

NEVADA COMMISSION ON ETHICS

RECEIVED

JUN 29 2011

COMMISSION ON ETHICS

Nevada Commission REQUEST FOR OPINION No. <u>11-49C</u>	THIRD PARTY REQUEST FOR OPINION (ETHICS COMPLAINT) <u>NRS 281A.440.2</u> Please print or complete online.
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1. Provide the name, title, public agency, address, and telephone number for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS 281A. (If more than one public officer or employee is alleged to have violated the law, use a separate form for each individual.)

Name & Title:	MR. MICHAEL BUCKLEY ESQ, CHAIRMAN		
Public Agency:	COMMON INTEREST COMMUNITY COMMISSION		
Address:	2501 East Sahara Ave		
City, State, Zip:	Las Vegas NV. 89104-4137	Telephone:	702 486 4480

2. Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. (You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)

Check here if additional pages are attached.

Mr. Michael Buckley is a partner in the Law firm of Jones Vargas and Chairman of the Common Interest Community Commission .
Jones Vargas was hired by RMI, a Homeowner Association Management company along with their Collections division Red Rock Financial as RMI's lobbyist in the 2011 Nevada Legislative session. Mr. Buckley states this fact in Exhibit B, section 9-C.
Regulation R 199-09 which deals with collection fees was directed by the Collection Companies as they told the Commission what fees they wanted in the regulation. Chairman Buckley participated in writing and had and a PRCUNIARY Interest in the passage of this Regulation.
This is in violation of NRS 281A.420(3) and NRS 232A.020(5)(b). RMI is paying Mr. Buckley's firm to act on its behalf as their lobbyist. This is a clear conflict of interest on Mr. Buckley's part as the law requires him to abstain from voting. However on
December 7, 2010 Mr. Buckley voted in favor of this regulation (R 199-09) and was adopted at that time. This Regulation was frozen by the Governor on January 2, 2011 but restored in May of 2011. For this reason Chairman Buckley's action should be investigated and his vote nullified.
Please see Exhibit A, 7 pages note the Yellow highlighted portions on pages 5 and 7
Also see Exhibit B, 1 page where Chairman Buckley recuses himself the same day on voting on the adoption of an Advisory Opinion he wrote dealing with the Commission position on the 9 month super priority liens on Assessments.

3. Identify all persons who might have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Include the address and telephone number for each person.

Check here if additional pages are attached.

Name & Title:	MS. TERALYN THOMPSON, COMMISSION CO-ORDINATOR		
Address:	2501 East Sahara Ave	Telephone:	702 486 4480
City, State, Zip:	Las Vegas NV. 89104-4137		
Nature of Testimony:	Ms. Thompson is the Commission Coordinator & maintains the minuets of the meetings. She is also present at the Commission meetings and has access to all the records.		

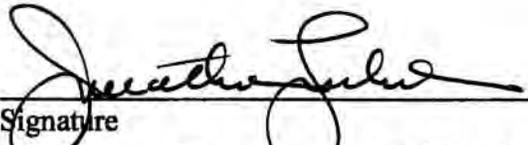
4. Attach two copies of all documents or items you believe provide credible evidence to support your allegations. [NRS 281A.440.2\(b\)\(1\)](#) requires you to submit all related evidence to support your allegations. [NAC 281A.435.3](#) defines credible evidence as a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made within the complaint. Credible evidence does not include a newspaper article or other media report if the article or report is offered by itself.

State the total number of additional pages attached (including evidence) 10 (INCLUDING FORM PAGES)

REQUESTER'S INFORMATION:

NAME: Jonathan Friedrich	E-MAIL: emmcor1@aol.com
ADDRESS: 2405 Windjammer Way	
CITY, STATE, ZIP: Las Vegas, NV. 89107	
TELEPHONE 702 822 4555	CELL PHONE:

By my signature below, I do affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief and I am willing to provide sworn testimony if necessary regarding these allegations.


Signature
Print Name: Jonathan Friedrich

JUNE 27 2011
Date

Please return an original signed form, two copies of the form, and three copies of the supporting documents and evidence to:

**Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703**

Forms submitted by facsimile will not be considered as properly filed with the Commission.
[NAC 281A.255.3](#)

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM
HOTELS MEETING**

DECEMBER 7, 2010

PUBLIC UTILITIES COMMISSION

9075 W. DIABLO DRIVE

ROOM 250

LAS VEGAS, NEVADA 89148

VIDEO CONFERENCED TO:

PUBLIC UTILITIES COMMISSION

1150 E. WILLIAMS STREET

CARSON CITY, NEVADA 89701

MINUTES

DECEMBER 7, 2010 8:32 A.M.

