



North Dakota Legislative Council

Prepared by the Legislative Council staff

LC# 25.9362.01000

November 2024

LEGISLATIVE ETHICS - LAWS AND RULES

INTRODUCTION

There is a difference between ethical behavior and legal behavior. Everyone has the duty to obey the law. Ethical behavior is a higher standard of conduct than merely not violating the law. Ethical behavior is following standards of moral duty and virtue in accordance with the accepted principles of conduct that govern in certain circumstances. In the circumstances of service as a member of the North Dakota Legislative Assembly, many of the accepted principles have been set in law or rules. This memorandum reviews constitutional and statutory provisions that apply to legal and ethical behavior of legislators in particular. This memorandum also reviews legislative rules the Legislative Assembly has established as standards of ethical conduct that legislators are expected to meet.

NORTH DAKOTA LAWS RELATING TO LEGAL BEHAVIOR AND ETHICS OF LEGISLATORS

Constitutional Provisions

A number of provisions of the Constitution of North Dakota relate to behavior in legislative activities.

Section 6 of Article IV provides:

While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office that has been created by the legislative assembly. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office for which the legislative assembly has increased the compensation in an amount greater than the general rate of increase provided to full-time state employees.

Section 9 of Article IV provides:

If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measure or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly, shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person, member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Sections 10 and 12 of Article IV contain indirect references to ethical standards. Section 10 provides:

No member of the legislative assembly, expelled for **corruption**, and no person convicted of bribery, perjury or other infamous crime shall be eligible to the legislative assembly, or to any office in either branch thereof. (**emphasis supplied**)

Section 12 of Article IV refers to ethical standards and also provides for the legislative authority to expel members. Section 12 provides, in part:

Each house shall determine its rules of procedure, and may punish its members or other persons for **contempt or disorderly behavior in its presence**. With the concurrence of two-thirds of its elected members, either house may expel a member. (**emphasis supplied**)

In the November 2018 general election, voters approved a ballot measure creating Article XIV of the Constitution of North Dakota. Article XIV contains several provisions related to government ethics applicable to lobbyists, legislators, other elected and appointed state officials, members of the governor's cabinet, and employees of the legislative branch. Some provisions in the article require the Legislative Assembly to enact laws. Many of the provisions in the article existed in statute before Article XIV was created. Although the article generally became effective January 5, 2019, several of the provisions had delayed effective dates.

Article XIV requires public disclosure of the "ultimate and true source of funds" spent to influence statewide elections or elections for legislators, to lobby, or otherwise to influence state government action. The article requires each head of an executive agency, bureau, commission, or other administrative unit in state government to avoid the appearance of bias. The article also generally prohibits:

1. A gift from a lobbyist to a public official;
2. A public official from being a lobbyist while holding office and for 2 years after holding office;
3. A lobbyist from knowingly delivering a campaign contribution made by another person;
4. A public official or candidate for statewide or legislative office from using a campaign contribution for personal use; and
5. A foreign national not lawfully admitted for permanent residence in the United States, a foreign government, and a foreign corporation from making contributions or expenditures for statewide or legislative campaigns.

Article XIV creates a state ethics commission with broad authority to adopt rules related to transparency, corruption, elections, and lobbying, and to make the rules apply to lobbyists, public officials and candidates for public office. The five members of the commission are to be appointed by consensus agreement of the governor, majority leader of the Senate, and minority leader of the Senate. The members may not hold public office, or be lobbyists, candidates for public office, or political party officials. The commission also is required to maintain a confidential hotline to receive information from any individual. The Legislative Assembly is required to appropriate funds for the commission.

Statutory Provisions

Several provisions of the North Dakota Century Code govern general activities of individuals and public officials.

Tampering with Public Records

Section 12.1-11-05 provides it is a Class C felony if a public servant who has custody of a government record knowingly makes a false entry in or knowingly, without lawful authority, destroys the verity or availability of a government record. "Government record" is defined as any record, document, or thing belonging to, or received or kept by the government for information or record, or any other record, document, or thing required to be kept by law pursuant to a statute that expressly invokes the penalty in that section.

Bribery - Unlawful Influence

Section 12.1-12-01 makes it a Class C felony to knowingly offer, give, or agree to give to another, or solicit, accept, or agree to accept a thing of value as consideration for the recipient's official action as a public servant or the recipient's violation of a known legal duty as a public servant.

Section 12.1-12-02 provides any person who violates Section 9 of Article IV (giving vote or influence) or Section 10 of Article V (actions of governor) of the Constitution of North Dakota is guilty of a Class C felony.

Section 12.1-12-03 makes it a Class A misdemeanor for a public servant to solicit, accept, or agree to accept a thing of pecuniary value from a nongovernmental source as compensation for advice or other assistance in preparing or promoting a matter that is or is likely to be subject to the public servant's official action, or for omitting or delaying official action.

Section 12.1-12-04 makes it a Class A misdemeanor to solicit, accept, or agree to accept, or offer, give, or agree to give a thing of pecuniary value as consideration for approval or disapproval by a public servant or party official of a person for appointment, employment, advancement, or retention as a public servant or for designation or nomination as a candidate for elective office.

Section 12.1-12-05 makes it a Class A misdemeanor to knowingly offer, give, or agree to give, or solicit, accept, or agree to accept a thing of pecuniary value for exerting, or procuring another to exert, special influence upon a public servant with respect to the public servant's legal duty or official action as a public servant.

Confidential Information - Conflict of Interest

Section 12.1-13-01 makes it a Class C felony for a public servant, in knowing violation of a public duty, to disclose any confidential information acquired as a public servant.

Section 12.1-13-02 makes it a Class A misdemeanor if during employment as a public servant, or within 1 year thereafter, in contemplation of official action by that person as a public servant or in reliance on information to which that person had access only in that person's capacity as a public servant, a public servant acquires a pecuniary interest in any property or enterprise which may be affected by such information or official action, speculates on the basis of such information or official action, or aids another to do any of these activities. This section also makes it a Class A misdemeanor for a public servant to take official action likely to benefit the public servant as a result of one of those activities.

Section 12.1-13-03 makes it a Class A misdemeanor for a public servant who is authorized to sell or lease property or to enter a contract in the public servant's official capacity, to become interested individually in the sale or lease of that property or in that contract.

