STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion Concerning the Conduct of MARJORIE WALKER, Social Services Program Specialist III, Division of Child and Family Services, Department of Health and Human Services, State of Nevada,

a Public Employee. /

Request for Opinion No.: 12-01C

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION

The Executive Director bases the following report and recommendation on the Commission on Ethics staff's investigation and consideration of a Third-Party Request for Opinion ("RFO") filed regarding the conduct of **Marjorie Walker**, a public employee.

Walker is employed as a Social Services Program Specialist III by the Division of Child and Family Services in the Department of Health and Human Services, State of Nevada. In her private capacity, Walker served on the Board of Directors of Nevada Urban Indians, a private nonprofit organization which receives some federal grant funds that are administered by the State. The RFO alleges that Walker's job and her non-profit service conflict, and that Walker failed to commit to avoid conflicts between her private and public interests and duties, and used State resources to further her personal interests.

In addition to the RFO, this report and recommendation is based upon Walker's written response. Those documents, their related exhibits, and other relevant materials gathered in the course of the investigation are attached as exhibits to this report and recommendation. The Executive Director provides her Report and Recommendation for the consideration of the two-commissioner investigatory panel ("Panel"), pursuant to the requirements of NRS 281A.240.

Facts:

The main party is Marjorie Walker, a State of Nevada classified employee since 1993. Walker has been involved with Nevada Urban Indians (NUI) for over 18 years, and formerly served on its Board of Directors and as its Chair for the two years preceding her resignation in August 2011.

Nevada Urban Indians is a non-profit organization which operates with a seven-member Board of Directors. Each Director has one vote except the Chair, who does not

vote unless it is necessary to break a tie. Directors receive a stipend of $75 per meeting, and board and staff members occasionally are awarded annual bonuses based on their number of years of service. (RFO Tab A, p. 41)

The Victims of Crime Act grant (VOCA) is comprised of federal funding designated to provide assistance with family violence prevention and shelters. Although the money comes from the federal government, the program is administered by and funds are disbursed by the state. Over a three-year period, NUI received approximately $122,000 in reimbursed expenditures related to the VOCA grant program. Walker received none of the VOCA grant funds personally. Her signature appears on the NUI grant application as the Chair of the Board, although she claims, and the evidence supports, that it was written by someone other than Walker.

Allegations:

The RFO alleges that Walker, by serving the State as an employee and simultaneously volunteering on the Board of the NUI, violated NRS 281A.020 by failing to separate her public and private duties and that she used State resources, time and equipment to further her NUI activities in violation of 281A.400(7).

Among the claims are inferences that Walker somewhat used her position in government to influence the Child and Family Services Grants Manager, the NUI Executive Director and the Fiscal Officer to award the grant to NUI, or to "help" NUI to be considered a recipient of the grant funds but no sufficient evidence was provided or uncovered.

As to the NUI acceptance of the VOCA grant award, it appears the Executive Director accepted the grant. A Board discussion and vote related to the VOCA grant occurred on March 24, 2008. The discussion related to the amount of the grant requested and the Board voted to reduce one part of the grant request from $25,000 to $10,000. At this meeting, Walker made the motion to lower the amount and voted. (Supplemental Response, Tab C, pp. 9 and 14). Then, during a NUI Board meeting on August 25, 2008, a discussion and a vote to accept the VOCA grant took place; however, Walker abstained from voting (Supplemental Response, Tab C, pp. 47-48). Other than these two occasions, no evidence was uncovered that the Board considered the VOCA grant at all.

The RFO alleged that Walker worked on NUI related tasks during her State work hours. (RFO, Tab A, p. 1). In essence, it alleges that Walker created and distributed a number of e-mails during her work hours and as such, she used government time, equipment and facility as provided in NRS 281A.400(7). (RFO, Tab A, pp. 71-112). Walker does not deny the fact; however, she claims that the e-mails did not interfere with her job duties, her supervisor was aware of her attention to NUI during work hours and some of the NUI e-mails related to her work duties. Walker's supervisor and the DCFS Acting Deputy Administrator both stated that the occasional e-mails did not interfere with Walker's employment.

The investigation revealed that the application for the NUI VOCA grant bears what appears to be Walker's signature (Supplemental Response, Tab C, pp. 71 and 75). However, Walker stated she never signed the application and, at the time the signature was placed on the application, she was not actively serving on the Board due to her assistance to an ill family member. (Response, Tab C, p. 1). Upon close examination, Walker's testimony appears correct; the signature appears to have been made by someone other than Walker. (Exhibit 4). The RFO does not specifically allege that Walker signed the VOCA grant application; however, since her signature appears, an explanation was warranted. Finally, the grant timeline provided by the Grants Manager is attached as Exhibit 4, and may be relevant for measuring the 2-year statute of limitations from the date the RFO was received (January 9, 2012).

Relevant Nevada Revised Statutes (NRS):

NRS 281A.020 Legislative findings and declarations.

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) ***A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.***

NRS 281A.400 General requirements; exceptions

7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, ***a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer's or employee's personal or financial interest. This subsection does not prohibit:***

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) ***The use of telephones or other means of communication if there is not a special charge for that use.***

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

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.

Analysis, Conclusion and Recommendation:

It is important for the panel members to keep in mind that it is Walker's conduct as a public employee that is in question - - not her conduct on the NUI Board. The VOCA grant was applied for and received by NUI - - not by Walker or any other member of the NUI Board personally. The RFO's allegation that Walker "received a grant from the same division where [she] works" is not factually correct, as Walker is not part of the division of DCFS that manages the VOCA grants. Even if Walker's acts on the Board to vote on the reduction in the grant application in March 2008 and later in August 2008 were regulated by NRS 281A, those acts occurred outside of the two-year statute of limitations in NRS 281A.280. There simply is no evidence that Walker used her position in her government employment to assist NUI as an applicant or grantee for the VOCA funds, or failed to commit to separating her personal interests from her duties as a public employee.

Walker's supervisor and others in her office described her as a well-respected and responsible employee. They stated that her work quality and quantity never was affected by using work hours to email regarding NUI, and that she never incurred any overtime. Upon learning of the allegations in the RFO, she ceased emailing about NUI from work to avoid any appearance of impropriety. Not only is Walker's involvement with NUI related to her DCFS responsibilities, but several of the communications she engaged in from her work crossed over between her NUI and work-related duties. Finally, no evidence was found that Walker received a personal pecuniary or other benefit from her volunteer work on the NUI Board that might cause a conflict with her employment by DCFS.

As a result, I recommend that the Panel find **insufficient credible evidence** present to support a reasonable belief that the Commission should hear this matter and render an opinion regarding Marjorie Walker's alleged violations of NRS 281A.020, NRS 281A.400(7). I recommend that these allegations and **the entire RFO be dismissed**.

I respectfully provide my recommendation to this honorable panel.

Date: 6/11/12

Caren Jenkins, Esq.
Executive Director