

## CHAPTER 115-02-01 COMPLAINT PROCESS

### Section

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### **115-02-01-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Alleged violation" means a formal written allegation issued by a majority vote of the commission that a respondent engaged in an ethical violation.
2. "Anonymous complaint" means a complaint by an individual who does not provide the individual's name or contact information and who will not be considered a complainant for any purpose.
- ~~1.3.~~ "Complaint" means a verbal or written allegation to the commission that a lobbyist, public official, candidate for public office, political committee, or contributor has violated article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying.
- ~~2.4.~~ "Complainant" means an individual who, verbally or in writing, submits a complaint to the commission and is:
  - a. A North Dakota resident;
  - b. Subject to licensing by a state agency or other public official subject to the jurisdiction of the ethics commission; or
  - c. A party to a quasi-judicial proceeding before a state agency or other public official subject to the jurisdiction of the ethics commission.
- ~~3.5.~~ "Confidential complaint" means a complaint submitted through the confidential hotline or other methods designated by the commission as confidential.
- ~~4.~~ ~~"Anonymous complaint" means a complaint by a person who does not provide their name or contact information will not be considered a complainant for any purpose.~~
6. "Ethical violation" means a violation of article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying.
- ~~5.7.~~ "Executive director" is the individual appointed by the ethics commission as the executive director and authorized to carry out the duties and functions delegated by the ethics commission in these rules.

~~6.8.~~ "Respondent" means ~~the individual or entity as defined by subsection 1 of North Dakota Century Code section 54-66-01 who is the subject of the complaint~~ a lobbyist, public official, candidate for public office, political committee, or contributor who is alleged to have violated article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying.

**History:** Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024.

**115-02-01-02. Jurisdiction and limitation period.**

1. The commission has authority to investigate complaints against a lobbyist, public officials, candidate for statewide public office, candidate for state legislative assembly, political committee, contributor, an elected or appointed official of the state's executive or legislative branch, members of the ethics commission, members of the governor's cabinet, or employees of the legislative branch.
- ~~2. The commission has no authority to investigate personnel matters or matters for which other remedies exist. These matters include, but are not limited to, grievances, appointments, promotions, reprimands, suspensions, dismissals, harassment, discrimination, open meetings violations, and open records violations.~~
- ~~3. The commission has no authority over city, county, or other political subdivision or local officials, employees of the state's executive branch, or members or employees of the state's judicial branch.~~
- ~~4.2.~~ A complaint must be filed within three years of the date of the ~~alleged violation~~ allegations in the complaint. ~~Violations occurring prior to January 5, 2019, the effective date of article XIV of the Constitution of North Dakota, will not be considered.~~

**History:** Effective June 17, 2020; amended effective July 28, 2021.

**115-02-01-03. Submission of a complaint.**

1. Any individual may submit information to the North Dakota ethics commission alleging a violation of article XIV of the Constitution of North Dakota, related North Dakota laws, and rules or regulations adopted by the commission.
2. A complaint will be ~~denied~~ summarily dismissed if there is not sufficient information to create a reasonable belief that a violation within the jurisdiction of the commission has occurred. Mere speculation is insufficient to proceed with a complaint.
3. The commission maintains a confidential whistleblower hotline for the submission of a complaint ~~relevant information~~. Complaints ~~and relevant information~~ may be submitted to the commission through the hotline or through any other medium, i.e. written, oral, or electronic.
4. No specific format is required for complaints ~~and relevant information~~. The commission may direct a complainant to refile a complaint using the commission's designated complaint form.
5. A complaint is considered filed with the commission upon receipt of the complaint by the office of the commission.
6. To enable the commission to more effectively evaluate and investigate a complaint, it is strongly recommended ~~that~~ the following information be provided:
  - a. Name and contact information for the individual submitting the complaint ~~or information~~ must be provided;
  - b. Clearly identify each person, entity, committee, or group that is alleged to have committed a violation;

