

North Dakota Ethics Commission Policies & Procedures

I. Commissioner Pay Policy (Approved 11/30/2022)

- a. Pursuant to N.D.C.C. 54-66-04, Commissioners are paid based on a daily rate as provided for members of the legislative management for their service set forth in N.D.C.C. 54-35-10.
- b. A Commissioner is to be paid a 1 full day pay for every regular meeting attended by a Commissioner. This payment is in consideration of the time a Commissioner prepares, travels (if applicable), and attends a meeting.
- c. A Commissioner is to be paid 1/2 day pay for every special meeting attended by a Commissioner unless the special meeting is longer than 3 hours. If the special meeting lasts longer than 3 hours, a Commissioner is to be paid 1 full day pay.
- d. A Commissioner is to be paid 1/2 day pay for any meeting, event, or educational presentation attended by a Commissioner as requested by the Executive Director or the Chairperson unless the meeting or event lasts longer than 3 hours. If the meeting, event, or educational presentation lasts longer than 3 hours, a Commissioner is to be paid 1 full day pay.

II. Media Relations Policy (Approved 11/30/2022)

- a. This policy outlines the procedures for the Commission and its staff to respond to any media inquiry.
- b. The Commission strives to advance its mission by communicating openly and honestly, with consideration of the prescribes of N.D.C.C. Section 54-66-12, with citizens of North Dakota, including the media.
- c. The Executive Director, or his or her designee, is to serve as the individual assigned to speak on behalf of the Commission.
- d. All media inquiries are to be directed to the Executive Director or his or her designee.
- e. All press releases or other promotional materials are to be approved by the Executive Director, or his or her designee, prior to publication.

III. Request for Advisory Opinion Policy (Approved 11/30/2022)

- a. Pursuant to N.D.C.C. Section 54-66-04.2, the Commission may issue advisory opinions regarding the application of Article XIV of the Constitution of North Dakota, state statutes, or Ethics Commission rules related to transparency, corruption, elections, and lobbying in response to requests

for advisory opinions from a public official, candidate for elected office, or lobbyist.

- b. Pursuant to N.D.C.C. Section 54-66-04.1, the Commission delegates the following duties prescribed in N.D.C.C. Section 54-66-04.2 to the Executive Director in consultation with the Chairperson:
 - i. To determine whether the Commission will issue an advisory opinion; and
 - ii. To determine whether the names of persons in the opinion and request are open or closed records.
- c. Upon receipt of a request for an advisory opinion, the Executive Director will consult with the Chairperson and determine whether the Commission will issue an advisory opinion and determine whether the names of persons in the opinion and request are open or closed records in accordance with N.D.C.C. Section 54-66-04.2.
- d. Within fourteen days after receiving a request, the Executive Director, on behalf of the Commission will notify the requester whether the Commission will issue an advisory opinion and whether the names of persons in the opinion and request are open or closed records.
- e. A requester may appeal a decision by the Executive Director to not issue an opinion to the full Ethics Commission. Any such appeal is to be addressed by the Commission at its next regularly scheduled meeting.

IV. Internal Code of Ethics Policy (Approved 3/15/2023)

- a. The provisions of the ND Ethics Commission's Code of Ethics shall be reviewed and signed by each Commission member and Commission employee at the time of completion and/or revision of the Code or at the time of appointment to office and by each employee at the time of its adoption/revision and annually thereafter.

V. Distracted Driving State Fleet Policy (Approved 4/26/2023)

- a. Drivers of State Fleet and other vehicles while conducting state official business may not use cell phones (including hands free) or any other mobile devices while operating the vehicle while in motion or stopped at a stop sign or traffic signal. This includes, but is not limited to, answering or making phone calls, engaging in phone conversations and reading or responding to emails, instant messages, social media or text messages. If the driver needs to use their cell phone while in a vehicle being used for state official

business, they must pull over safely to the side of the road or another safe location and put the vehicle in park. Additionally, drivers should:

- Consider turning off, putting on silent or vibrate cell phones or mobile devices before starting the vehicle.
 - Consider modifying your voice mail greeting to indicate that you are unavailable to answer calls or return messages while driving.
 - Inform others that this policy is in place as an explanation of why calls may not be returned immediately.
- b. This policy does not apply if a wireless communications device is used for obtaining emergency assistance to report a crash, medical emergency, or serious traffic hazard or to prevent a crime from being committed.