Interference with Elections

Section 12.1-14-01 makes it a Class A misdemeanor for a public official to deny or impede an individual in the exercise or enjoyment of any right, privilege, power, or immunity, if the public official knows it is illegal to do so.

Sections 12.1-14-02 and 12.1-14-03 make it a Class A misdemeanor to interfere with another because that person is or has been voting for any candidate or issue or to make or induce any false voting registration or give a thing of pecuniary value to another as consideration for the recipient's voting or withholding the recipient's vote for or against any candidate or issue.

Theft

Section 12.1-23-03 provides it is theft to intentionally obtain services, known to be available only for compensation, by deception, threat, false token, or other means to avoid payment for the services, or to permit another to use those services. Under Section 12.1-23-05, if a public servant violates Section 12.1-23-03 and the services exceed \$50 in value or is a government file or paper, the offense is a Class C felony.

Section 12.1-23-07 makes it a crime to use property entrusted to a public servant in a manner that the user "knows is not authorized and that [the user] knows to involve a risk of loss or detriment to the owner of the property or to the government." The criminal offense classification increases as the value of the misapplied property increases. Depending on the value of the property, the crime may constitute a misdemeanor or felony.

Campaign Contribution Statements

Title 16.1 governs elections. In addition to general requirements for election to office, several provisions apply to the conduct of legislators and public employees.

Section 16.1-08.1-02.3 requires any candidate committee, multicandidate committee, nonstatewide political party, or candidate for legislative office soliciting or accepting contributions to make and file with the secretary of state detailed statements of all contributions received from each individual or political committee, which exceed \$200 in the aggregate. Sections 16.1-08.1-02.1, 16.1-08.1-02.2, and 16.1-08.1-02.4 contain reporting requirements for contributions and expenditures for statewide political parties and other political committees. Section 16.1-08.1-06.2 authorizes the Secretary of State to adjust the \$200 reporting threshold for inflation.

Section 16.1-08.1-03.1 contains reporting requirements for individuals engaged in certain activities related to ballot measures.

Section 16.1-08.1-03.15 prohibits foreign nationals, entities, and governments from directly or indirectly making a contribution in connection with any campaign.

Section 16.1-08.1-04.1 prohibits using a campaign contribution for the personal benefit of any person, or using the contribution to make a loan, knowingly pay more than fair market value for goods or services purchased for a campaign, or pay a criminal fine or civil penalty.

A violation of any provision in Chapter 16.1-08.1 is a Class A misdemeanor and may trigger civil penalties.

Statements of Interests

Section 16.1-09-02 requires every candidate for elective office to file a statement of interests along with the certificate of nomination or endorsement or the petition of nomination. Section 16.1-09-03 lists the requirements for the contents of the statement. The candidate must identify the principal source of income, entities in which the candidate or candidate's spouse has a financial interest, entities with which the candidate and candidate's spouse are closely associated and which may be affected by legislative action, and the identity of business relationships held by the candidate or candidate's spouse during the preceding calendar year.

Corrupt Election Practices

Chapter 16.1-10 identifies corrupt practices.

Section 16.1-10-01 makes it a corrupt practice for any person to expend any money for election purposes contrary to the provisions of Chapter 16.1-10, engage in any of the practices prohibited by Section 12.1-14-02 or 12.1-14-03 (interference with elections, and safeguarding elections).

Section 16.1-10-02 prohibits any person from using any property belonging to or leased by, or any service that is provided to or carried on by, the state or a political subdivision for any political purpose.

"Property" is defined as including motor vehicles, telephones, typewriters, adding machines, postage or postage meters, money, and buildings. (Although this definition is somewhat dated, e.g., typewriters and adding machines, the definition does not exclude computers, cell phones, and smartphones.)

"Services" is defined as including the use of employees during regular working hours for which the employees have not taken annual or sick leave or other compensatory leave. (Although the definition specifically identifies one type of service, the definition does not exclude any type of service, e.g., Internet service, which also could be considered a type of property.)

"Political purpose" is defined as any activity undertaken in support of or in opposition to **a statewide initiated or referred measure, a constitutional amendment or measure, a political subdivision ballot measure**, or the election or nomination of a candidate for public office whether the activity is undertaken by a candidate, political committee, political party, or any other person, but does not include the activities undertaken in the performance of a duty of state or political subdivision office. **Factual information may be presented regarding a ballot question solely for the purpose of educating voters if the information does not advocate for or against or otherwise reflect a position on the adoption or rejection of the ballot question. (emphasis supplied)**

Political Activities - State Cars - Mileage Expense

Section 39-01-03 prohibits an officer or employee of the state from using or driving any motor vehicle belonging to the state or any agency of the state for private use or while engaged in any political activity.

Section 39-01-04 defines political activity as "any form of campaigning or electioneering, such as attending or arranging for political meetings; transporting candidates or workers engaged in campaigning or electioneering; distributing campaign literature, political guide cards, or placards; soliciting or canvassing for campaign funds; transporting electors to the polls on election day; and any other form of political work usually and ordinarily engaged in by state officers and employees during primary and general election campaigns."

Section 39-01-05 prohibits any state officer or state employee who uses or drives any privately owned motor vehicle while engaged in political activity to collect or receive from the state any expense money for the use or operation of the motor vehicle while engaged in the political activity. The section also prohibits any state officer or employee from receiving any traveling expense reimbursement from the state for any time spent engaging in any political activity.

Public Officers Generally - Political Activities

Title 44 contains provisions generally applicable to public officers or employees.

Section 44-08-19 prohibits a public employee from engaging in political activities (as defined in Section 39-01-04) while on duty or in uniform.

Nepotism

Section 44-04-09 prohibits a state official or employee from serving in a supervisory capacity over, or enter a personal service contract with, that individual's parent, spouse, son, daughter, stepchild, brother, sister, brother-in-law, sister-in-law, son-in-law, or daughter-in-law. "Supervisory capacity" means the authority to appoint, employ, hire, assign, transfer, promote, evaluate, reward, discipline, demote, or terminate.

Public Records Generally

Section 6 of Article XI of the Constitution of North Dakota provides that unless otherwise provided by law, "all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours."

Section 44-04-18 provides that unless otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours. Section 44-04-17.1 defines a record as "recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business." Section 44-04-17.1 further provides that a record includes preliminary drafts and working papers.