- c. Clearly recite the facts that show specific violations under the commission's jurisdiction. Citations to the constitution, North Dakota law, or rules or regulations are not required but helpful. The individual submitting the complaint ~~or information~~ should be as specific as possible as it relates to dates, times, and individuals involved;
  - d. Differentiate between statements based on the individual's personal knowledge and those based on information and belief. Statements not based on the individual's personal knowledge should identify the source of the information, if known; and
  - e. Include any and all documentation supporting the allegations, if available.
7. The ~~executive director~~commission shall conduct an initial review of any complaint ~~or information received by the commission~~.
- a. If the ~~executive director~~commission determines ~~that~~ the matter falls within the jurisdiction of the commission and contains sufficient information to believe a violation has occurred, the executive director shall prepare a written summary of the complaint along with a notice to the respondent.
  - b. The ~~executive director~~commission may summarily dismiss the complaint if the ~~alleged violation~~complaint:
    - (1) Does not fall within the commission's jurisdiction;
    - (2) Is insufficient to identify a possible violation; or
    - (3) Fails to comply with the rules adopted by the commission.
  - ~~c. The complainant may appeal the decision to summarily dismiss a complaint to the commission by appealing in writing within thirty days of the notice by the executive director.~~
    - ~~(1) A complainant may submit materials in writing in support of the complainant's appeal of the summary dismissal.~~
    - ~~(2) The commission shall provide the respondent the materials the complainant submits in support of the appeal. The respondent may respond in writing within thirty days.~~
    - ~~(3) The complainant shall receive any response submitted by the respondent.~~
    - ~~(4) If the documents on appeal from a summary dismissal relate to the grounds for the summary dismissal, the commission shall consider the documents.~~
    - ~~(5) The complainant and respondent may not orally address the commission regarding the appeal from summary dismissal.~~
  - ~~d.c.~~ If the ~~executive director~~commission determines ~~that~~ the matter falls within the jurisdiction of another agency, the executive director may refer the complainant to the relevant agency.
  - ~~e.d.~~ If the matter contains allegations of criminal conduct, the matter ~~shall~~may be coordinated with the appropriate law enforcement agency with jurisdiction over the offense. If the law enforcement agency agrees to accept a referral for possible criminal prosecution the commission will take no further action on the complaint until the criminal referral is resolved. If the law enforcement agency declines a referral for prosecution the commission will proceed with the complaint process. If the law enforcement agency takes no action on the referral for prosecution within sixty days, the commission may resume its review of the complaint. ~~Absent rejection by the referring entity, Unless the agency accepting the referral objects,~~ the executive director shall inform the complainant and respondent as soon as

reasonably possible ~~by registered mail~~ of a referral and the nature of the referred allegations.

~~f.e.~~ If the commission receives an anonymous complaint that contains documentary or real evidence of possible criminal conduct, the commission may refer the matter to the appropriate law enforcement agency as provided under North Dakota Century Code section 54-66-08, and may not otherwise divulge the documentary or real evidence.

~~8. The executive director shall report all summarily dismissed or referred complaints and report to the commission at the commission's next regular meeting. The commission shall consider any appeals of a summarily dismissed complaint and vote to either reopen or deny the appeal. The commission shall ratify or direct reopening the actions of the executive director.~~

**History:** Effective June 17, 2020; amended effective July 28, 2021; June 23, 2022; April 1, 2024; January 1, 2025.

**115-02-01-04. Notice to respondents and motion to dismiss.**

1. The respondent over whom the commission has jurisdiction shall be informed of any complaint ~~that~~ the commission receives. The executive director shall prepare the notice which shall include the identity of the complainant who submitted the complaint unless the complaint ~~or information~~ was submitted confidentially. The ethics commission may not release a confidential complainant's name and address to the ~~accused individual~~ respondent without the authorization of the complainant. If the confidential complainant is a witness to an alleged offense and does not authorize release of the complainant's name and address to the ~~accused individual~~ respondent, the statement of the complainant may not be used as evidence of a violation. The notice shall include the written complaint or written summary of the complaint. The respondent will receive a copy of all evidence and witness statements included with the complaint.
2. Notice to the respondent shall be provided as soon as reasonably possible but no later than thirty days after the complaint was received by the commission.
3. The respondent may respond to the complaint within thirty days of notice of the complaint or after the commission requests a response. In the executive director's discretion, the respondent may be granted an extension of time to provide any written response to the complaint or summary of the complaint.
4. If a complaint is summarily dismissed prior to the executive director notifying the respondent of a complaint, notice to the respondent shall include notice of the summary dismissal.
- 4.5. At any time, the respondent may request by motion the commission dismiss the complaint asserting the complaint:
  - a. Does not fall within the commission's jurisdiction;
  - b. Is insufficient to identify a possible violation; or
  - c. Fails to comply with the rules adopted by the commission.