VI. Policy Reviews (Approved 4/26/2023)

- a. All staff and Commissioners must review all policies annually and provide a signature acknowledging they have read and understand all policies contained within this document.

VII. Rental Car Policy (Approved 4/26/2023)

- a. When traveling out of state, Staff and Commissioners must use the available State cooperative contract when renting a motor vehicle which includes insurance and damage waiver as part of the base rental rate. Exceptions are allowed if, in consultation with the Risk Management Division of OMB, alternative arrangements will result in cost savings considering the availability and cost of any recommended additional insurance. If the cooperative contract is not available, optional liability and damage waiver must be purchased.

VIII. Risk Management Reporting (Approved 4/26/2023)

- a. When on official duty of the Commission, staff and Commissioners must immediately report all incidents and actions to designated staff which result in injuries to non-employees and state employees; causes property damage at state owned or state managed buildings, locations or property, or involve any type of state owned or state employee-owned vehicle or equipment.
- b. The claim must be submitted to Risk Management on form SFN 50552 State Risk Management Fund Notice of Claim.

- c. Commission staff and members must complete any required risk management training as determined by the Office of Management and Budget. (Added 5/22/24)

IX. Fiscal Policy (Approved 7/18/2023)

- a. The Commission authorizes the Executive Director to expend up to \$1,000 of Commission funds per month other than regularly occurring monthly expenditures, previously approved expenditures, or travel expenditures of staff and Commissioners without Commission approval.
- b. Any expenditures exceeding \$1,000 that are not considered regular occurring or travel costs, require Commission approval.
- c. All expenditures of the Commission must follow OMB fiscal policies.
- d. Commission staff is to provide a financial status update at each regular Commission meeting.
- e. Financial updates will include:
 - 1. Previous month expenditures;
 - 2. Total biennial expenditures as of the previous month;
 - 3. Projected expenditures for the remainder of the biennium; and
 - 4. Final expenditures for the biennium and remaining balance at close of the biennium.
- f. Additional financial reports are to be provided as requested by the Commission.

X. Length of Officer Term Policy (Approved 8/23/2023)

- a. The Commission shall elect a chair and vice chair to serve for a term of two (2) years to commence on September 1 of the year in which the election occurs.
- b. The chair is to preside at regular and special meetings of the Commission. In the chair's absence, the vice chair is to preside at meetings of the Commission.
- c. If for some reason the chair vacates, the vice chair is to serve as chair for the remainder of the unexpired term. The Commission is to elect a vice-chair for the remainder of the unexpired term.

XI. Computing Time (Approved 10/25/2023)

- a. The following policy applies in computing any time period specified in any statute or the Ethics Commission's rules that does not specify a method of computing time.
 - (1) When the period is stated in days or a longer unit of time:
 - (A) exclude the day of the event that triggers the period;
 - (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
 - (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
 - (2) "Last Day" Defined. Unless a different time is set by statute or the Ethics Commission's rules, the last day ends at midnight in the Central time zone.
 - (3) "Next Day" Defined. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.
 - (4) "Legal Holiday" Defined. As used in this policy, "legal holiday" means a day set aside as a holiday under N.D.C.C. §§ 1-03-01, 1-03-02 and 1-03-02.1.

XII. Appeal from Summary Dismissal Policy (Approved 1/17/2024)

- a. A complainant has twenty (20) days from the date of the letter informing him/her of a summary dismissal to appeal the decision to the Commission.
- b. A complainant may submit documents in support of his/her appeal by emailing documents to ethicscommission@nd.gov.
- c. The respondent is entitled to receive documents submitted in support of an appeal and given an opportunity to respond by emailing any submission to ethicscommission@nd.gov. Any response from a respondent will be provided to the complainant.
- d. The Commission will only consider documents on appeal that relate to the grounds for dismissal.
- e. Both the complainant and respondent may seek assistance from an attorney during the appeal process.

- f. The complainant and respondent will not have an opportunity to personally address the Commission at the meeting.