Legislative Records

Section 44-04-18.6 provides certain legislative records (records of or relating to the Legislative Council, Legislative Management, Legislative Assembly, House of Representatives, Senate, or a member of the Legislative Assembly), regardless of form or characteristic, are not subject to the open records laws. Specifically identified are:

- A record of a purely personal or private nature;
- A record that is Legislative Council work product or is Legislative Council-client communication;
- A record that reveals the content of private communications between a member of the Legislative Assembly and any person; and
- Except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved.

Specifically excluded from Section 44-04-18.6 are records distributed at a meeting subject to Section 44-04-19 and Section 5 of Article XI of the Constitution of North Dakota. Also, Section 44-04-18.26 provides any record of the Legislative Council which is related to an open records request made by the Legislative Council on behalf of a member of the Legislative Assembly is a public record.

Public Meetings

Section 5 of Article XI of the Constitution of North Dakota provides unless otherwise provided by law, "all meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be open to the public."

Section 44-04-19 provides except as otherwise specifically provided by law, all meetings of a public entity must be open to the public. Under Section 44-04-17.1, "meeting" is defined as including a formal or informal gathering of a quorum of the members of the governing body of a public entity regarding public business. "Public business" is defined as including all matters that relate or may foreseeably relate in any way to the performance of the public entity's governmental functions.

Note that the Attorney General has opined that the open meetings law was violated when a quorum of members of the Dickinson City Commission and of the South Heart City Council attended a presentation by Great Northern Power about its proposed coal gasification plant in Stark County (Opinion 2008-O-11, Dickinson City Commission; South Heart City Council). The opinion discusses what constitutes public business and points out that information shared by Great Northern Power at the presentation concerned personnel requirements and likely economic impact of the proposed plant on the area which in turn could have a significant effect on the infrastructure needs that could foreseeably be brought before the governing bodies and thus related to public business.

Public Improvement Contracts

Section 48-01.2-08 prohibits a governing body or any member, employee, or appointee of a governing body from being pecuniarily interested or concerned in a contract for a public improvement entered by the governing

body. A public improvement is defined as including any improvement for the good of the public and which is paid for with public funds.

Use of Great Seal

Section 54-02-01 makes it a Class B misdemeanor for any person to place the Great Seal of the state on any political badge, button insignia, pamphlet, folder, display card, sign, poster, billboard, or on any other public advertisement, or to otherwise use the Great Seal for any political purpose, as defined in Section 16.1-10-02. The Great Seal appears on legislative stationery. In a letter to Senator Bryce Streibel dated June 8, 1993, the Attorney General said it was her opinion that use of the Great Seal as a part of a letterhead or otherwise in a campaign constitutes a corrupt practice under Section 16.1-10-01.

Section 54-02-01 was amended in 1997 to allow use of the Great Seal on business calling cards of state officials and employees, regardless of whether the cards are paid for by the person or the state.

Legislative Lobbying

Chapter 54-05.1 governs legislative lobbying.

Section 54-05.1-02 defines lobbying as:

- (1) Attempts to secure the passage, amendment, or defeat of any legislation by the Legislative Assembly or the approval or veto of any legislation by the governor; or
- (2) Attempts to influence decisions made by the Legislative Management or by an interim committee of the Legislative Management.

Section 54-05.1-03(2) requires registered lobbyists to file annual expenditure reports by August 1 of each year (the annual registration period for lobbyists goes from July 1 through June 30). The report must include a statement as to each expenditure of **\$60 or more expended on any single occasion on any individual**, including a legislator's spouse or other family member, in carrying out the lobbyist's work. If the lobbyist does not make any such expenditures, the report must include a statement that no reportable expenditures were made during the reporting period. (**emphasis supplied**)

Section 54-05.1-05 requires a lobbyist, on request of a legislator, to supply the legislator with the estimated cost of a non-information-bearing gift provided to the legislator or of a function sponsored by the lobbyist and allow the legislator to accept the gift or attend the function and pay the legislator's own share of the expense.

Section 54-66-02 requires lobbyists to file statements disclosing the ultimate and true source of funds expended to lobby and other individuals to file statements disclosing the ultimate and true source of funds expended to influence state government action as defined by Section 54-66-01.

Section 54-66-03 prohibits gifts from lobbyists to public officials, including members of the Legislative Assembly and provides mandatory financial penalties for violations of the section. The Ethics Commission adopted rules exempting certain items from the gift prohibition.

Section 54-66-13 states it is a Class A misdemeanor to knowingly engage in lobbying while an elected public official or for 2 years after holding office. The section also requires the Ethics Commission to assess a civil penalty up to \$1,000 for a violation.

State Officials - Restrictions

Section 54-06-12 makes it a Class C felony for any state official to publish willfully any false statement in regard to any state department, institution, or industry which tends to deceive the public and create a distrust of any state official or employee in charge of such department, institution, or industry, or which tends to obstruct, hinder, and delay the various departments, institutions, and industries of the state.

Section 54-06-26 permits state officials and employees to use state telephones for local calls for essential personal purposes to the extent that use does not interfere with official functions. The section also allows limited long-distance telephone calls when an official or employee is away on state business.

Chapters 54-52 and 54-52.1 relate to public employee retirement and health insurance and contain several provisions making records on those subjects confidential. Some of those records are also confidential under the federal Health Insurance Portability and Accountability Act of 1996.

Section 54-35-02.8 provides the Legislative Management is to appoint an ethics committee each biennium to consider or prepare a code of ethics. The Legislative Management has named the Legislative Procedure and Arrangements Committee as the ethics committee. In 1997, that committee recommended the adoption of Joint Rules 1001 through 1004, which establish a legislative ethics policy.

Ethics Commission

Sections 54-66-04 through 54-66-12 govern the Ethics Commission's procedures, including the handling of complaints. Members of the Legislative Assembly and employees of the legislative branch are subject to the jurisdiction of the Ethics Commission.

Conflicts of interest

Section 54-66-18 requires each Legislative Assembly to adopt conflict of interest rules and provides if the rules are at least as restrictive as the conflict of interest rules adopted by the Ethics Commission, the disclosure process portion of the commission's rules do not apply to members of the Legislative Assembly.

