



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

NOTICE OF INTENT TO ACT UPON A REGULATION

(NRS 233B.060)

The Nevada Commission on Ethics will hold a public hearing to adopt, amend and repeal permanent regulations (LCB File R048-14) as follows:

DATE: Wednesday, June 11, 2014

TIME: 8:30 a.m.

**PLACE: Grant Sawyer State Office Building
555 E. Washington Avenue
Suite 4412
Las Vegas, NV 89101**

The purpose of the hearing is to receive comments from all interested persons regarding the Commission's intent to adopt, amend and repeal regulations that pertain to chapter 281A of the Nevada Administrative Code.

The following information is provided pursuant to the applicable requirements of NRS 233B.0603:

1. The need for and purpose of the proposed regulations are to reflect amendments to NRS Chapter 281A enacted by Senate Bill 228 of the 2013 Legislative Session (Chapter 551, 2013 Statutes of Nevada), including provisions relating to Commission procedures regarding jurisdiction, notice and investigations of third-party requests for opinion, confidentiality of certain information and documents, the applicability of certain relationships as those within the third degree of consanguinity and other matters related thereto. (NRS 233B.0603(1)(a)(1))

2. In accordance with NRS 233B.0608, the proposed permanent regulations do not impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business. Rather, the Commission and the Ethics Law govern only the conduct of public officers and employees to ensure that public officers and employees commit themselves to avoid conflicts between their private interests and those of the general public whom they serve. Based on the foregoing, Commission Staff concluded that the regulations

proposed by the Commission have no effect on small business. See Statement Regarding Small Business Impact. (NRS 233B.0603(1)(a)(4) and (5))

3. The Commission will not incur any cost to enforce the proposed regulations. (NRS 233B.0603(1)(a)(6))

4. The proposed regulations do not overlap or duplicate any other state, local or federal government regulation. However, NRS 281A.470 authorizes local governments to establish local ethics committees to complement the functions of the Commission and establish standards of ethical conduct that may not be less restrictive than NRS 281A. (233B.0603(1)(a)(7)).

5. The proposed regulations are not more stringent than any federal regulation that regulates the same activity, and are not required pursuant to any federal law. (NRS 233B.0603(1)(a)(8) and (9))

6. Persons wishing to comment upon the proposed action of the Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Commission at ncoe@ethics.nv.gov or to 704 W. Nye Street, Suite 204, Carson City, Nevada 89703, on or before **June 2, 2014**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Commission may proceed immediately to act upon any written submissions. (NRS 233B.0603(1)(a)(10)).

7. Pursuant to 233B.064, upon adoption of any regulation, the Commission, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption. (NRS 233B.0603(1)(c)).

8. The regulations do not establish any new fee or increase any existing fee. (NRS 233B.0603(1)(d)).

In accordance with NRS 233B.0607 and 233B.0603(1)(a)(3), members of the public may obtain a copy of this notice and the text of the regulations approved by the Legislative Counsel pursuant to NRS 233B.064 at the State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and regulations will be available at the Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City, Nevada 89703 and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us/> pursuant to NRS 233B.0601. Pursuant to NRS 233B.0603(1)(e), copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. Pursuant to NRS 233B.061(5), the Commission will prepare and post an agenda for its June 11, 2014 Meeting in compliance with NRS Chapter 241.

This notice of hearing and the text of the proposed regulations have been posted at the following locations:

- The Nevada Commission on Ethics website: <http://ethics.nv.gov>
- Nevada Register of Administrative Regulations website: <http://www.leg.state.nv.us/>
- The Nevada Legislature's Administrative Regulations Notices website: <http://www.leg.state.nv.us/App/Notice/A/>
- Nevada Public Notice Website: <http://notice.nv.gov>
- State Library & Archives Building, 100 North Stewart Street, Carson City
- Blasdel Building, 209 E. Musser Street, Carson City
- Washoe County Administration Building, 1001 East 9th Street, Reno
- Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas
- The Following County Libraries:

CARSON CITY LIBRARY
900 NORTH ROOP ST
CARSON CITY NV 89701

CHURCHILL COUNTY
LIBRARY
553 SOUTH MAINE ST
FALLON NV 89406

CLARK COUNTY/LAS VEGAS
LIBRARY
833 LAS VEGAS BLVD NORTH
LAS VEGAS NV 89101-2602

DOUGLAS COUNTY LIBRARY
1625 LIBRARY LANE
MINDEN NV 89423

ELKO COUNTY LIBRARY
720 COURT ST
ELKO NV 89801

ESMERALDA COUNTY LIBRARY
FOURTH & CROOK ST
P O BOX 430
GOLDFIELD NV 89013-0430

EUREKA COUNTY LIBRARY
210 SOUTH MONROE ST
EUREKA NV 89316

HUMBOLDT COUNTY
LIBRARY
85 EAST 5TH ST
WINNEMUCCA NV 89445

LANDER COUNTY/BATTLE MT
BRANCH LIBRARY
625 SOUTH BROAD ST
BATTLE MTN NV 89820

LINCOLN COUNTY LIBRARY
63 MAIN ST
PIOCHE NV 89043

LYON COUNTY LIBRARY
20 NEVIN WAY
YERINGTON NV 89447-2399

MINERAL COUNTY LIBRARY
FIRST & A ST
P O BOX 1390
HAWTHORNE NV 89415

NYE COUNTY
TONOPAH PUB LIBRARY
167 CENTRAL ST
P O BOX 449
TONOPAH NV 89049-0449

PERSHING COUNTY
LIBRARY
1125 CENTRAL AVE
P O BOX 781
LOVELOCK NV 89419

STOREY COUNTY
TREASURER/CLERK'S OFFICE
DRAWER D
VIRGINIA CITY NV 89440

WASHOE COUNTY LIBRARY
301 SOUTH CENTER ST
P O BO 2151
RENO NV 89505

WHITE PINE COUNTY
LIBRARY
950 CAMPTON ST
ELY NV 89301

**SECOND REVISED PROPOSED REGULATION
OF THE COMMISSION ON ETHICS**

LCB File No. R048-14

May 7, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-23, NRS 281A.290.

A REGULATION relating to ethics in government; revising provisions relating to the procedures of the Commission on Ethics and the staff of the Commission; revising provisions relating to the confidentiality of certain information and documents which are used by the Commission and the staff of the Commission; revising provisions relating to the determination of a commitment in a private capacity of a public officer or employee; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides a code of ethical standards which prohibits a public officer or employee from using the public officer’s or employee’s position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. (NRS 281A.400) Senate Bill No. 228 of the 77th Session of the Nevada Legislature revised the definition of the term “commitment in a private capacity” to include, with respect to the interests of another person, a commitment, interest or relationship of a public officer or employee to: (1) a person who is the domestic partner of the public officer or employee; and (2) a person who is related to the domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity. (NRS 281A.065) **Section 9** of this regulation revises a chart used by the Commission on Ethics to determine relationships within the third degree of consanguinity or affinity to include relationships based on domestic partnership and adoption. (NAC 281A.310)

Under existing law, the Commission is required to render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances upon its own motion or upon receiving a request for such an opinion from certain persons and entities. Upon receipt of such a request for an opinion, the Executive Director of the Commission is required to first investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter.

(NRS 281A.440) Under existing regulations, when the request for an opinion is from a person making a third-party request relating to a public officer or employee, the Executive Director must confer with the Commission Counsel to determine whether the Commission has jurisdiction concerning the request and whether the third-party request was properly filed. (NAC 281A.400, 281A.403, 281A.405) If the Executive Director and the Commission Counsel determine that the Commission has jurisdiction concerning the request and the third-party request was properly filed, the Executive Director is required to begin an investigation. If the Executive Director and the Commission Counsel determine that the Commission does not have jurisdiction concerning the request or that the third-party request was not properly filed, the Executive Director must notify the requester of that determination. The requester may appeal the determination by requesting a review of the determination by an investigatory panel appointed by the Chair of the Commission. (NAC 281A.405) **Section 13** of this regulation revises this procedure. First, **section 13** provides that the Executive Director and Commission Counsel must notify: (1) both the requester and the subject of the request if a determination is made that the Commission has jurisdiction and the request was properly filed; and (2) only the requester if a determination is made that the Commission does not have jurisdiction or that the request was not properly filed. Second, **section 13** allows a person who receives such a notification to request a review of the determination by the entire Commission instead of an investigatory panel of the Commission. Third, **section 13** prescribes a list of documents which must be provided to a person who requests such a review and provides that the Commission may, based on the findings of the Commission after conducting the review, dismiss the matter with or without prejudice or accept jurisdiction of the matter.