1-A) Introduction of Commissioners in attendance.

M. Favil West, Scott Sibley, Gary Lein, Michael Buckley, Randolph Watkins, Robert Schwenk, Marilyn

Brainard, Senior Deputy Attorney General Deonne Contine serving as Commission Counsel.

1-B) Introduction of Division staff in attendance.

In Las Vegas: Gail Anderson, Administrator; Lindsay Waite, Ombudsman; Susan Clark, Licensing

Manager; Nicholas Haley, Education Officer; Sonya Meriweather, Program Officer; Joanne Gierer, Legal

Administrative Officer; Teralyn Thompson, Commission Coordinator, Senior Deputy Attorney General

Kimberly Arguello serving as Division Counsel.

In Carson City: Christopher Cooke, Compliance Investigator

2) Public Comment

In Las Vegas:

Joyce Patterson-Rogers, resident of Sunrise Villas 5 commented. Mrs. Patterson-Rogers stated that

Sunrise Villas 5 is a small thirty-three year old common-interest community of sixty-one units. Ms.

Patterson-Rogers stated that the Commission takes into consideration very large communities. Ms.

Patterson-Rogers stated that she would like the Commission to consider small, older communities when

making legislation. Ms. Patterson-Rogers stated that it is a burden on small associations to try to make

changes with only sixty-one people contributing.

Robert Patterson-Rogers, resident of Sunrise Villas 5 commented. Mr. Patterson-Rogers stated that in the

economic stress we are in, he would hope that the Commission recommends to the Legislature to consider

small associations. Mr. Patterson-Rogers stated that his association has lost four to five units and the

assessments for those units.

8-A-1) Administrative Program Officer's report on Intervention Program.

Sonya Meriweather presented this report.

Number of active interventions in the Compliance section has doubled from this time last year.
 As of October 31, 2010: One hundred eighteen active intervention cases in the South and sixteen cases in the North.

2

Top Five areas where intervention affidavits are being filed: Las Vegas in the South and Gardnerville in the North.

Number One reason why intervention affidavits are being filed in the South and North: NRS 116.31083 regarding executive board meetings.

8-A-2) Administrative Program Officer's report on Number and types of associations registered within the State.

Sonya Meriweather presented this report.

As of October 31, 2010: Two thousand nine hundred sixty- seven associations with four hundred

seventy-four thousand units in them

Ms. Meriweather submitted a report created to provide the Commission with an overview of the work that

the auditor is doing pertaining to registration delinquencies and compliance support audits.

June 30, 2010: three hundred ninety-nine associations were delinquent.

As of October 31, 2010: two hundred thirty-one associations delinquent.

8-A-3) Administrative Program Officer's report on Alternative Dispute Resolution filings and subsidy claims.

Sonya Meriweather presented this report.

57% of the claims close within six months from the date received by the Division.

Commissioner West asked why some of the arbitrations take longer.

Ms. Meriweather stated that once the claim is assigned to an arbitrator the Division is not kept updated on

the process. Ms. Meriweather stated that the Division is contacted once the decision has been reached.

Ms. Meriweather stated that she does not know why it takes longer and the arbitrator is not required to

provide the Division with that information once the case has been assigned.

Ms. Meriweather stated that when the time has become lengthy, the Division will contact the arbitrator to

find out if the Division missed receiving the decision.

8-A-4) Administrative Program Officer's report on Notices of Sales.

Sonya Meriweather presented this report.

Correction on page 24 of the report. Zip code 89085 for N. Las Vegas should be 89084.

Correction on page 27 under zip code 89084 should stated 89085 and vice versa making zip code

89084 have a total of 85.

3) Adoption Hearing for LCB File No. R164-09

Adoption Hearing began at 9:04 a.m. on December 7, 2010.

Introduction of Commissioners in attendance.

M. Favil West, Scott Sibley, Gary Lein, Michael Buckley, Randolph Watkins, Robert Schwenk, Marilyn

Brainard, Senior Deputy Attorney General Deonne Contine serving as Commission Counsel.

Introduction of Division staff in attendance.

In Las Vegas: Gail Anderson, Administrator; Lindsay Waite, Ombudsman; Susan Clark, Licensing Manager; Nicholas Haley, Education Officer; Sonya Meriweather, Program Officer; Joanne Gierer, Legal Administrative Officer; Teralyn Thompson, Commission Coordinator, Senior Deputy Attorney General Kimberly Arguello serving as Division Counsel.
 In Carson City: Christopher Cooke, Compliance Investigator

3

Commissioner West moved to adopt the regulation. Seconded by Commissioner Watkins.
 Unanimous decision.

