

CHAPTER 115-02-01 ENFORCEMENT ACTION

Section

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115-02-01-01. Definitions.

1. "Alleged violation" means a formal written allegation issued by a majority vote of the commission, which alleges a regulated individual may have engaged in an ethical violation.
2. "Enforcement action" means an investigation and proceeding before the commission pursuant to section 3 of article XIV of the Constitution of North Dakota regarding an alleged violation by a regulated individual.
3. "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 by a regulated individual.
4. "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.
5. "Final commission order" means a written order issued by a majority vote of the commission, which finds an ethical violation and:
 - a. The time to file a petition for rehearing before the commission has expired;
 - b. The commission has denied a petition for rehearing; or
 - c. The commission has affirmed the finding of an ethical violation after rehearing.

6. "Initiating individual" means the person who provides relevant information to the commission.
7. "Regulated individual" means a lobbyist, public official, candidate for public office, political committee, or contributor.
8. "Relevant information" means an assertion provided to the commission that a regulated individual engaged in an ethical violation.
9. "Respondent" means a regulated individual who is the subject of an alleged violation.

115-02-01-02. Limitation Period.

Relevant information must be submitted to the commission within three years of when the facts involved occurred.

115-02-01-03. Submission of relevant information.

1. Any individual may submit relevant information to the North Dakota ethics commission. Relevant information may be submitted to the commission through any medium, i.e. the commission's confidential whistleblower hotline, mail, email, or oral communication.
2. To enable the commission to more effectively evaluate relevant information, the commission requests the initiating individual provide the following:
 - a. Name and contact information for the initiating individual;
 - b. Name and office of each regulated individual who is the subject of the relevant information;
 - c. Clearly recite the facts asserting an ethical violation under the commission's jurisdiction. Citations to the constitution, North Dakota law, or rules are not required but helpful. The initiating individual should be as specific as possible as it relates to dates, times, and individuals involved;
 - d. Include any and all documentation supporting the relevant information, if available.

115-02-01-04. Informal investigation.

Upon receipt of relevant information, the executive director shall review and informally investigate the relevant information. The informal investigation shall primarily focus on:

1. Review of any documents provided to the commission with the relevant information;
2. Interviews with the initiating individual and cooperating witnesses; and
3. Review of publicly available documents.

115-02-01-05. Issuance of alleged violation.

Upon completion of the informal investigation, the executive director shall prepare a report and recommendation to the commission to close the matter or to issue an alleged violation. The commission may issue an alleged violation, require additional informal investigation, or close the matter. The report and recommendation for an alleged violation shall include relevant facts from the informal investigation that when assumed to be true plausibly create an ethical violation by a regulated individual.

115-02-01-06. Formal investigation.

Upon issuance of an alleged violation, the executive director shall conduct a formal investigation. The executive director shall determine the manner in which the alleged violation will be formally investigated. The investigation may include the following:

1. All information received during the informal investigation;
2. Review of any documents provided to the commission with the relevant information or by the respondent;
3. Review of publicly available documents or documents maintained by the state;
4. Request for documents from individuals or entities with knowledge or information;
5. Written interrogatories submitted to individuals or entities with knowledge or information;
6. Interviews or depositions with witnesses, legislators, employees, the respondent, the initiating individual, or other appointed or elected officials; and
7. Any other information deemed relevant.

115-02-01-07. Investigation personnel.

The executive director may authorize commission staff to assist with an enforcement action. With the approval of the commission, the executive director may refer the formal investigation to an outside attorney or investigator. The executive director shall supervise an outside attorney or investigator.

115-02-01-08. Finding of reasonable cause.

Upon completion of the formal investigation, the executive director or outside investigator may prepare a request for a finding of reasonable cause. The respondent shall have thirty days to respond to the request in writing. The commission shall deliberate on the request for a finding of reasonable cause and issue an order finding that reasonable cause exists to proceed to a formal hearing, require additional formal investigation, or close the matter. Reasonable cause exists when the facts and circumstances are sufficient to warrant a person of reasonable caution in believing an ethical violation has been committed by a regulated individual. Knowledge of facts sufficient to establish an ethical violation is not necessary to establish reasonable cause.

115-02-01-09. Report and recommendation and notice of formal hearing.

Upon the issuance of a finding of reasonable cause, the commission shall set and notice a time and place for a formal hearing. The executive director or outside investigator shall prepare a report and recommendation for the commission's consideration at the formal hearing. The respondent shall have thirty days to respond to the report and recommendation in writing before the hearing.

115-02-01-10. Formal hearing.

At a formal hearing, the executive director and the respondent shall have an opportunity to be heard and present evidence. The hearing must be audio recorded. The commission, the commission's investigators, and the respondent 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 may be admitted and considered. Effect shall be given to the rules of privilege recognized by North Dakota and federal law.

115-02-01-11. 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 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. "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.

115-02-01-12. Commission order.

Upon the completion of the formal hearing, the commission shall deliberate and by a majority vote issue an order with its findings and, if permitted by law or rule, sanctions. The commission shall determine whether an ethical violation occurred by a preponderance of the evidence.

115-02-01-13. Petition for rehearing before the commission.

A respondent may file a petition for rehearing before the commission within ten days after notice of an order finding an ethical violation. The commission shall issue an order granting or denying the petition for rehearing within thirty days after the petition for rehearing is filed.

115-02-01-14. Appeal to district court.

A respondent may appeal a final commission order to the district court of the county where the respondent resides, the district court in Burleigh County, or a district court of the county in which a substantial part of the subject matter of the alleged violation occurred within thirty days after notice of the final commission order.

115-02-01-15. Settlement.

At any time during the enforcement action, the commission may settle and close the matter. A settlement may include the issuance of an advisory opinion pursuant to North Dakota Century Code section 54-66-04.2 or informal guidance pursuant to the commission’s rules.

115-02-01-16. Respondent representation.

During an enforcement action, a respondent is entitled to be represented by counsel at the respondent’s own cost.

115-02-01-17. Effect of rules on pending matters.

Upon the effective date of amendments to these rules, matters pending before the commission shall follow the procedures outlined in the amended rules. The commission shall notify a regulated individual in a matter pending before the commission of the amendments to these rules prior to issuing an alleged violation.