LEGISLATIVE RULES AFFECTING ETHICS

Take notice that proposed rules for adoption related to conflicts of interest will be considered during the 2024 Legislative Organizational Session. Please remain apprised of any rule changes to ensure compliance with legislative rules affecting ethics.

House and Senate Rules 321 provide that any member who has a personal or private interest in any measure or bill must disclose the fact to the House or Senate and may not vote thereon without the consent of the House or Senate. The rules define "personal or private interest" as an interest that affects the member directly, individually, uniquely, and substantially.

House and Senate Rules 322 provide that when a member asks to be excused, or declines to vote, the member is required to state the member's reasons. Upon motion, the question must be put to the House or Senate "Shall the member, for the reasons stated, be permitted to vote?" The question is to be decided without debate, and the proceedings must occur before the taking of the vote.

Joint Rule 901 declares that the Legislative Assembly is committed to providing a healthy and appropriate work environment and that sexual harassment in any manner will not be tolerated. The *North Dakota Legislative Assembly Policy Against Workplace Harassment* is incorporated into the rule by reference.

Joint Rules 1001 through 1004, relating to ethics, provide as follows:

1001. Legislative ethics policy.

1. The Legislative Assembly always seeks a high reputation for progressive accomplishment where its members are public officers of integrity and dedication, maintaining high standards of ethical conduct.
2. The public interest is best served by attracting and retaining in the Legislative Assembly citizens of high caliber and attainment. The public interest will suffer if unduly stringent requirements deprive government of the services of well-qualified citizens.
3. Membership in the Legislative Assembly is not a full-time occupation and is not compensated on that basis. Continued membership is on an elected-term basis, requiring each member to recognize and contemplate that election will not provide any career tenure. These characteristics ensure that each member is rooted to a community and that legislation reflects the needs and values of citizens.
4. A member such as a teacher, administrator, state employee, farmer, labor leader, lawyer, independent business person, or any salaried employee must look to a source of income from other than legislative compensation for sustenance and support; moreover, every member must plan for return to that individual's regular employment, business, or profession.
5. The increasing complexity of public policy at all levels, with intervention into private affairs, makes conflicts of interest almost inevitable for every part-time public official, and particularly for a member who must vote on measures affecting the life of every citizen or resident of the state. Consequently, the adoption of standards of ethics does not impugn a member's integrity or dedication; rather, it recognizes the increasing complexity of government and private life and provides members with helpful advice and guidance when confronted with difficult problems in that gray area involving action that is neither clearly right nor clearly wrong.
6. Ethical conduct is expected of all who participate in the legislative process, including lobbyists, legislative staff, government employees, interest groups, the media, and others. All participants in the

legislative process should recognize the importance of their role to support each member's ethical duty to make independent judgments.

- 7. If public confidence in the Legislative Assembly is to be maintained and enhanced, it is not enough that members avoid acts of misconduct. They also must avoid acts that may create an appearance of misconduct.**

1002. Recognition of ethical standards. The resolution of ethical problems must rest largely in the individual conscience. The Legislative Assembly may and should, however, define ethical standards, as most professions have done, to chart the areas of real or apparent impropriety. Unless otherwise provided by law, no criminal penalty applies to a member who engages in conduct that is inconsistent with this section. However, in striving to maintain ethical standards, each member should recognize the importance of:

1. Complying with all other rules relating to ethics, including Joint Rule 901 regarding sexual harassment and Senate and House Rules 321 regarding disclosure of personal or private interest when voting.
2. Acknowledging that the public trust requires each member to make a consistent effort to be well-informed about legislative issues and legislative proposals and to resist influences that may bias the member's independent judgment.
3. Acknowledging that accountability requires members to maintain communication with constituents, to remain open to constructive comment, and to exercise leadership in helping constituents understand legislative issues.
4. Acknowledging that institutional responsibility requires members to remain committed to the integrity and maintenance of the legislative branch.
5. Not using or attempting to use the member's influence in any matter involving a substantial conflict between the member's personal interest and duties in the public interest.
6. Not using the member's official position to obtain financial gain for the member, the member's family, or a business associate or to secure privileges or exemptions in direct contravention of the public interest.

1003. Recognition of constitutional and statutory provisions. Members should apprise themselves of constitutional provisions and statutes that prohibit conduct for which criminal penalties may apply, including Article IV, Section 9, of the Constitution of North Dakota, which prohibits vote trading; Article IV, Section 10, of the Constitution of North Dakota, which provides for expulsion for corruption, bribery, perjury, or other infamous crimes; Article IV, Section 12, of the Constitution of North Dakota, which prohibits contempt or disorderly behavior; North Dakota Century Code Chapter 12.1-12, which prohibits bribery and unlawful influence of public servants; North Dakota Century Code Section 12.1-13-01, which prohibits disclosure of confidential information; North Dakota Century Code Section 12.1-13-02, which prohibits acquisition of a pecuniary interest in property or an enterprise in contemplation of official action or in reliance on information accessed as a public servant; North Dakota Century Code Section 12.1-13-03, which prohibits a public servant from becoming interested individually in the sale or lease of property or a contract for which the public servant is authorized to transact; North Dakota Century Code Sections 12.1-14-02 and 12.1-14-03, which prohibit interference with voting; North Dakota Century Code Sections 12.1-23-03 and 12.1-23-05, which prohibit theft to obtain services while a public servant; North Dakota Century Code Section 12.1-23-07, which relates to the use of property entrusted to a public servant; North Dakota Century Code Chapter 16.1-08.1, which relates to campaign contributions and campaign contributing statements; North Dakota Century Code Chapter 16.1-09, which relates to statements of interest; North Dakota Century Code Chapter 16.1-10, which relates to corrupt practices; North Dakota Century Code Sections 39-01-03 and 39-01-05, which prohibit the private or political use of state motor vehicles; North Dakota Century Code Section 44-08-19, which relates to political activities by public employees; North Dakota Century Code Section 48-01.2-08, which prohibits the interest in public contracts by a member of a governing board; North Dakota Century Code Section 54-02-01, which governs the use of the Great Seal; North Dakota Century Code Chapter 54-05.1, which relates to legislative lobbying; and North Dakota Century Code Section 54-06-12, which prohibits false statements regarding state departments, institutions, or industries.