Adoption hearing ended at 9:15 a.m. on December 7, 2010.

8-B) Licensee and board members discipline report.

Teralyn Thompson presented this report.

Commissioner Brainard asked about the debt collection process for disciplinary fines that are past due and

if any money recovered by the State Controller's Office goes into the general fund.

Joanne Gierer stated that any money recovered by the State Controller's Office for past due disciplinary

fines goes into the State general fund.

Gail Anderson stated that the Division sends a thirty day notice if payment for a disciplinary fine has not

been received by the Division. Ms. Anderson stated that after the thirty days, it is submitted to the State

Controller's Office who conducts debt collection for the State. Ms. Anderson stated that Division also

writes off the debt against the Division's records once the debt is uncollectable and has gone through the

debt collection process. Ms. Anderson stated that this last step involves the Administrator going before

the Board of Examiners.

Ms. Anderson stated that she does not know if a debt for past due disciplinary fines will appear on a

person's credit report. Ms. Anderson stated that it stays on the Division's records until it has been made

whole.

8-C) Compliance Section's current caseload report.

Gail Anderson presented this report.

Ms. Anderson stated that Supervisor Compliance Investigator Sharon Jackson has been working with

Sonya Meriweather compiling the compliance statistics report.

8-D) Administrator's report on agency submitted administration budget for the 2012/2013 biennium.

Gail Anderson presented this report. Ms. Anderson gave the Commission an overview of the administrative budget for the Real Estate Division that has been submitted. Ms. Anderson stated that on

October 15, 2010 when the agencies-requested budgets were due to be submitted to the Legislative

Counsel Bureau's Fiscal section, the Budget Division posted the agency request on the Budget Division's

website for public information.

Ms. Anderson stated that the Real Estate Division's Administrative Account at its highest point had

thirty-nine employees now has twenty-nine employees. Ms. Anderson stated that the administrative

budget account is dealing with a shortfall in time share revenue from a projection made in 2007-2008 for

the 2010-2011 biennium. Ms. Anderson stated that the Real Estate Administrative budget account is a

general fund budget account that receives general fund appropriation for licensing fees from real estate

and appraisal.

Ms. Anderson stated that for fiscal year 2011, in the legislative session, the Division will be requesting a

transfer from the Real Estate Education fund.

4

Ms. Anderson stated that the impact will affect all of the programs under the Division.

Elimination of eight and a half positions from the existing twenty-nine positions

Carson City licensing section will be closed which impacts community managers and reserve study

specialists

All licensing functions will be performed from the Las Vegas office by walking into the office, mailing documents or online renewals when that feature is available to community managers and reserve study specialists.

Positions being eliminated in Carson City: Two administrative assistant positions in the licensing

section, the administrative assistant in the appraisal section, one administrative assistant position in

the fiscal section.

Positions being eliminated in Las Vegas: Licensing Supervisor position in the licensing section, the

Administrative Assistant to the Administrator, the administrative assistant in the compliance section, and Projects Chief position in the projects section is being reduced to three days a week which is now a part time position.

Ms. Anderson stated that the Ombudsman budget account is not currently being impacted in terms of

position reductions.

4) Adoption Hearing for LCB File No. R166-09

Adoption Hearing began at 9:30 a.m. on December 7, 2010.

Introduction of Commissioners in attendance.

M. Favil West, Scott Sibley, Gary Lein, Michael Buckley, Randolph Watkins, Robert Schwenk, Marilyn

Brainard, Senior Deputy Attorney General Deonne Contine serving as Commission Counsel.

Introduction of Division staff in attendance.

In Las Vegas: Gail Anderson, Administrator; Lindsay Waite, Ombudsman; Susan Clark, Licensing

Manager; Nicholas Haley, Education Officer; Sonya Meriweather, Program Officer; Joanne Gierer, Legal

Administrative Officer; Teralyn Thompson, Commission Coordinator, Senior Deputy Attorney General

Kimberly Arguello serving as Division Counsel.

In Carson City: Christopher Cooke, Compliance Investigator
 Commissioner Watkins moved to adopt the regulation with the deletion of section 2(3)(c), change to section 3(1)(a) to replace "the public" with "their associations", addition of section 3(2)(s) to include a course regarding dispute resolution and clarification of references in section 5(4)(c). Seconded by Commissioner Brainard. Unanimous decision.

Adoption hearing ended at 10:00 a.m. on December 7, 2010.

