

# North Dakota Ethics Commission Meeting

Minutes of October 19, 2022

Held at the State Capitol Sakakawea Room and Live Stream MS Teams

1. **Call to Order:** The meeting was called to order by Vice Chair David Anderson at 9:03 a.m. The following members of the Ethics Commission were also present: Chair Paul Richard, Commissioners Ron Goodman, Ward Koeser, and Cynthia Lindquist, Legal Counsel Allyson Hicks, Executive Director Rebecca Binstock, and Office Manager Holly Gaugler.
2. **Approval of Agenda:** No additions to the agenda were made; however, Executive Director Binstock noted the budget update would be moved to coincide with agenda item #10. She also noted that File Management using Teams & SharePoint would be moved to the end of the meeting to provide instruction to the Commission.
3. **Approval of Minutes:** The minutes of the September 14, 2022, and October 6, 2022, meetings were discussed with no substantive corrections.

**Motion:** Chair Richard moved to approve the minutes of September 14, 2022, and October 6, 2022, with no corrections. Motion was seconded by Commissioner Goodman. The motion was approved by unanimous voice vote.

4. **Executive Director Binstock Update:**

- Binstock briefed the Commission on the status of the General Conflict Rule adoption process: On August 19, 2022, a notice was sent out and a public hearing was held on September 27, 2022. Public comments were received at that time. The public comment period was left open until October 7, 2022. No additional comments were received. Further discussion by the Commission will be held in item #5 of the meeting agenda.
- Binstock discussed the need for an on-line submission through the Commission's website to accept and track forms to include: quasi-judicial bias forms, conflict of interest disclosure forms, meeting notices, complaints, and requests for advisory opinions. She further explained the increased volume of forms submitted to the Commission since September 1, 2022, and the inefficient manner in which the forms are tracked leaving a significant risk of missing both acknowledgements as well as the forms themselves. She advised the Commission that a request for an estimate has been made to NDIT for the cost to update the website to allow online submissions. The cost will be provided to the Commission before proceeding with the project. Legal Counsel Hicks added that as the conflict rule comes into effect, she anticipates a large volume of conflict forms to be filed with the Commission.



- Binstock reminded the Commission of the annual COGEL conference in Montreal, December 4-7, 2022. The early registration through October 28<sup>th</sup> is \$600 which will go to \$700 after October 28<sup>th</sup>.
- Binstock briefed the Commission on the current office leased space. After the September 14<sup>th</sup> meeting, she met with the landlord to discuss options. The landlord was very receptive to the Commission's need to downsize and has since listed the space for rent. She also advised the Commission that there may be some costs incurred by the Commission for listing/realtor fees. She also noted that she has been working with John Boyle, the state's Director of Facilities, regarding her discussions with the landlord.
- Binstock provided an update on recent outreach education and training. She has met with Legislative Council, Attorney General, Governor's Office, Auditor's Office, OMB, and State Procurement. She explained her goal was to discuss with various agencies the role of the Ethics Commission and how the Ethics Commission and their agencies may work together. She also met with NDPI, the ND Lobbyists Association and participated in the state licensing board training session through the Attorney General's Office with Allyson Hicks. During this training session there was a significant amount of interest in obtaining training from numerous boards and commissions on the rules of the Commission and a desire to comply with the rules of the Commission. The Commission discussed options and the need to provide extensive training to the public and public officials. Chair Richard asked that Executive Director Binstock review the current media policy for the Commission and provide a recommendation for an update at a near future meeting.
- Binstock discussed the change in information distribution to the Commission using Share Point rather than emails which will provide a much more secure method. She will provide the Commission an overview of how to access SharePoint near the end of the meeting.

5. **Adoption of General Conflict of Interest Rule:**

**Motion:** Commissioner Goodman moved to approve the General Conflict of Interest Rule. Motion was seconded by Commissioner Koeser. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

6. **Discussion on Advisory Opinion Process and Guidelines:** Executive Director Binstock asked that the Commission review the corrected Advisory Opinion Process and Guidelines as the information on the website was conflicting with statute. The information posted on the website indicated that the identity of individuals requesting an advisory opinion and names in the opinion would be confidential when the statute (N.D.C.C. 54-66-04.2) states names of individuals requesting an advisory opinion and names in the opinions would be considered exempt records. Binstock further clarified that as an exempt record, it is the discretion of the Commission whether those records would be kept confidential. The Commission agreed with



corrected Advisory Opinion Process and Guidelines with the exception of the last sentence which stated: “Whether the Commission closes the record of the names of persons in the opinions and requests will be determined by the Commission on a case-by-case basis, with consideration given to the nature of the request and opinion.”

**Motion:** Chair Richard moved to approve the revised Advisory Opinion document with the amendment of removing the last sentence in the first paragraph on page two. Motion was seconded by Commissioner Lindquist. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

7. **Revised Agenda Item to Discuss Advisory Opinion Request Dated September 29, 2022:**

Chair Richard requested a motion to add an agenda item to discuss a request for advisory opinion dated September 29, 2022.