1004. Legislative ethics classes - Publication of information relating to ethics. During each organizational session and at other times as deemed appropriate, the Legislative Council shall conduct classes on legislative ethics and laws governing the activities and conduct of public officials, including criminal laws, election practices, and conflicts of interest. Before each regular legislative session, the Legislative Council shall distribute a document to all members which includes constitutional provisions, statutes, legislative rules, and other pertinent information regarding ethical conduct in the legislative process.

NORTH DAKOTA ETHICS COMMISSION RULES

The North Dakota Ethics Commission has promulgated administrative rules relating to gifts between lobbyists and public officials, complaint rules, quasi-judicial proceedings rules, and conflict of interest rules.

Complaint Rules

Article 115-02 of the North Dakota Administrative Code sets forth the rules relating to complaints to the North Dakota Ethics Commission.

115-02-01-01. Definitions.

1. "Complainant" means a North Dakota resident who, in writing or by other electronic means, submits a complaint to the commission.
2. "Confidential complaint" means a complaint by a North Dakota resident submitted through the confidential hotline or other methods designated by the commission as confidential.
3. "Anonymous or nonresident complaint" means a person who does not provide their name or contact information or a nonresident will not be considered a complainant for any purpose.
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. "Respondent" means the individual or entity who is the subject of the complaint.

115-02-01-02. Jurisdiction.

1. The commission has authority to investigate complaints against a lobbyist, public officials, candidate for statewide public office, candidate for state legislative assembly, 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. A complaint must be filed within three years of the date of the alleged violation. Violations occurring prior to January 5, 2019, the effective date of article XIV of the Constitution of North Dakota, will not be considered.

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 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 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.
5. 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.

6. The executive director shall conduct an initial review of any complaint or information received by the commission.
 - a. If the executive director 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 may summarily dismiss the complaint if the alleged violation:
 - (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 twenty calendar days of the notice by the executive director.
 - d. If the executive director determines that the matter falls within the jurisdiction of another agency, the executive director may refer the complainant to the relevant agency.
 - e. If the matter contains allegations of criminal conduct, the matter shall 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 resolved. If the law enforcement agency declines a referral for prosecution the commission will proceed with the complaint process. Absent rejection by the referring entity, 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. 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.
7. 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.

115-02-01-04. Notice to respondents.

1. The respondent shall be informed of any complaint that the commission receives that is not summarily dismissed. 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 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, 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 to include names.
2. Notice to the respondent shall be provided as soon as reasonably possible but no later than twenty calendar days after the complaint or relevant information was received by the commission.
3. The respondent may respond to the complaint within twenty calendar days of receipt of the complaint or summary of the complaint. 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.

115-02-01-05. Informal resolution of complaint.

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, the complaint shall be investigated as provided in section 115-02-01-06.

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. 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.

115-02-01-07. Investigation report.

Upon completion of the investigation, the executive director or outside investigator shall prepare written findings. The findings shall include relevant documents, interview transcripts or summaries, respondent written response, and other relevant information 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.

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

1. The executive director's investigation report shall be provided to the respondent at least ten calendar days prior to any special or regular commission meeting at which the 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 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. 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. 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, 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 meeting, at least a quorum of commissioners must be present. The commissioner chairing the meeting shall determine the order of presentations and the time allotted to the respondent. The commissioner chairing the meeting shall also determine any other procedural matters necessary for an orderly conduct of the commission meeting. 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 respondent may be accompanied by legal counsel when appearing before the commission to provide an in-person response to the executive director's report and recommendation.
3. Upon the completion of any in-person response to the commission, the commission shall deliberate on the complaint 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. The respondent shall be informed of the commission's decision. The complainant and others shall be provided information regarding the commission's decision only as permitted under applicable North Dakota law.

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.

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 before the commission may be admitted and considered. Effect shall be given to the rules of privilege recognized by North Dakota and federal law.

Gift Rules

Article 115-03 sets forth the rules pertaining to gifts between lobbyists and public officials.

115-03-01-01. Definitions.

1. "Immediate family" means a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild.
2. "Gift" means any item, service, or thing of value not given in exchange for fair market consideration, including gifts of travel or recreation.
3. "Informal social and educational event" is any meeting, session, or interaction occurring within the state between a public official and a state resident, including but not limited to a registered lobbyist who is a state resident, for the purpose of informing or educating the public official on a matter of interest or concern.
4. **"Lobby" means:**
 - a. **Attempts to secure the passage, amendment, or defeat of any legislation by the legislative assembly or the approval or veto of any legislation by the governor of the state.**
 - b. **Attempts to influence decisions made by the legislative management or by an interim committee of the legislative management.**
 - c. **Attempts to secure passage, amendment, or defeat of any administrative rule or regulation by any department, agency, or body of the state's executive branch.**
 - d. **Attempts to otherwise influence public official action or decision.**
5. "Lobbyist" means a person who engages in activity that falls within the definition of the term "lobby" as defined in this rule but does not include:
 - a. A legislator.
 - b. A private citizen appearing on the citizen's own behalf.
 - c. An employee, officer, board member, volunteer, or agent of the state or its political subdivisions whether elected or appointed and, whether or not compensated, who is acting in that person's official capacity.
 - d. Invited by the chairman of the legislative management, an interim committee of the legislative management, standing committee of the legislative assembly, or an official of any department, agency, or body of the state's executive branch to appear before the legislative management, interim committee, or standing committee for the purpose of providing information.
 - e. A person who appears before a legislative committee for the sole purpose of presenting testimony on behalf of a trade or professional organization or a business or industry if the person is introduced to the committee by the lobbyist for the trade or professional organization or the business or industry.
 - f. These rules are not intended to expand the definition of who should be required to be registered as a lobbyist under North Dakota century code section 54-05.1-03.
6. "Person" means an individual, partnership, entity, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
7. "Private social and educational event" is any social and educational event that is held within the state and attendance is by invitation to state residents and others who are members, employees, or affiliated with a sponsoring public or private organization, entity, or association. The event must include an educational component and not be limited to a social event. The lobbyist required to register under North Dakota century code chapter 54-05.1, and public officials may not be the only state residents in attendance.
8. "Public official" means any elected or appointed official of the state's executive or legislative branch, including members of the ethics commission, members of the governor's cabinet, and employees of the legislative branch.
9. "Public social and educational event" is any social and educational event that is held within the state and attendance is open to any state residents and others. The event must include an educational component and not be limited to a social event. The lobbyist required to register under North Dakota century code chapter 54-05.1, and public officials may not be the only state residents in attendance.

