

# GOVERNMENT ACCOUNTABILITY BOARD

## MINUTES OF MEETING

November 14, 2022, at 1:30 p.m. Central Time  
Sioux Falls, SD

**BOARD MEMBERS PRESENT:** Lori Wilbur, David Gienapp, Gene Kean,  
David Gilbertson

**CALL MEETING TO ORDER:** Wilbur called the meeting to order at 1:30 p.m. Central Time. A quorum was present. Zoom was initiated prior to meeting being called to order.

**OTHERS PRESENT:** Caroline Srstka, assisting the Board  
Judy Morford, assisting the Board  
Mark Haigh, legal counsel for the Board  
Lisa Prostrollo  
Deb Gilbertson  
Michelle Ensz  
Victoria Tucker (via Zoom)  
Media

**The following is a summary (not verbatim) of the matters discussed.**

**APPROVE AGENDA:** Agenda was approved.

**APPROVAL OF MINUTES:** Motion by Kean, seconded by Gienapp, to approve the minutes of the August 22, 2022, meeting. Gilbertson abstained from voting. Motion carried unanimously.

**NEW BUSINESS:** There was no new business to discuss.

### **DISCUSSION OF PENDING COMPLAINTS:**

Motion by Gienapp, seconded by Kean, to move into executive session pursuant to SDCL 1-25-2 and 3-24-4 to discuss Complaints 2022-02 and 2021-04. Motion carried unanimously. Board proceeded to executive session.

Executive Session ended and the meeting was again open to the public.

### COMPLAINT 2022-02

Gilbertson moved that the Board dismiss Complaint 2022-02 for lack of statutory jurisdiction by this Board. The factual allegations complain about the job performance of State employees and fail to cite any direct action, inaction or malfeasance by the person who is the subject of the complaint. Our statutory framework does not provide jurisdiction against a state official based on a theory of respondeat superior. The only basis for the Board's jurisdiction is set forth in the statute. None are implicated in Complaint 2022-02. Gienapp seconded the motion. Motion carried unanimously.

The Board went back into executive session to discuss Complaint 2021-04. Gilbertson left the meeting at this time.

Executive Session ended and the meeting was again open to the public.

### COMPLAINT 2021-04

Chief Justice Gilbertson previously recused himself from sitting on Complaint 2021-04.

Gienapp noted that the Board requested and have not received the DCI investigative report. Gienapp moved that in order to fulfill the Board's responsibility under Chapter 3-24, the Board authorize a subpoena for the investigative report prepared by the DCI and State's Attorney's Office relating to Complaint 2021-04. Kean Seconded the motion. Motion carried unanimously.

**PUBLIC COMMENT:** Victoria Tucker gave comments regarding alleged abuse faced while in the care of the State of South Dakota.

### **DISCUSSION REGARDING FUTURE MEETINGS:**

The next meeting will be scheduled at a later date.

### **ADJOURNMENT**

Motion by Kean, seconded by Gienapp, to adjourn the meeting. Motion carried unanimously and the Board adjourned.

Approved on \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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On Behalf of the Government Accountability Board

\*\* Members of the public were provided an option to appear at the meeting in person or via Zoom. The information on how to appear via Zoom was listed on the Agenda.

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