XIII. Overtime and Compensatory Time Policy (Approved 1/17/2024, Updated 4/23/25)

- a. By agreement prior to the hours actually worked, non-exempt team members must be given compensatory time off, at a rate not to exceed time and one-half for each overtime hour when the hours actually worked exceed forty hours in a designated work week. When determining the total number of hours worked, the time record must be rounded to the nearest quarter hour.
- b. Annual leave, sick leave or other paid leave time, such as holidays, unless the holiday is worked, is not considered work time for purposes of determining overtime pay. Exceptions may be made by the executive director when a non-exempt team member is required to respond under non-scheduled or emergency situations.
- c. A team member who has accrued compensatory time must be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the Commission.
- d. A non-exempt team member who has accrued compensatory time must, upon termination of employment, be paid for the unused compensatory time at a rate of compensation not less than the average regular rate received by that team member during the past three years of employment or the final regular rate received by the team member, whichever is higher as required by the Fair Labor Standards Act ("FLSA").
- e. At the executive director's discretion, non-exempt team members may be given overtime pay for 80 hours of the fiscal year actually worked exceeding forty hours in a designated work week. The overtime rate shall not to exceed time and one-half for each overtime hour when the hours actually worked exceed forty hours in a designated work week.

XIV. Commission Substitution Policy (Approved 2/28/2024)

- a. This policy outlines the procedure for the Commission to follow when a majority of the Commissioners have a potential conflict of interest in a complaint matter. This policy is made pursuant to N.D. Admin. Code § 115-05-01-05.

- b. When a majority of the Commissioners recuse from a complaint matter, the Executive Director, or the attorney acting in the Executive Director's stead, shall facilitate requesting the Director of the Office of Administrative Hearings assign an administrative law judge. Pursuant to N.D.C.C. § 54-57-03(6), the administrative law judge shall preside in the complaint matter in the place of the recused Commissioner(s) or for the Commission when a quorum cannot be met with the addition of an administrative law judge.

XV. Executive Director Substitution Policy (Approved 2/28/2024)

- a. This policy outlines the procedure for the Executive Director to follow when the Executive Director has a potential conflict of interest in a complaint matter. This policy is made pursuant to N.D. Admin. Code § 115-05-01-05.
- b. When the Executive Director has a potential conflict of interest in a complaint matter the Executive Director must disclose the potential conflict of interest pursuant to the process outlined in N.D. Admin. Code ch. 115-05-01.
- c. Prior to filing the Commission's approved form, the Executive Director shall facilitate finding an attorney to act in the Executive Director's stead for the complaint matter. The attorney must be the Commission's general counsel or an independent and unconflicted attorney when the Commission's general counsel has a disqualifying conflict of interest in the complaint matter.
- d. Once the Executive Director secures the services of an attorney to act in the Executive Director's stead, the Executive Director shall recuse from the complaint matter and file the Commission's approved form.

XVI. Records Retention Policy (Approved 6/6/2024)

- a. The Ethics Commission shall maintain an active, continuing program for the economical and efficient management of the records of the Commission as outlined in N.D.C.C ch. 54-46.
- b. For purposes of this policy, a "record means document, book, paper, photograph, electronic mail or communication, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official business, policies, or decisions that provide administrative, operational, fiscal, historical, audit or business value." Nonbusiness-related or draft electronic messages and stocks of

publications and of processed documents are not included within the definition of records as used in this policy.

- c. The Commission shall maintain, for one year, data contained in electronic mail accounts for Commissioners and all staff.
- d. Commissioners and all staff shall review electronic mail accounts for records retention purposes on an annual basis.

Commissioners shall forward electronic messages containing content with administrative, operational, fiscal, historical, audit, or business value to the Commission's records coordinator. This requirement does not include electronic messages originating from Commission staff or electronic messages where Commission staff is also a recipient. The Commission's records coordinator will retain the electronic message in accordance with this policy.

XVII. Neutral Reviewer Policy (Approved 9/25/2024)

- a. This policy designates the neutral reviewer for the Commission and Commission staff. This policy is made pursuant to N.D. Admin. Code §§ 115-04-01-01(5) and 115-05-01-02(4).
- b. For Commissioners, the remaining Commissioners without a potential conflict of interest shall be the neutral reviewer.
- c. For the Executive Director, Commissioners without a potential conflict of interest shall be the neutral reviewer.
- d. For Commission staff, the Executive Director in consultation with the Chairperson shall be the neutral reviewer. When the Executive Director has a potential conflict of interest, Commissioners without a potential conflict of interest shall be the neutral reviewer.