**History:** Effective June 17, 2020; amended effective July 28, 2021; April 1, 2024; January 1, 2025.

**115-02-01-05. Informal resolution ~~of complaint~~ or settlement with the commission.**

1. Prior to any investigation of a complaint, the executive director shall afford the complainant and respondent the opportunity to informally negotiate or mediate a resolution of the complaint. The negotiation or mediation shall be conducted by the executive director in an informal manner with the goal of resolving the matter ~~without further investigation~~.

2. The commission may engage outside counsel or mediator to conduct the informal negotiation or mediation.
3. If the complaint is resolved through informal negotiation or mediation, the executive director shall document the resolution and report the resolution to the commission at a special or regular meeting during executive session.
4. The complainant and respondent may be accompanied by legal counsel in any informal negotiation or mediation.
5. Complaints resolved through informal negotiation or mediation shall not be further investigated and the complaint shall be deemed closed.
6. If the ~~complaint is not resolved through informal negotiation or mediation~~ informal resolution process is unsuccessful, the commission may work with the respondent to settle and close the complaint matter at any time pursuant to settlement guidelines adopted by the commission or the complaint ~~shall~~ may be investigated as provided in section 115-02-01-06.

**History:** Effective June 17, 2020; amended effective July 28, 2021.

**115-02-01-06. Complaint investigation.**

The executive director shall conduct the investigation of any complaint which is not summarily dismissed, ~~or resolved through informal negotiation or mediation~~, informally resolved, or settled with the commission. With the approval of the commission, the executive director may refer the matter to an outside attorney or investigator in lieu of the executive director completing the investigation. The executive director shall determine the manner in which the complaint will be investigated. Investigations conducted by an outside attorney or investigator shall be supervised and under the direction of the executive director. The investigation may include the following:

1. Review of any documents provided to the commission by the complainant or respondent;
2. Review of publicly available documents or documents maintained by the state;
3. Request for documents from individuals or entities with knowledge or ~~relevant~~ information;
4. Written interrogatories submitted to individuals or entities with knowledge or ~~relevant~~ information;
5. Interviews with legislators, employees, or other appointed or elected officials;
6. Interviews with the complainant and individuals identified by the complainant as having knowledge or ~~relevant~~ information;
7. Interviews with the respondent; and
8. Any other information deemed relevant.

**History:** Effective June 17, 2020.

**115-02-01-07. Reports to the commission and complaint record ~~Investigation report.~~**

1. Upon completion of the investigation, the executive director ~~or outside investigator~~ shall prepare a preliminary report and recommendation to the commission to close the matter or issue an alleged violation. The commission may issue an alleged violation, require additional investigation, or close the complaint matter.
2. If the commission issues an alleged violation, the executive director shall prepare a final report and recommendation. The final report and recommendation shall include written findings from the investigation and the executive director's recommendation to the

commission with respect to commission action on the complaint.

3. The investigation file findings shall including e relevant documents, interview transcripts or summaries recordings, respondent written response to the final report and recommendation, and other relevant information evidence obtained during the investigation shall become the record for the complaint. ~~necessary for the commission to be fully informed on the matter. The executive director shall prepare the investigation report for presentation to the commission. The report shall include the written findings of any outside counsel or investigator who conducted the investigation. The executive director shall include the executive director's recommendation to the commission with respect to commission action on the complaint.~~