115-03-01-02. Gift prohibitions and penalties.

1. A lobbyist may not knowingly give, offer, solicit, initiate, or facilitate a gift to a public official in conjunction with any effort by the lobbyist to lobby the public official. **A public official may not knowingly accept a gift from a lobbyist offered in conjunction with the lobbyist efforts to lobby the public official.**
2. If a prohibited gift is received by a public official the gift will not be considered a violation if:
 - a. The gift is not used and is returned within ten days after receipt of the gift or ten days after learning that the gift is prohibited; or
 - b. The public official pays market value for the gift within ten days after receipt of the gift or ten days after learning that the gift is prohibited.
3. The commission shall assess a civil penalty upon any individual who violates this section. If the gift has a value of five hundred dollars or more, the civil penalty may be up to two times the value of the gift. If the gift has a value of less than five hundred dollars, the civil penalty may be up to two times the value of the gift and may be up to one thousand dollars.

115-03-01-03. Exceptions to gift prohibitions.

This rule does not preclude or apply to the following:

1. A gift by a lobbyist who is a member of the public official's immediate family.
2. Any item given where the public official is paying fair market value for the item.
3. Purely informational material.
4. A campaign contribution that is given in accordance with all applicable state laws, rules, and regulations governing campaign contributions.
5. Reimbursement or payment for transportation, lodging costs, and meal costs not to exceed rates as authorized under North Dakota century code section 44-08-04 and office of management and budget Fiscal Policy #505 to facilitate attendance to a public or private educational and social event within the state, if the public official meaningfully participates in the event as a speaker or panel participant, presenter, or ceremonial event appropriate to the position, or if attendance is appropriate to the performance of official duties.
6. Gifts or other things of value shared as a cultural or social norm as part of a public or private social and educational event.
7. Food and beverage served for immediate consumption at any private or public social and educational event.
8. Food or beverage with a value of ten dollars or less, excluding gratuity, purchased for a public official in conjunction with an informal social and educational event. The purchased food and beverage must be consumed during the event. A state resident must be present but is not required to be the purchaser of the food or beverage.

115-03-01-04. Public or private event notice.

1. Prior to a public or private social and educational event, the sponsor shall file notice with the ethics commission providing details regarding the planned event. Notice does not constitute approval of the event by the ethics commission. If the sponsor is concerned with compliance with North Dakota law and these rules, the sponsor may request an advisory opinion from the ethics commission.
2. No specific format of notice is required; however, it should include the event date, place, sponsor, educational purpose, estimated attendance, and estimated cost per attendee.

Conflict of Interest

Article 115-04 sets forth the rules relating to conflict of interest.

115-04-01-01. Definitions.

1. "Disqualifying conflict of interest" means one of the following:
 - a. A potential conflict of interest disclosed pursuant to this rule which the public official has determined requires recusal and abstention from further action in the matter; or
 - b. A potential conflict of interest disclosed pursuant to this rule which the neutral reviewer has determined requires the public official to recuse and abstain from further action in the matter.
2. "Potential conflict of interest" means a public official as part of the public official's duties must make a decision or take action in a matter in which the public official has:
 - a. Received a gift from one of the parties;
 - b. A significant financial interest in one of the parties or in the outcome of the proceeding; or
 - c. A relationship in private capacity with one of the parties.
3. "Gift" means a gift not otherwise permitted under Article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or North Dakota Administrative Code chapter 115-03-01.

4. "Immediate family" means a public official's parent, sibling, spouse, grandparent, grandchild, stepchild or child by blood or adoption.
5. "Neutral reviewer" means the individual or committee designated by an agency, legislative body, board, commission, or committee to receive disclosures of potential conflicts of interest and determine whether the potential conflict of interest is a disqualifying conflict of interest. In the absence of a rule or policy designating a neutral reviewer, the following shall apply:
 - a. If a public official with a potential conflict of interest is a member of a legislative body, board, commission or committee, the remaining individuals who are members of the legislative body, board, commission or committee shall be considered as the neutral reviewer;
 - b. If a public official with a potential conflict of interest is an employee of the legislature, the public official's supervisor may be considered as the neutral reviewer;
 - c. If a public official with a potential conflict of interest is a member of the governor's cabinet, the governor's designated ethics officer shall be considered as the neutral reviewer;
 - d. If the public official with a potential conflict of interest is an appointed public official, the appointing official shall be considered as the neutral reviewer; or
 - e. If none of the above apply, the public official shall make the determination but must report the disclosure and decision in the manner set forth in section 115-04-01-04 within seven calendar days.
6. "Public official" means any elected or appointed official of the North Dakota executive or legislative branches, including members of the ethics commission, members of the governor's cabinet and employees of the legislative branch.
7. "Relationship in a private capacity" means a past or present commitment, interest or relationship of the public official in a matter involving the public official's immediate family, individual's residing in the public official's household, the public official's employer, or employer of the public official's immediate family, or individuals with whom the public official has a substantial and continuous business relationship.
8. "Significant financial interest" means a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.

115-04-01-02. Disclosure of potential conflict of interests.

1. Subject to the requirements of section 115-04-01-05, this section shall only apply if an agency, board, or commission does not have a current conflicts of interest statute or rule. In any assessment of a possible conflict of interest the matter will be reported to the ethics commission in accordance with section 115-04-01-04.
2. When a matter comes before a public official and the public official has a known potential conflict of interest, the public official must disclose the potential conflict of Interest.
3. The disclosure of potential conflict of interest must be made prior to the public official taking any action or making any decision in the matter and must provide sufficient information concerning the matter and the public official's potential conflict of interest. Disclosure shall be on the written form approved by the ethics commission as set forth in section 115-04-01-04.
4. In emergency or other exigent circumstances where time is of the essence, and a public official is not permitted or is otherwise unable to abstain from action in connection with the matter, the public official must disclose the potential conflict of interest and the action with the neutral reviewer in the manner requested by the neutral reviewer. The disclosure must occur within seven calendar days of the public official's action in the matter.
5. Upon the completion of the required disclosure of a potential conflict of interest, the public official may voluntarily recuse himself and abstain from further action in the matter.

