complaint #22-011 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, Commissioner Ron Goodman, Commissioner Ward Koeser, Legal Counsel Allyson Hicks, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Executive Session ended at 11:05 a.m. and all participants returned to the regular meeting. No final action was necessary to be taken in regular session regarding Executive Session #1.
10. **Executive Session #2:** The Commission entered the second executive session at 11:07 a.m. to discuss Complaint #22-012 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, Commissioner Ron Goodman, Commissioner Ward Koeser, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler. Legal Counsel Allyson Hicks did not enter this Executive Session. Executive Session ended at 11:13 a.m. and all participants returned to the regular meeting.

Motion: Commissioner Anderson moved to direct Executive Director Binstock to summarily dismiss Complaint No. 22-012. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

11. **Discussion of Request for Advisory Opinion No. 22-02:** Executive Director Binstock informed the Commission that a response has been sent to the requester notifying the requester that an advisory opinion would be issued. Executive Director also added that she has begun working on a draft advisory opinion and plans to have a completed the draft for the Commission's review at the next regular meeting.
12. **Further Business:** The Commission tentatively rescheduled the February meeting from February 15 to February 22, 2023.
13. **Adjourn:** Commission, having no further business, was adjourned at 11:18 a.m. The next meeting is scheduled for December 21, 2022, at 9:00 a.m. by MS Teams.

Approved on 12/21/2023 

Rebecca Binstock, Executive Director, North Dakota Ethics Commission