**History:** Effective June 17, 2020.

#### **115-02-01-08. Commission review and action on complaint.**

1. The executive director's investigation final report and recommendation and the record for the complaint shall be provided to the respondent at least ten days prior to any special or regular commission meeting at which the final report and recommendation will be considered by the commission in executive session. The respondent may submit to the commission a written response to the executive director's final report and recommendation no later than five days prior to the special or regular commission meeting in which the commission will take action on the matter complaint. Any written response must be submitted to the executive director at the commission's office and not directly to the commissioners. The executive director will provide copies to the commission and the written response shall be included in the record for the complaint. ~~The commission chair may grant an extension of any time periods required by these rules.~~
2. ~~In lieu of a written response to the executive director's investigation report and recommendation, The~~ respondent may provide an in-person response at the special or regular meeting of the commission at which the commission will take action on the complaint. At the commission special or regular meeting, at least a quorum of commissioners must be present.
3. During the special or regular meeting, the commission will conduct a hearing on the complaint in executive session. The commission's chair or the chair's designee shall act as the hearing officer. The commissioner chairing the meeting hearing officer shall determine the order of presentations and the time allotted to the respondent for presentations by the executive director and the respondent. The commissioner chairing the meeting hearing officer shall also determine any other all procedural matters necessary for an orderly conduct of the commission meeting hearing. The respondent shall meet separately with the commission in closed executive sessions to present their in-person responses to the executive director's report and recommendation. The hearing officer may administer an oath or affirmation to any witness providing testimony at the hearing.
4. The hearing on the complaint shall be audio or video recorded or recorded by a certified court reporter. At the discretion of the hearing officer, the hearing may take place via reliable electronic means.
- 2.5. The respondent may be accompanied by legal counsel when appearing before the commission to provide an in-person response to the executive director's final report and recommendation.
- 3.6. Upon the completion of any in-person response to the commission, the commission shall deliberate on the complaint outside the presence of the executive director, commission staff assisting the executive director with the investigation, the respondent, and the respondent's attorney in executive session. The commission shall determine whether a violation of article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or another law or rule regarding transparency, corruption, elections, or lobbying occurred. The commission shall determine what penalty, if any, authorized under North Dakota law will be



imposed upon the respondent. In lieu of a penalty authorized under North Dakota law, the commission may refer the matter to another agency with enforcement authority over the violation.

4.7. Following the commission's deliberation, the commission shall issue an order with its decision on the complaint. The respondent shall be ~~informed~~ provided a copy of the commission's ~~decision~~ order. The complainant and others shall be provided information regarding the commission's decision only as permitted under applicable North Dakota law.

**History:** Effective June 17, 2020; amended effective January 1, 2025.

#### **115-02-01-09. Appeal to district court.**

The respondent may appeal a finding of the commission to the district court of the county where the respondent resides within thirty days after notice of the finding.

**History:** Effective June 17, 2020; amended effective January 1, 2025.

#### **115-02-01-10. Rules of evidence and procedure.**

The commission and its investigators shall not be bound by the rules of evidence or procedure under North Dakota or federal law. Any oral or documentary evidence which is relevant to the ~~case~~ complaint before the commission may be admitted and considered. Effect shall be given to the rules of privilege recognized by North Dakota and federal law.

**History:** Effective June 17, 2020.

#### **115-02-01-11. Computing time.**

1. If 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. As used in this article:
  - a. "Last day" means, unless a different time is set by statute or the commission's rules, the last day until midnight in the central time zone.
  - b. "Legal holiday" means a day set aside as a holiday under North Dakota Century Code sections 1-03-01, 1-03-02, and 1-03-02.1.
  - c. "Next day" means the day determined by continuing to count forward if the period is measured after an event and backward if measured before an event.

**History:** Effective January 1, 2025.

#### **115-02-01-12. Complaint management time standards.**

1. A goal of the commission is to avoid unnecessary delay and promote efficient and timely disposition of complaints. Deviation from these standards does not cause the dismissal of any complaint. A complaint should not remain open in excess of the guidelines set forth without prompt review by the commission.
2. In recognition of the commission's limited resources, the increasing number of complaints, the

development of a case management system, and ongoing developments and data collection in the management of complaints, the commission shall consider amending these complaint management time standards on a biennial basis.

3. These standards run from the date of filing to the date the commission dismisses, closes, or issues an order on a complaint following a hearing. These standards do not include an appeal to district court by the respondent after the commission issues an order on a complaint following a hearing. The running of time is suspended during a criminal referral of a complaint, when the commission adopts a motion to pause review of a complaint for good cause, or when a civil action is filed regarding the complaint.

a. Time standards for the completion of a complaint from filing to resolution:

(1) 75% within 365 days

(2) 90% within 545 days

(3) 100% within 730 days

- b. When progress on a complaint does not meet the time standards, the commission shall discuss the progress and obstacles to resolution of the complaint in executive session at the commission's next regularly scheduled meeting.