115-04-01-03. Neutral reviewer assessment of potential conflict disclosures, decision, and action.

1. Subject to section 115-04-01-05, this section shall only apply if an agency, board, or commission does not have a current conflict of interest statute or rule. In any assessment of a possible conflict of interest the matter will be reported to the ethics commission in accordance with section 115-04-01-04.
2. If a public official elects not to recuse themselves from the matter, the public official may consult with or defer to the neutral reviewer. The neutral reviewer, if utilized, shall evaluate the disclosure, may request further information from the public official regarding the disclosure, and shall determine if the disclosed potential conflict of interest constitutes a disqualifying conflict of interest.
3. Upon completion of the review of the potential conflict of interest, the neutral reviewer should communicate to the public official one of the following:

- a. The potential conflict of Interest does not constitute a disqualifying conflict of interest, and the public official may participate in the matter; or
- b. The potential conflict of interest does constitute a disqualifying conflict of interest, and the public official shall recuse himself and abstain from participating in the matter.
4. A violation of article XIV of the Constitution of North Dakota or these rules will not be found if:
 - a. The public official consults with and adheres to the neutral reviewer's suggested course of action;
 - b. The public official acts in good faith; and
 - c. The disclosed material facts surrounding the potential conflict of interest are substantially the same as the facts presented in the complaint.
5. If applicable the neutral reviewer shall comply with the requirements of North Dakota Century Code chapter 44-04 in its consideration and review of the potential conflict of interest. During any discussion of a potential conflict of interest, upon request by the neutral reviewer, the public official may provide additional information regarding the potential conflict of interest and the matter in question. Where North Dakota Century Code chapter 44-04 applies, the public official may not be asked to leave the discussion of the potential conflict of interest; however, the disclosing public official may voluntarily leave the meeting at which the discussion occurs.
6. If the neutral reviewer is a group of individuals in which the public official is a member, the public official may not vote on the issue of whether a potential conflict of interest constitutes a disqualifying conflict of interest. The public official may not be counted for purposes of determining whether a quorum is present. Any quorum requirement established under statute or rule shall be reduced as though the public official were not a member of the group of individuals that constitutes the neutral reviewer.
7. The following standards shall guide the review and decision of either a public official or the neutral reviewer with respect to any public official's potential conflict of interest:
 - a. Appropriate weight and proper deference must be given to the requirement that a public official perform the duties of elected or appointed office, including the duty to vote or otherwise act upon a matter, provided the public official has properly disclosed the potential conflict of interest as required by this rule.
 - b. A decision that requires a public official to recuse or abstain from further action or decision in a matter should only occur in cases where the independence of judgment of a reasonable person in the public official's situation would be materially affected by the disclosed potential conflict of interest.
 - c. The review of a potential conflict of Interest and any decision that would require a public official to recuse themselves or abstain from further involvement in a matter shall consider any applicable North Dakota law which precludes the public official from recusal or abstention in the matter.
 - d. It is presumed that a public official does not have a disqualifying conflict of interest if the public official would not derive any personal benefit which is greater than that accruing to any other member of the general public or any general business, profession, occupation, or group affected by the matter.
 - e. Any guidance issued by the ethics commission, including informal guidance, advisory opinions, rules, standards, and precedent.

115-04-01-04. Disclosure form and documentation.

1. Disclosure required under these rules shall be made using the form approved by the ethics commission and available on the ethics commission website. The form will allow public officials and directors, officers, commissioners, heads, or other executives of agencies to input information and attach relevant documentation.
2. The neutral reviewer or public official shall document the decision regarding any disclosures on the approved form. Upon completion, the neutral reviewer or public official shall provide a copy of the completed form to the relevant department, agency, board, body, commission or committee, and the ethics commission. The public official may retain a copy of the completed form.
3. Departments, agencies, boards, commissions or public entities shall document in the official minutes of a proceeding information, if applicable, that a public official or director, officer, commissioner, head, or other executive has been recused from any further involvement in the matter.

115-04-01-05. Adoption of more restrictive rules.

Any agency, office, commission, board, or entity subject to these rules may adopt conflict of interest rules that are more restrictive than these rules but may not adopt conflict of interest rules that are less restrictive.

Quasi-Judicial Proceedings Rules

Article 115-05 sets forth the rules relating to quasi-judicial proceedings.

115-05-01-01. Applicability.

Subsection 5 of section 2 of article XIV of the Constitution of North Dakota establishes a requirement that public officials who are directors, officers, commissioners, heads, or other executives of agencies avoid the appearance of bias in any quasi-judicial proceeding. This section is only applicable to directors, officers, commissioners, heads, or other executives of agencies who are involved in quasi-judicial proceedings.

115-05-01-02. Definitions.

