



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Request for Opinion
Concerning the Conduct of **Michael Buckley,**
Esq., Chairman, Commission on Common Interest
Communities and Condominium Hotels, State of
Nevada,

Request for Opinion No. **11-49C**

Subject.

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The Executive Director bases the following report and recommendation on the staff's consideration and investigation of the Third-Party Request for Opinion ("RFO") filed regarding the conduct of Michael Buckley, Esq., a public officer, and on his written response to the RFO, attached as an exhibit to this Report and Recommendation, and the other materials attached hereto. The Executive Director provides her Report and Recommendation and its exhibits for the consideration of the two-commissioner investigatory panel ("Panel"), pursuant to the requirements of NRS 281A.240.

Facts:

The main party is Michael Buckley, Esq., who is a shareholder in the Jones Vargas law firm and currently serves as Chairman of the Commission on Common Interest Communities and Condominium Hotels (CCICCH). As an appointee to the CCICCH, Buckley is a public officer within the meaning of NRS 281A.160.

Allegations:

The allegations center on Buckley's conduct related to the disclosure of a pecuniary interest in his law firm and the abstention analysis he must undertake when a matter that affects his pecuniary interest comes before the CCICCH. The RFO alleges that Buckley violated several provisions of the Nevada Ethics in Government Law, including NRS 281A.420(1) by failing to disclose a conflict of interest with one of his law firm's clients, RMI Management LLC ("RMI") and its subsidiary Red Rock Financial Services ("Red Rock Financial")¹ (Exhibit 5) and NRS 281A.420(3) by failing to abstain from acting on a matter in which a conflict of interest existed. (RFO, Tab A, p. 1). In

¹ RMI Management, LLC is an association management firm that provides services to homeowner and condominium associations. Its subsidiary, Red Rock Financial Services, offers collection services to community associations.

particular, it alleges that, during Agenda Item No. 5 of the December 7, 2010 CCICCH meeting (RFO, Tab A, p. 7 of 10), Buckley failed to disclose his pecuniary interest as a shareholder in his law firm, which received fees from its client, RMI, and undertake the abstention analysis before voting to adopt CCICCH Regulation R199-09 (RFO, Tab A, p. 1 of 10) which imposed a cap on the costs passed through to a homeowner by association managers and collection agencies in a foreclosure.

Buckley's firm, Jones Vargas, had been engaged to represent RMI in the 2011 Legislative Session and advocated to protect the interests of Common-Interest Community managers. Buckley was uninvolved in any such lobbying efforts during the legislative session. However, as a person intensely involved in the development and application of Chapter 116 of NRS, the Common-Interest Communities laws, he was aware of his firm's participation in the issue.

At the December 7, 2010 CCICCH meeting, at Agenda Item No. 5, Buckley voted to adopt regulation R199-09 without disclosing his affiliation with his firm or undertaking an abstention analysis on the record to inform the public of the effect of his action or inaction on his pecuniary interest, if any. (RFO, Tab A, p. 1 of 10).

Relevant Nevada Revised Statutes (NRS):

NRS 281A.420 Requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts; effect of abstention on quorum and voting requirements; exceptions.

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

- (a) Regarding which the public officer or employee has accepted a gift or loan;
- (b) In which the public officer or employee has a pecuniary interest; or
- (c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others, without disclosing sufficient information concerning the gift, loan, interest or commitment to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's pecuniary interest, or upon the persons to whom the public officer or employee has a commitment in a private capacity. Such a disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. . . .

* * * * *

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- (a) The public officer's acceptance of a gift or loan;
- (b) The public officer's pecuniary interest; or
- (c) The public officer's commitment in a private capacity to the interests of others.

Analysis and Recommendation:

NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics RFO **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics RFO must be unanimous.

3. As used in this section, **"credible evidence" means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

I recommend that the Panel find that **insufficient credible evidence** is present to support a reasonable belief that the Commission should hear this matter and render an opinion regarding Michael Buckley's alleged violation of NRS 281A.420(1) and (3) because no evidence was presented or discovered of any effect on Mr. Buckley's pecuniary interest in Jones Vargas by the adoption of a regulation imposing a cap on fees assessed to a homeowner in a common-interest community assessment-related foreclosure. No credible evidence was presented that the pecuniary interest of a shareholder in a law firm that lobbied on behalf of an association management company in one Nevada Legislative session would be affected by the regulation.

Further, **insufficient credible evidence** was presented to conclude that placing a cap on the pass-through of collection-related fees to homeowners in common-interest community foreclosures would have a material effect on the independence of judgment of a reasonable shareholder in a law firm whose limited engagement client works in common-interest community management, even if that client engaged in activities related to foreclosing against homeowners whose assessments are delinquent, when that shareholder sits as a member of the CCICCH and considers whether to adopt, modify or reject the proposed regulation.

Therefore, I recommend that the Investigatory Panel **dismiss** this RFO in its entirety. I respectfully provide my recommendation to this honorable panel.



Caren Jenkins, Esq.
Executive Director

Date: 9/21/11