Existing law provides for the confidentiality of certain proceedings, information, documents and other materials related to an investigation of certain requests for an opinion of the Commission. (NRS 281A.440) Senate Bill No. 228 revised those provisions to provide that the investigative file of the Commission is confidential and generally defined the term “investigative file” to include any information obtained by the Commission during the course of an investigation and any records, documents or other materials created or maintained during the course of an investigation which relate to the public officer or employee who is the subject of the investigation. **Section 15** of this regulation revises a provision relating to the confidentiality of information relating to a third-party request for an opinion to reflect the confidentiality in statute of the investigative file. (NAC 281A.420)

Existing regulations provide that the proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion are closed to all persons except the parties to the third-party request for an opinion and any other person the investigatory panel deems necessary to the proceedings. (NAC 281A.425) **Section 16** of this regulation revises that provision to make such proceedings closed to all persons except the staff of the Commission.

Existing law prohibits the Commission Counsel from issuing written opinions concerning the applicability of the statutory ethical standards to a given set of facts and circumstances except as directed by the Commission. (NRS 281A.260) Existing law also provides that each opinion rendered by the Commission in response to a request for an opinion from a public officer or employee is confidential unless the public officer or employee: (1) acts in contravention of the

opinion; (2) discloses the contents of the opinion; or (3) requests the Commission to disclose the contents of the opinion. (NRS 281A.440, 281A.550) Existing regulations require the Commission Counsel to prepare a written opinion for requests for an opinion that are heard by the Commission. (NAC 281A.185) **Section 23** of this regulation repeals that requirement, and **section 20** of this regulation authorizes the Commission to direct the Commission Counsel to prepare written opinions of requests for an opinion that are heard by the Commission. Existing regulations provide requirements for the contents of any written opinion of the Commission and requirements for the provision of copies of the written opinion to each person who is a party to the matter, the posting of the written opinion on the Internet website of the Commission and the delivery of a copy of the written opinion to any person who requests such a copy. (NAC 281A.550) **Section 20** authorizes the Commission to direct the Commission Counsel to prepare an abstract for a written opinion which is confidential under the applicable statute. The abstract is defined as a version of a confidential written opinion that has been redacted or amended to keep the identity of the requester of the opinion confidential. **Section 20** also revises the requirements for the posting of written opinions on the Commission’s Internet website to include the posting of abstracts and to prohibit the posting of a written opinion which is confidential.

Section 1. NAC 281A.060 is hereby amended to read as follows:

281A.060 “Party” means the subject *or his or her counsel, any staff of the Commission who investigate a third-party request for an opinion* and any other person who the Commission reasonably determines will be treated as a party in a matter before the Commission.

Sec. 2. NAC 281A.075 is hereby amended to read as follows:

281A.075 “Proceedings of an investigatory panel” means ~~⌋~~:

~~1.—A review and determination by an investigatory panel pursuant to NAC 281A.405 as to whether the Commission has jurisdiction over a third-party request for an opinion.~~

~~—2.—A] a~~ review pursuant to NAC 281A.430 and determination by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a matter presented in a third-party request for an opinion.

~~⌋~~ For the purposes of this chapter, the proceedings of an investigatory panel do not constitute a hearing.

Sec. 3. NAC 281A.090 is hereby amended to read as follows:

281A.090 “Requester” means a person ~~[or group of persons]~~ who ~~[file]~~ *files* with the Commission a third-party request for an opinion.

Sec. 4. NAC 281A.195 is hereby amended to read as follows:

281A.195 1. If any member of the Commission participates in an ex parte communication, the member must disclose to the Commission that he or she participated in an ex parte communication.

2. If a member of the Commission discloses that he or she participated in an ex parte communication or the Commission otherwise determines that a member of the Commission participated in an ex parte communication, the Commission may require the member to abstain from participating with the Commission in any hearing or determination to be made by the Commission concerning the matter that was the subject of the ex parte communication.

3. As used in this section, “ex parte communication” means any written or oral communication between *a party or* a person who has any *interest in a* matter pending before the Commission, or any agent of such *party or* person, and a member of the Commission which:

- (a) Is communicated outside the presence of the entire Commission;
- (b) Is not communicated during a formal proceeding of the Commission; and
- (c) Includes any comment, response or argument regarding any:
 - (1) Ongoing investigation by the Commission; or
 - (2) Matter that is pending before the Commission.

Sec. 5. NAC 281A.250 is hereby amended to read as follows:

281A.250 1. Except as otherwise provided in subsection 3, the provisions of NAC 281A.250 to ~~[281A.290,]~~ **281A.310**, inclusive, govern all practice and procedure before the Commission.

2. The Commission will liberally construe the provisions of NAC 281A.250 to ~~[281A.290,]~~ **281A.310**, inclusive, to determine all matters before the Commission in a just, speedy and economical manner.