1. "Appearance of bias to a reasonable person" means that the interest in question would create in reasonable minds a perception that the director, officer, commissioner, head, or other executive's ability to carry out quasi-judicial responsibilities impartially and without bias is impaired.
2. "Campaign monetary or in-kind support" means all campaign contributions from a party to a proceeding of every kind and type whatsoever, whether in the form of cash, goods, services, or other form of contribution, and whether donated directly to the director, officer, commissioner, head, or other executive's campaign or donated to any other person or entity for the purpose of supporting the director, officer, commissioner, head, or other executive's election to any office within the current or immediately preceding election cycle which are known to the director, officer, commissioner, head, or other executive. No campaign contribution of any kind received prior to January 5, 2022, shall be included in this definition. No campaign contribution or in-kind support that is below the reporting level set forth in North Dakota Century Code chapter 16.1-08.1 shall be included in this definition.
3. "Gift" means a gift not otherwise permitted under article XIV of the Constitution of North Dakota, North Dakota Century Code chapter 54-66, or chapter 115-03-01.
4. "Neutral reviewer" means the individual or committee designated by an agency, legislative body, board, commission, or committee to receive disclosures of potential conflicts of interest and determine whether the potential conflict of interest is a disqualifying conflict of interest. In the absence of a rule or policy designating a neutral reviewer, the following shall apply:
 - a. If the director, officer, commissioner, head, or other executive with a potential conflict of interest or campaign monetary or in-kind support is a member of a legislative body, board, commission, or committee the remaining individuals who are members of the legislative body, board, commission, or committee which the matter is before shall be considered as the neutral reviewer;
 - b. If the director, officer, commissioner, head, or other executive with a potential conflict of interest or campaign monetary or in-kind support is an employee of the legislature, the director, officer, commissioner, head, or other executive's supervisor may be considered as the neutral reviewer;
 - c. If the director, officer, commissioner, head, or other executive with a potential conflict of interest or campaign monetary or in-kind support is a member of the governor's cabinet, the governor's designated ethics officer shall be considered as the neutral reviewer;
 - d. If the director, officer, commissioner, head, or other executive with a potential conflict of interest or campaign monetary or in-kind support is an appointed public official, the appointing official shall be considered as the neutral reviewer; or
 - e. If none of the above apply, the director, officer, commissioner, head, or other executive shall make the determination but must report the disclosure and decision in the manner set forth in section 115-05-01-06 within seven calendar days.
5. "Potential conflict of interest" means a director, officer, commissioner, head, or other executive as part of his duties must make a decision or take action in a matter in which the director, officer, commissioner, head, or other executive has:
 - a. Received a gift from one of the parties;
 - b. A significant financial interest in one of the parties or in the outcome of the proceeding; or
 - c. A relationship in private capacity with one of the parties.
6. "Quasi-judicial" means the directors, officers, commissioners, heads, or other executives of agencies are called upon to perform a judicial act when the directors, officers, commissioners, heads, or other executives of agencies are not members of the North Dakota judiciary. This includes adversarial administrative hearings, but does not include the portion of a public hearing where:
 - a. There are not pre-identified parties;
 - b. Only public input or comment is being received; or
 - c. The hearing is for quasi-legislative purposes, such as administrative rulemaking.
7. "Relationship in a private capacity" means a past or present commitment, interest or relationship of the director, officer, commissioner, head, or other executive in a matter involving the director, officer, commissioner, head, or other executive's employer, or individuals with whom the director, officer, commissioner, head, or other executive has a substantial and continuous business relationship.

8. "Significant financial interest" means a direct and substantial in-kind or monetary interest, or its equivalent, not shared by the general public; however, does not include investments in a widely held investment fund, such as mutual funds, exchange-traded funds, participation in a public employee benefits plan, or lawful campaign contributions.

115-05-01-03. Disclosure.

When a matter comes before a director, officer, commissioner, head, or other executive as part of a quasi-judicial proceeding, the director, officer, commissioner, head, or other executive must disclose any potential conflict of interest and campaign monetary or in-kind support. The disclosure must:

1. Be made in the manner set forth in section 115-05-01-06;
2. Be made to the parties to the quasi-judicial proceeding;
3. Be made prior to the hearing and prior to the agency, board, or commission making any substantive ruling in the matter; and
4. Provide sufficient information concerning the potential conflict of interest or campaign monetary or in-kind support to put the public on notice of the material facts of the matter.

115-05-01-04. Review, decision, and action.

1. As provided in subsection 6 of section 115-04-01-02, the director, officer, commissioner, head, or other executive shall voluntarily recuse themselves from any further involvement in a quasi-judicial proceeding where the potential conflict of interest or campaign monetary in-kind support creates an appearance of bias to a reasonable person.
2. The following factors should be considered to determine whether a potential conflict of interest or campaign monetary or in-kind support creates an appearance of bias to a reasonable person:
 - a. Whether the potential conflict of interest or campaign monetary or in-kind support involves a party to the proceeding;
 - b. The issues involved in the quasi-judicial proceeding;
 - c. Other factors known to the director, officer, commissioner, head, or other executive that create an appearance of bias to a reasonable person; and
 - d. For campaign monetary or in-kind support, the following factors also should be considered:
 - (1) The size of the potential conflict of interest or campaign monetary or in-kind support;
 - (2) The degree of involvement in the campaign; and
 - (3) Whether the campaign monetary or in-kind support is within the current or immediately preceding election cycle.
3. The director, officer, commissioner, head, or other executive may consult with or defer to the neutral reviewer in determination of whether a potential conflict of interest or campaign monetary or in-kind support creates an appearance of bias to a reasonable person.
4. A violation of subsection 5 of section 2 of article XIV of the Constitution of North Dakota or these rules will not be found if:
 - a. The director, officer, commissioner, head, or other executive consults with and adheres to the neutral reviewer's suggested course of action;
 - b. The director, officer, commissioner, head, or other executive acts in good faith; and
 - c. The disclosed material facts surrounding the potential conflict of interest or campaign contribution or in-kind support are substantially the same as the facts presented in the complaint.
5. After disclosure to the parties involved in a quasi-judicial proceeding of a director, officer, commissioner, head, or other executive's potential conflict of interest or campaign monetary or in-kind support, all parties to the quasi-judicial proceeding may voluntarily consent, in writing, to the director, officer, commissioner, head, or other executive's continued involvement in the quasi-judicial proceeding.

115-05-01-05. Substitution.

In quasi-judicial proceedings in which a director, officer, commissioner, head, or other executive recuses themselves from further involvement in the proceeding, the department, agency, board, commission, or other public entity involved in the quasi-judicial proceeding shall determine whether a substitute is required to act in the place of the director, officer, commissioner, head, or other executive. The procedure to assign a substitute for the director, officer, commissioner, head, or other executive shall be determined by North Dakota law or rule. In the absence of applicable North Dakota law or rule, the department, agency, board, commission, or public entity may adopt policies consistent with this rule to address vacancies caused by a director, officer, commissioner, head, or other executive's recusal or abstention in any quasi-judicial proceeding.

115-05-01-06. Disclosure form and documentation.

1. Disclosure required under these rules shall be made using the form approved by the ethics commission and available on the ethics commission website. The form will allow directors, officers, commissioners, heads, or other executives of agencies to input information and attach relevant documentation.
2. The neutral reviewer or director, officer, commissioner, head, or other executive shall document the decision regarding any disclosures on the approved form. Upon completion, the neutral reviewer or director, officer, commissioner, head, or other executive shall provide a copy of the completed form to the disclosing director, officer, commissioner, head, or other executive; the relevant department, agency, board, body, commission or committee; and to the ethics commission.
3. Departments, agencies, boards, commissions, or public entities shall document in the official minutes of a proceeding information, if applicable, that a director, officer, commissioner, head, or other executive has been recused from any further involvement in the matter.