5) Adoption Hearing for LCB File No. R199-09

Adoption Hearing began at 10:07 a.m. on December 7, 2010.

Introduction of Commissioners in attendance.

M. Favil West, Scott Sibley, Gary Lein, Michael Buckley, Randolph Watkins, Robert Schwenk, Marilyn

Brainard, Senior Deputy Attorney General Deonne Contine serving as Commission Counsel.

5

Introduction of Division staff in attendance.

In Las Vegas: Gail Anderson, Administrator; Lindsay Waite, Ombudsman; Susan Clark, Licensing

Manager; Nicholas Haley, Education Officer; Sonya Meriweather, Program Officer; Joanne Gierer, Legal

Administrative Officer; Teralyn Thompson, Commission Coordinator, Senior Deputy Attorney General

Kimberly Arguello serving as Division Counsel.

In Carson City: Christopher Cooke, Compliance Investigator

Chairman Buckley recessed this agenda item until later in the meeting to give the Commission time to

review the changes to the proposed language.

8-D-2) Administrator's report on Personnel.

Gail Anderson presented this report.

Received notification that Ombudsman Lindsay Waite will be retiring effective January 31, 2011.

Under NRS 116.625 the Ombudsman for Common-Interest Communities is appointed by the Administrator and is an unclassified position that does not go through qualification with the Department of Personnel.

Ms. Anderson will utilize the Department of Personnel's website to post the Ombudsman position.

Starting recruitment with the Department of Personnel for the Training Program Officer position

Commissioner Lein requested that the Commission receive Division organizational chart to see which

positions have been eliminated and consolidated.

Ms. Anderson stated that the Division has been able to start recruitment for the Chief Compliance Investigator position and received the qualifying list. Ms. Anderson stated there will be a Divisional

recruitment for this position. Ms. Anderson stated that the position that will be vacated by the incumbent

into the Chief Investigator position will be eliminated. Ms. Anderson stated that she hopes to have the

Chief Compliance Investigator position filled by the end of the calendar year.

8-D-3) Administrator's report on status of Policies and Procedures Manual

Gail Anderson presented this report. Ms. Anderson stated that she intends to post the manual by chapter as final edits are done. Ms. Anderson stated that the manual is going to be a living document and changeable.

8-D-4) Administrator's report on status of proposed regulations LCB File No. R099-09 regarding arbitration under NRS Chapter 38.

Gail Anderson presented this report. Ms. Anderson stated that a workshop was held November 19, 2010

and there was very good participation.

Ms. Anderson stated that the intended purpose of this regulation is to set forth by regulation the qualifications for arbitrators and mediators, duties of the arbitrator or mediator, how parties make selections for who will handle the dispute resolution process, set forth a process for the withdrawal of a

claim, who is responsible for fees incurred at that time and removal of an arbitrator or mediator from a panel.

Ms. Anderson stated that the next step is drafting modifications and conducting another workshop using the modified draft made as a result of input.

6

8-D-5) Administrator's report on Division advisory opinions

Gail Anderson presented this report. Ms. Anderson stated that there have not been any new Division

advisory opinions issued at this time. Ms. Anderson stated that she has started working with new Division counsel on drafting responses to request for Division advisory opinions.

6) Adoption Hearing for LCB File No. R186-07

Adoption Hearing began at 1:30 p.m. on December 7, 2010.

Introduction of Commissioners in attendance.

M. Favil West, Scott Sibley, Gary Lein, Michael Buckley, Randolph Watkins, Robert Schwenk, Marilyn

Brainard, Senior Deputy Attorney General Deonne Contine serving as Commission Counsel.

Introduction of Division staff in attendance.

In Las Vegas: Gail Anderson, Administrator; Lindsay Waite, Ombudsman; Susan Clark, Licensing

Manager; Nicholas Haley, Education Officer; Sonya Meriweather, Program Officer; Joanne Gierer, Legal

Administrative Officer; Teralyn Thompson, Commission Coordinator, Senior Deputy Attorney General

Kimberly Arguello serving as Division Counsel.

In Carson City: Christopher Cooke, Compliance Investigator

Commissioner Brainard moved to adopt the regulation with the addition of the language "and condominium hotels" to the end of section 9(7), changing section 9(9)(f) to be consistent with NRS

116.311395, changing section 11(2) to be consistent with LCB File No. R135-09, changes to section 24

to change "adequate reserves" to "adequately funded reserves" to be consistent with NAC 116.425 and

change to section 32(2)(a) to delete the word "charges", delete the word "actual" and insert "estimated" or

“projected”. The Commission requests that NAC 116 and 116B be updated to conform to the most recent

changes. Seconded by Commissioner West. Unanimous decision.

