

## **Title 115**

### **ETHICS COMMISSION**

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#### **115-04-01-01. Definitions**

1. A "Conflict of interest" exists when:
  - a. A public official as part of the public official's duties must make a decision, take action or perform a quasi-judicial act in a matter affecting circumstances or persons with whom the public official has received a gift;
  - b. Persons or entities or issues with which the public official has a significant financial interest arise as a part of the public official's duties; and

- c. Persons to whom the public official has a relationship in a private capacity to that person's interests are affected or involved in matters which a public official must act upon as a part of the public officials duties.
  - d. It is presumed that a public official does not have a conflict of interest if the public official would not derive any personal benefit which is not greater than that accruing to any other member of any general business, profession, occupation, or group affected by the matter.
- 2. "Gift" means a gift not otherwise permitted under Article XIV of the North Dakota Constitution, N.D.C.C. Chapter 54-66 or N.D.A.C. Chapter 115-03-01.
- 3. "Immediate family" means a:
  - a. Parent;
  - b. Sibling;
  - c. Child by blood, adoption, or marriage;
  - d. Spouse;
  - e. Grandparent; or
  - f. Grandchild.
- 4. "Relationship in a private capacity" with respect to the interests of another person, means a commitment, interest, or relationship of a public official:
  - a. To their spouse;
  - b. To an individual residing in their household;
  - c. To an individual who is a member of their immediate family;
  - d. To the employer of the public official or the employer of the public official's immediate family;
  - e. To a person with whom the public official has a substantial and continuous business relationship; or

- f. To anyone with whom the public official has any other commitment, interest, or relationship that is substantially similar to a commitment, interest or relationship described in Section 4 (a)-(e), above.
- 5. “Significant financial interest” or “significant business interest” means an in-kind or monetary interest, or its equivalent, not shared by the general public and does not include:
  - a. Campaign donations made in accordance with North Dakota or federal law.
  - b. Investments in a mutual fund; ownership interest in one of the parties to the proceeding which is shared by the general public; and an investment or ownership interest in a retirement account of one of the parties to the proceeding.
- 6. “Quasi-judicial” act means an act in which the public official has the power and authority to exercise judgment and discretion, hear and determine or ascertain facts, make binding orders and judgments affecting personal or property rights, examine witnesses, and enforce decisions or impose penalties. The term “quasi-judicial” broadly means the public official is called upon to perform a judicial act when the public official is not a member of the North Dakota judiciary.

**115-04-01-02 Disclosure of Conflict of Interests**

- 1. When a matter comes before a public official in which the public official has a known conflict of interest, the public official must disclose the conflict of interest in a public manner. The disclosure:
  - a. Must be made prior to the public official taking any action or making a decision in the matter; and
  - b. Must provide sufficient information concerning the matter giving rise to the conflict of interest to put the public on notice of the potential effect of the action upon the person who provided the gift to the public official, upon the public official’s significant financial

interest, or upon the person to whom the public official has a commitment in a private capacity.

2. The public official, unless otherwise required by law, shall disclose conflicts of interests as follows:
  - a. If a public official is a member of the legislature, the public official must make the disclosure to the chamber of the legislative assembly of which the public official is a member, prior to the vote on any matter in which the public official has a conflict of interest.
  - b. If a public official is an employee of the legislature, the public official must make the disclosure in writing to his or her supervisor.
  - c. If the public official is a member of the Governor's cabinet, the public official must make the disclosure in writing to the Governor's designated ethics officer.
  - d. If the public official is a member of a board or commission, they must disclose at the board or commission meeting at which they may have a conflict.
  - e. If the public official is appointed and none of the above disclosure requirements apply, they must disclose the conflict to their appointing official.

**115-04-01-03 Public Official Disqualification or Abstention**

1. 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 conflict of interest as provided in this rule. Disqualification or abstention from consideration of the matter or voting on a matter before the public official 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 conflict of interest.
2. In matters where North Dakota law provides a procedure for the substitution of another individual, agency or official to act in the place of the public official who has a conflict of interest, the public

official may abstain or disqualify himself/herself from taking action in the matter. However, after disclosure, the agency head or governing body shall determine whether to disqualify or abstain from further participation in the matter.

3. In matters where North Dakota law does not provide a procedure for the substitution of another individual, agency or official to act in the place of the public official who has a conflict of interest, the public official may not abstain or disqualify himself/herself from taking action in the matter.

**115-04-01-04 Adoption of More Restrictive Rules**

Any entity subject to these rules may adopt conflict rules that are more restrictive but may not adopt conflict rules less restrictive.