

North Dakota Ethics Commission Regular Meeting

Minutes of April 24, 2024

MS Teams

1. **Call to Order:** The meeting was called to order by Chair Paul Richard at 9:00 a.m. The following members of the Ethics Commission were also present: Vice Chair Dave Anderson, Commissioners Ward Koeser and Ron Goodman, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Operations Administrator Alisha Maier. Commissioner Cynthia Lindquist was absent.
2. **Agenda Additions:** No additions were made.
3. **Approval of Minutes:** The Commission discussed regular meeting minutes from March 27, 2024.

Motion: Vice Chair Anderson moved to approve regular meeting minutes from March 27, 2024. Motion was seconded by Commissioner Goodman. Chair Richard called for a voice vote. The motion was approved by unanimous voice vote.

4. **Executive Director Update:**

- Operations Administrator Alisha Maier provided a budget update through the end of March 2024 for the 2023-25 biennium budget. She noted the following totals: current appropriation for the 2023-2025 biennium is \$1,155,297, expenditures in March were \$45,252, total expenditures for the current biennium have been \$393,915, leaving a remaining appropriation for the 2023-2025 biennium of \$761,382. OA Maier presented an estimated ending balance for the biennium on June 30, 2025, at \$15,726, explaining this number will fluctuate as we move through the biennium. EA Maier noted the office rent had now been paid twice for the fiscal year causing a notable increase in March expenditures.
- Executive Director Rebecca Binstock provided an update on the online forms project. The final edits of the Commission's 5 online forms have been completed. Once the forms are active on the website, individuals will be able to submit the form online. When a form is submitted, commission staff will receive

an email notification, and the information will be saved. The forms were presented to the Commission for review and approval. After review, the Commission requested to remove the statement "If a lobbyist is concerned about complying with North Dakota law, including the Ethics Commission's rules, the lobbyist may request an advisory opinion from the Ethics Commission" from the meeting notice form.

Motion: Vice Chair Anderson moved to approve the new online forms and formats including the update that was discussed during the meeting. Motion was seconded by Commissioner Goodman. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

- ED Binstock provided an update to the Commission on legislative internships. The application for UND Law Students to apply for legislative internships has opened. The Ethics Commission is listed as a placement option along with other state agencies. The law school has conducted internal interviews with all applicants. The Commission will likely know more regarding prospects next week.
- ED Binstock provided an update to the Commission on education and outreach initiatives.

ED Binstock presented the education and outreach events for April:

April 9, 2024: ED Binstock taught 4 classes on ethics in government and civil involvement at Dickinson High School in Dickinson, North Dakota.

April 22, 2024: ED Binstock presented to the Bismarck Lions, providing them an update on general information about the Commission and its work.

April 23, 2024: Dakota Dilemmas: A Practical Application of Conflict Rules Webinar was cohosted by ED Binstock and General Counsel, Logan Carpenter. This webinar walked participants through a step-by-step approach on how to manage conflicts of interest and appearance of bias.

ED Binstock advised the Commission's next webinar will focus on the complaint process and will be held in the near future.

ED Binstock advised that on March 28, 2024, the Ethics Commission received a letter from the Attorney General's office. The letter was received shortly before the Commission's Dakota Dilemmas: A Practical Application of Conflict Rules webinar was set to begin. The Attorney General's letter responded to a November 2023 letter from the Ethics Commission regarding education and providing

advice that doesn't move into legal advice. After receiving the Attorney General's letter response and in consultation with Chair Richard, ED Binstock postponed the Webinar event to allow commission staff time to review and evaluate the letter.

ED Binstock advised that staff has conducted a review of other constitutionally created ethics commissions to analyze how each of those commissions provide education and informal guidance. GC Carpenter created an informal guidance matrix that was presented to the Commission to highlight how other constitutional ethics commissions address education.

ED Binstock noted at COGEL she, Commissioner Lindquist, and GC Carpenter attended many sessions on how to educate the public. Based on those sessions and conversations, the Commission's educational initiative is in line with what other ethics commissions are doing. Commission staff believe they are following the best practices of other ethics commissions regarding training, education, and informal advice and will continue to do so.

Chair Richard advised there are some changes that need to be considered regarding the advisory opinion statute at the next legislation. Commission staff should also look at addressing informal advice in the statute. Chair Richard requested that commission staff bring a draft rule for the commissioners to review at the next meeting.

- ED Binstock provided an update to the Commission on the audit process. The Office of the Auditor is in the process of doing the Commissions biennial audit. The Commission will be updated once the audit is complete.
- ED Binstock advised the Commission on website updates. OA Maier has made noticeable improvements to the Commission's website. OA Maier gave a quick tour of the website and updates made for the Commission and any members of the public attending the meeting.
- ED Binstock advised the Commission on Ethics Commission apparel. OA Maier has coordinated with a company in Fargo that has a state contract to offer Ethics Commission logoed apparel to the Commission and its staff. That company will create an online store for commissioners and staff to purchase items. The Commission will not be purchasing items for staff or commissioners. Commissioners and staff can personally purchase clothing and have it shipped directly to them. When the online store is ready, OA Maier will email the link to commissioners.