The adoption hearing ended at 2:47 p.m. on December 7, 2010.

5) Adoption Hearing for LCB File No. R199-09

Chairman Buckley resumed the adoption hearing at 1:30 p.m.

Chairman Buckley prepared a document for the Commission titled “199-09 Changes”.

Commission proposed changes to the regulation:

Adding to the end of section 1(1): “in connection with a notice of delinquent assessment pursuant to

NRS 116.31162(1)(a).”

Changing section 1(1)(s) to postponement fees.

Correcting Section 1(2)(a) to state “trustee’s sale”

Changing Section 1(2)(b) to state “those cost are not charged by an officer, director, agent or affiliate of the community manager or its agent, the association. The association may recover from

the unit’s owner the actual cost incurred without any increase or mark-up.”

Adding new section 1(3) that states: “The association may recover from a unit's owner: (a) reasonable management company fees not to exceed \$200; and (b) reasonable attorney's fees and actual costs incurred, without any increase or mark up, incurred by the association for legal services

which do not include any of the activities specified in subsections (a) through (t) of subsection 1.”

Adding section 1(4) that states: “If a unit's owner owns 25 or more units, the amounts described in

subsection 1 must not exceed a multiple of the amounts described in subsection 1, reduced by an amount determined by a specific resolution of the executive board.”

7

Adding section 1(5) that will read as NRS 116.007 except wherever it states “declarant” it will be

substituted with “community manager or its agent”.

Adding section 1(6) that states: “No collection fees shall be charged to the unit's owner for a one

time period of 15 business days immediately following a request for payoff from the unit's owner or

his or her agent, other than the fee described in subsection 1(q) and any charge related to an action

which must be taken by statute within such 15-day period.”

Adding section 1(7) that states: “The amounts described in subsection 1 shall not exceed an amount

of \$1,950.”

Commissioner Watkins moved to adopt LCB File No. R199-09 with the Commission’s proposed changes.

Seconded by Commissioner West. Motion passed with Commissioner Sibley abstaining.

Adoption hearing ended at 4:23 p.m. on December 7, 2010.

DECEMBER 7, 2010
A.M.

8:32

9-C) Discussion and possible action regarding an Advisory Opinion to the Division and the Commission from RMI Management dated November 29, 2010 requesting an interpretation of NRS 116.3115 and NRS 116.3116 regarding the application of the so called super priority lien.

Chairman Buckley stated that his law firm has been engaged performs legal services for RMI Management in the Nevada Legislature. Chairman Buckley abstained from voting for this reason.

Vice Chair Commissioner Watkins took over as the Chair.

The Commission reviewed a document titled "Collection Cost NRS 116.3116 Analysis" that was attached to an email from Kevin Wallace of RMI Management dated December 3, 2010.

Deputy Attorney General Deonne Contine stated that in May 2010 the Commission discussed an advisory opinion that Chairman Buckley later drafted. Ms. Contine stated that she reviewed the draft and discussed with Chairman Buckley some of her concerns with issuing an advisory opinion on contested cases that were in litigation, arbitration or some judicial proceeding. Ms. Contine stated that her other concern was that most state agencies have a process for requesting advisory opinions and do not often issue advisory opinions absent a request from a constituent of some type.

Ms. Contine stated that Commissioner Burns of the Financial Institutions Division issued an advisory opinion/declaratory order interpreting FID statutes but mentioning NRS 116 that prompted RMI Management's request for an advisory opinion from the Commission or Division.

Ms. Contine stated that she has concerns about issuing an advisory opinion in light of the Financial Institutions Division's advisory. Ms. Contine stated that the State of Nevada Attorney General does not issue Attorney General Opinions when matters are in litigation.

Kevin Wallace from RMI Management commented. Mr. Wallace stated that his company requested the advisory opinion because of the considerable amount of confusion that is in the industry. Mr. Wallace stated that NRS 116.620, NRS 116.623 and NRS 116.624 make the Commission in charge of NRS 116. Mr. Wallace stated that the Commission is the body that should decide this issue.

David Stone commented. Mr. Stone stated that his company, RMI Management and Angius & Terry Collections brought the law suit against the Financial Institutions Division. Mr. Stone stated that they have received a temporary restraining order and are in the process of getting a preliminary injunction issued.

Mr. Stone requested that the Commission adopt the advisory opinion to provide clarity to the industry.

Paul Terry from Angius & Terry Collections commented. Mr. Terry stated that he agreed with Mr. Stone's comments and requested that the Commission issue an advisory opinion.