**Motion:** Commissioner Goodman moved to amend the agenda to include discussion of a request for advisory opinion dated September 29, 2022. Motion was seconded by Chair Richard. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

Executive Director Binstock briefed the Commission on the September 29, 2022, request for advisory opinion, reporting that the requestor did not wish to withdraw their request as they anticipated it would be considered a public record by the Commission. The requester understood that the Commission voted against issuing an advisory opinion at the October 6, 2022, special meeting.

8. **Discussion and Review of Proposed Legislation:** Executive Director Binstock briefed the Commission on proposed legislation for consideration and discussion by the Commission for the upcoming 2023 legislative session:

- a. Adding language in N.D.C.C. 54-66-01(9) that allows the Commission jurisdiction over employees of the executive branch. Executive Director Rebecca Binstock also commented that statutes and rules would function to limit the Commission’s jurisdiction over executive branch employees
- b. Changing the definition of complainant in the Commission’s complaint rules and N.D.C.C. 54-66-01(2) by adding individuals subject to licensing or regulation by a state agency, regulatory board or commission, licensing board or commission, or other public official subject to the jurisdiction of the Ethics Commission; and is a party to a quasi-judicial proceeding before a state agency, regulatory board or commission, licensing board or commission, or other public official subject to the jurisdiction of the Ethics Commission.

**Motion:** Commissioner Goodman moved to approve the proposed legislation as amended and approve the submittal for bill prefile by



Executive Director Binstock. Motion was seconded by Commissioner Koeser. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

9. **Discussion of “Party” as it relates to PACs Under the Quasi-Judicial Rule:** Chair Richard explained a previous meeting discussion of an advisory opinion regarding PACs raised a question whether a PAC could indirectly be a party in a Quasi-Judicial proceeding. Chair Richard discussed “connected” and “nonconnected” PACS and asked that the Executive Director further research PACs. Specifically, are the federal regulations around “connected” PACs to a company or individual sufficient to create a separation to a PAC or could this result in a conflict under the Commission’s current Quasi-Judicial Bias rules.
10. **Executive Session to Discuss Complaints and Assignment of Special Assistant Attorney General:** **General:** Legal Counsel Allyson Hicks recused herself from this executive session and any discussion of complaints #22-003 through #22-009. After Hicks’ recusal, the Commission entered into executive session to discuss complaint #’s 22-003 through 22-009 and the assignment of a special assistant attorney general under the authority of N.D.C.C. 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 Commission entered executive session at 11:33 a.m.
11. **Appointment of Special Assistant Attorney General:** The Commission returned to regular session at 12:15 p.m.

**Motion:** Commissioner Goodman moved to approve the hiring of Shea Miller as Special Assistant Attorney General as legal counsel regarding complaint #’s 22-003 through 22-009 and to have Executive Director Binstock send a letter to the ND Attorney General with the request to hire. Motion was seconded by Commissioner Lindquist. Vice Chair Anderson called for a roll call vote. The motion was approved by unanimous roll call vote.

12. **Budget Update:** Office Manager Holly Gaugler provided a budget update as of September 30, 2022. Gaugler reported September 2022 expenditures of \$35,037 and total expenditures for the biennium of \$351,362 leaving a remaining biennial budget of \$272,622. Gaugler reported payroll for September was approximately \$12,000 higher than past months due to an overlapping of our new Executive Director with our outgoing Executive Director for approximately ten days along with the payout of annual leave for retiring Executive Director Thiele.

Gaugler also reported projected expenditures for the remainder of the biennium (October 1, 2022, through June 30, 2023) at an estimated \$262,941 which would leave an approximate



ending balance of \$9,681 on June 30, 2023. Gaugler briefed the Commission that the projected ending balance had significantly changed from a consistent reported ending balance of approximately \$20,000. This decrease was largely due to a significant increase in activity for the Commission upon the adoption of additional rules and an increase in public awareness. Gaugler reported that due to the increased level of activity, her hours had also increased from approximately 20 hours per week to 30 hours per week.

Executive Director Binstock added additional comments as we now have approved the hiring of the Special Assistant Attorney General (SAAG) and a significant increase in activities as the conflict of interest rules come into effect all create additional requirements on the current budget as well as the 2023-25 budget. She further added that the 2023-25 budget submitted in August will need to be amended. Gaugler is working on the amendments which will need to be submitted by August 24, 2022. This will require a special meeting of the Commission for approval. Intended areas of increase include education and training, professional fees for the SAAG and other costs, additional two FTE staff. One of the two FTE would coordinate education and travel; the second FTE for an executive assistant would replace our current temporary part time employee which will process and maintain incoming data and requests.

The Commission discussed various options for increased funding for the current 2021-23 biennial budget; a final decision was not made. The Commission agreed to amend the current budget and have a special meeting on October 24, 2022, at 11:00 a.m. to discuss proposed amendments to the 2023-25 budget submittal.

13. **File Management using Teams and Share Point:** The Executive Director and Office Manager instructed the Commission on the use of Teams and Share Point to more effectively manage meeting data and files for the Commission in the future.
  
14. **Adjourn:** Commission, having no further business, was adjourned at 12:56 p.m. The next meeting is scheduled for November 30, 2022, at 9:00 a.m. via MS Teams.

Approved on 11/30/2022

Rebecca Binstock, Executive Director, North Dakota Ethics Commission