5. **Discussion of Annual Records Retention, Destruction, and Archiving:** ED Binstock provided an update on annual records retention, destruction, and archiving. OA Maier has begun the process of reviewing the Commission's records, which have a June deadline for retention. This process has been more time consuming than in years past because the Commission has more documents in categories which need to be archived or destroyed. In previous years, many retention periods had yet to run as the Commission is relatively new. AO Maier will follow-up with each Commissioner during the next in-person meeting to assist Commissioners in reviewing records or emails they may have on their computer.

6. **Discussion of Potential Financial and Travel Requirements for Public Officials:** ED Binstock provided an update on potential financial and travel requirements for public officials. The meetings previously scheduled with Legislative Council and the Office of the Auditor to discuss the proposed rules had to be rescheduled and will be taking place in the next few weeks.

ED Binstock advised that commission staff has begun evaluating the logistics for implementing the proposed financial and travel disclosure rules. As required under the administrative practices act, the Commission is required to evaluate the fiscal impact to the Commission as well as the fiscal impact to those subject to the new rule. For this rule, there isn't going to be a fiscal impact to anybody who is subject to the new rule, but it will require online IT support and IT solutions. Commission staff still needs to meet with the Office of the Secretary of State to discuss coordination options. ED Binstock recommended including a line-item in the Commissions budget for potential rulemaking costs. In the interim, if funding is needed to implement a proposed rule, the Commission can request funds through the Emergency Commission.

7. **Discussion of Legislative Agenda for 2025 Session:** ED Binstock provided an update on legislative agenda. Commission staff would like to prioritize a list from the Commission to start conducting research and drafting legislation. The Commission has previously discussed items they wish to address during Legislative Session, including amending the advisory opinion statute, providing informal advice, and removing the term "accused individual" and substituting the term "respondent."

ED Binstock advised staff would like the Commission to consider legislation on the process to apply for courts. GC Carpenter advised the Commission has a statute regarding investigations where the Commission can require individuals to produce documents or testimony, but there is no clear process on how the Commission does this without subpoena power.

ED Binstock advised staff would also like the Commission to consider legislation on removing the Commission's rule-making process from the administrative practices act. Individuals are confused as the Ethics Commission is not an administrative agency but goes through the administrative rule-making process instead of a separately defined rule process. Chair Richard suggested instead to add information to the Commissions public education and frequently asked questions materials to provide guidance to individuals who have those questions or need clarification.

Chair Richard addressed concerns around respondents having a duty to maintain confidentiality of complaints filed against the respondents themselves. He recommended looking at that statute for changes to address this concern.

8. **Discussion of Meeting Dates for June 2024 – December 2024:** The Commission discussed potential dates for the remainder of 2024. The following dates were selected pending Commissioner Lindquist's availability:

June 26, 2024 (in person)

July 24, 2024

August 28, 2024

September 25, 2024

October 23, 2024

November 20, 2024

December 18, 2024

9. **Executive Session:** The Commission entered executive session during the general meeting at 11:05 a.m. to discuss Complaint Nos. 22-003, 22-004, 22-005, 22-006, 22-007, 22-008, 22-009, 22-010, 23-011, 23-013, 24-001, and 24-010. 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, Commissioners Ward Koeser and Ron Goodman, Executive Director Rebecca Binstock, General Counsel Logan Carpenter, and Operations Administrator Alisha Maier. Chair Richard also advised that Special Assistant Attorney General Pat Monson would be joining a portion of Executive Session.

SAAG Monson left Executive Session at 11:42 a.m. and was only in attendance during the discussion of complaint Nos. 22-003 – 22-010.

Commissioner Goodman left Executive Session at 11:49 a.m. and was not in attendance during the discussion of complaint No. 24-001.

Chair Richard left Executive Session at 11:51 a.m. and was not in attendance during the discussion of complaint No. 23-011.

Commissioner Goodman returned to Executive Session at 11:53 a.m.

Executive Session ended at 11:58 a.m. and all participants returned to the regular meeting.

During the Executive Session, the Commission discussed Complaint Nos. 22-003, 22-004, 22-005, 22-006, 22-007, 22-008, 22-009, 22-010, 23-011, 23-013, 24-001, and 24-010.

Motion: Commissioner Koeser moved to direct ED Binstock to summarily dismiss Complaint No. 24-010. Motion was seconded by Vice Chair Anderson. Chair Richard called for a roll call vote. The motion was approved by unanimous roll call vote.

10. **Adjourn:** Having no further business, the meeting was adjourned at 12:00 p.m. The next regular meeting is scheduled for May 22, 2024, at 9:00 a.m., livestreamed with MS Teams.

Approved on  May, 22, 2024

Rebecca Binstock, Executive Director, North Dakota Ethics Commission