XVIII. Annual Inventory Policy (Approved 4/23/25)

- a. In accordance with N.D.C.C. § 44-04-07, the executive director with the assistance of Commission staff shall maintain a complete and current inventory record of all property of sufficient value and permanence as to render such inventory record practical.
- b. For purposes of this policy "property of sufficient value and permanence as to render such inventory record practical" means assets with a value of fifty dollars (\$50) or more.
- c. Each year, the executive director with the assistance of Commission staff shall do a physical inventory and certify said inventory.

- d. The annual inventory must provide a comprehensive description of each item, together with the manufacturer's serial number, or other means of positive identification, and must include statements of all property disposed of by any means whatsoever and must be in such form and detail as may be prescribed by the Office of the State Auditor.

XIX. Bonus Policy (Approved 5/6/25)

- a. This policy is modeled after and adopted in accordance with the Office of Management and Budget's Bonus Policies.
- b. Performance Bonus
 - i. The Team Member Performance Bonus program allows the Commission to recognize and reward regular team members for exceptional performance or work achievement.
 - ii. The Executive Director or the Commission must document in writing to the Commission the team member's exceptional efforts and accomplishments and that the following technical requirements have been met:
 - 1. The team member has held a position in state government for at least one year before a bonus is paid.
 - 2. The team member is a full-time or part-time regular non-probationary team member holding a regularly funded non-temporary position.
 - 3. The team member's overall annual performance evaluation satisfies the Commission's performance bonus program criteria for receiving a bonus.
 - 4. The team member has not received a previous performance bonus during the fiscal year.
 - 5. No performance bonus may exceed \$1,500.
 - iii. The Executive Director and the Commission may develop job-specific guidelines or criteria for their team members to assist with the determination of performance bonuses.
 - iv. A performance bonus is subject to state and federal taxes and withholdings. Amounts paid under this plan are not included in the calculation of a team member's hourly rate of pay nor benefit plan calculations ties to a team member's salary.

- v. The Commission will provide oversight on this performance bonus program, seeking to ensure effectiveness, fairness, equity, and non-discriminatory employment practices are exercised.
- c. Retention Bonus
 - i. A retention bonus may be given as an incentive to retain a team member within the Commission unless the team member is leaving to work for another state agency. If, however, this rule would result in a significant impact on the Commission or negative fiscal consequences to the State, an exception may be sought under N.D. Admin. Code § 4-07-02-06.
 - ii. All positions are considered eligible for a retention bonus and may be designated hard-to-fill based on one or more of the following criteria:
 - 1. Demand exceeds supply.
 - 2. Special qualifications are required.
 - 3. Competition with other employers is intense.
 - 4. There is a risk of losing an incumbent with rare skills.
 - 5. The position is filled by a highly skilled team member who is in high demand in the marketplace.
 - 6. Loss of the team member would result in significant replacement costs.
 - 7. The position is filled by key personnel.
 - 8. The position has other unique recruitment or retention issues identified and documented by the appointing authority.
 - iii. Recruitment Bonus
 - 1. A recruitment bonus may be used only in extraordinarily difficult labor-market circumstances where the demand for such talent exceeds supply and there is a need to fill a position. The Commission will first attempt to use its usual recruitment methods prior to payment of any recruitment bonus. See N.D. Admin. Code § 4-07-02-06 and N.D.C.C. § 54-06-31 (details and qualifications).
 - iv. Referral Bonus
 - 1. A referral bonus may be used only in extraordinary circumstances where there is a need to fill a position and usual recruitment methods are unsatisfactory. Identification of eligible positions or occupations considered hard to fill will be

made by the Human Resources Department of the Office of Management and Budget. See N.D. Admin. Code § 4-07-02-06 and N.D.C.C. 54-06-31 (details and qualifications).

- v. All final decisions regarding bonuses for the executive director shall be made by the Commission. All final decisions regarding bonuses for Commission staff shall be made by the executive director.