3. For good cause shown, the Commission may deviate from the provisions of NAC 281A.250 to ~~[281A.290,]~~ **281A.310**, inclusive, if the deviation will not materially affect the interests of the ~~[party who is the]~~ subject of the request.

Sec. 6. NAC 281A.255 is hereby amended to read as follows:

281A.255 1. Each written communication or document filed with the Commission must:

(a) Be ~~[in proper]~~ **on the** form ~~[;]~~ **provided by the Commission;**

(b) Be ~~[clearly and legibly typed or printed on 8 1/2 by 11 inch paper, on one side only;~~

~~—(c) Be addressed to the principal office of the Commission;]~~ **submitted in the manner prescribed on the form;** and

~~[(d)]~~ (c) Include any ~~[duplicate]~~ :

(1) **Duplicate** copy required to be included with the form, as specified on the form ~~[;]~~ ;

and

(2) **Necessary exhibits in a form and format, including, without limitation, digital or electronic format, which is reasonably accessible to the Commission.**

2. Except as otherwise provided in NRS 281A.410 and 281A.500, the Commission will consider a written communication or document which is required to be filed with the

Commission to have been filed with the Commission on the date on which the communication or document is received at the principal office of the Commission. ~~[A written communication or document that is required to be filed with the Commission may not be submitted via facsimile transmission.]~~

Sec. 7. NAC 281A.265 is hereby amended to read as follows:

281A.265 1. Motions related to a third-party request for an opinion may only be made:

(a) After an investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion pursuant to NRS 281A.220; and

(b) Before the hearing on the matter unless the cause for the motion arises for the first time during the hearing on the matter.

2. A motion that is made before the hearing on the matter must be in writing and must be filed at the principal office of the Commission not later than ~~[15 days before the date of the hearing.]~~ *the close of business on the date set by an order of the Commission after the investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion.*

3. A written motion must contain:

(a) A brief statement of the facts and the points and authorities upon which the motion is based;

(b) A description of the relief sought; and

(c) A certificate of mailing which indicates that the motion was served upon all other parties to the matter.

4. The Commission, in its discretion, may allow a party making a motion to argue the motion before the Commission.

5. The Commission, in its discretion, may allow a party or any other person to respond to a motion.

6. The Chair, in his or her discretion, may accept and rule upon a motion on a matter, except a motion for disposition of a matter, at any time before, during or after the hearing by the Commission on the matter.

7. A motion for rehearing or for the reconsideration of an opinion on a third-party request for an opinion issued by the Commission must be filed with the Commission not later than 15 days after the date on which the opinion of the Commission is served.

Sec. 8. NAC 281A.285 is hereby amended to read as follows:

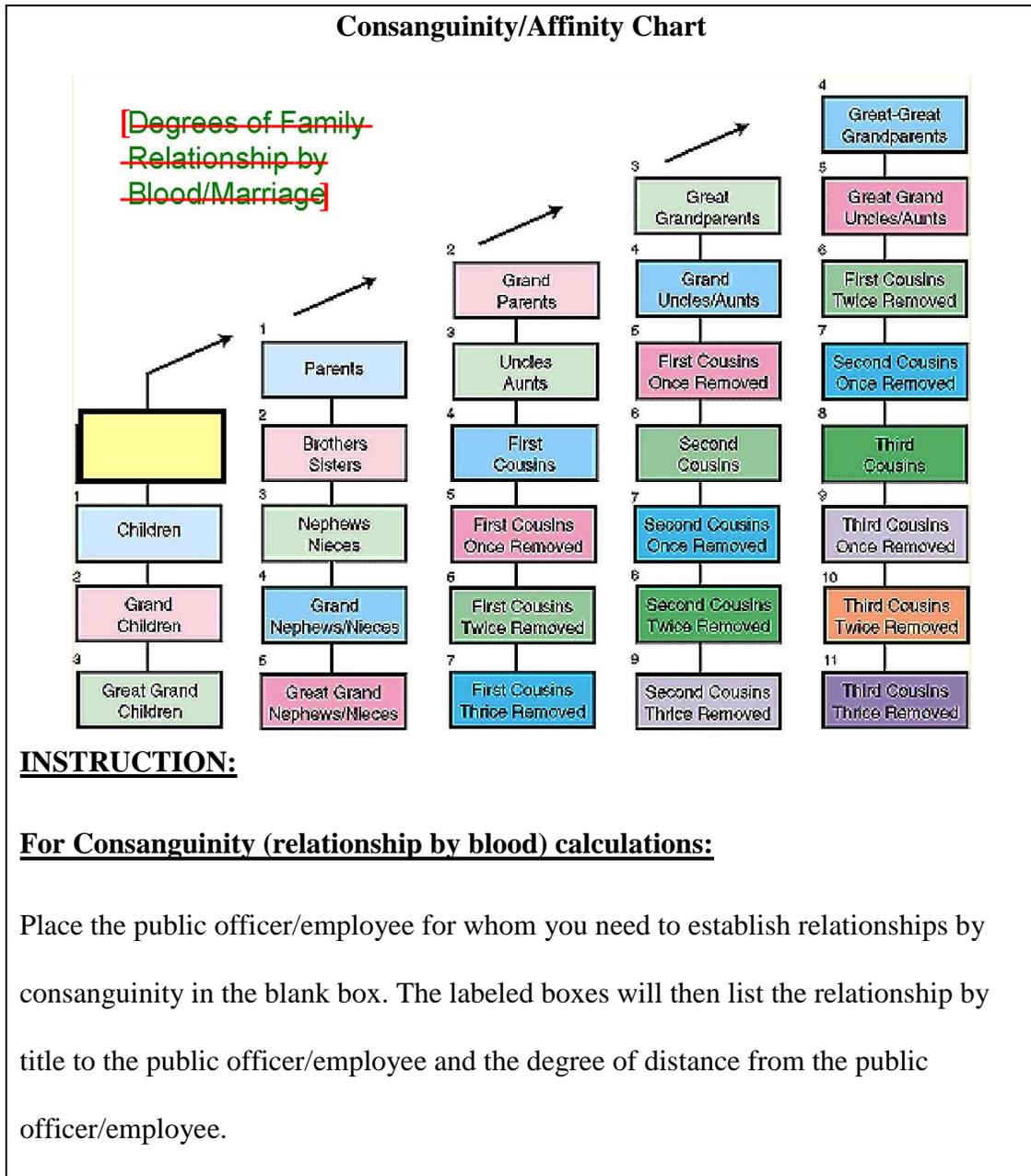
281A.285 ~~{H.}~~ A subject of a third-party request for an opinion may request that a subpoena be issued by filing a written request for a subpoena at the principal office of the Commission. A subject of a third-party request for an opinion who requests the issuance ~~{and service}~~ of a subpoena pursuant to this section shall *serve the subpoena in accordance with NRS 281A.300 and* pay ~~{all expenses}~~ *the costs* related to the ~~{issuance and}~~ service of the subpoena.

~~{2.— Service of a subpoena issued pursuant to this section or NRS 281A.300 must be made in the manner provided by Rule 45 of the Nevada Rules of Civil Procedure.}~~

Sec. 9. NAC 281A.310 is hereby amended to read as follows:

281A.310 *1.* For the purposes of NRS ~~{281.571 and 281A.420,}~~ *281A.065*, the Commission will determine *the* relationships *of a public officer or employee, or the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic*

partnership within the third degree of consanguinity or affinity pursuant to the following chart and instructions:



Anyone in a box numbered 1, 2, or 3 is within the third degree of consanguinity.

~~[Nevada Ethics in Government Law addresses consanguinity within the third degree by blood, adoption or marriage.]~~

For Affinity (relationship by *adoption, marriage* ~~[]~~ or *domestic partnership*)

calculations:

Place the spouse *or domestic partner* of the public officer/employee for whom you need to establish relationships by affinity in the blank box. The labeled boxes will then list the relationship by title to the spouse *or domestic partner* and the degree of distance from the public officer/employee by affinity.

~~[A husband and wife]~~ *Spouses* are related in the first degree *of affinity* by marriage ~~[]~~ *and domestic partners are related in the first degree of affinity by domestic partnership.* For *adoption and* other relationships by marriage ~~[]~~ *or domestic partnership,* the degree of relationship is the same as the degree of underlying relationship by blood.

2. *As used in this section:*

- (a) *“Domestic partner” has the meaning ascribed to it in NRS 281A.085; and***
- (b) *“Domestic partnership” has the meaning ascribed to it in NRS 281A.086.***

Sec. 10. NAC 281A.350 is hereby amended to read as follows:

281A.350 The Commission will only consider a first-party request for an opinion filed by a public officer or public employee that is ~~submitted to the Commission in proper~~ *on the* form ~~[-]~~ *provided by the Commission and submitted in the manner prescribed on the form.*

Sec. 11. NAC 281A.365 is hereby amended to read as follows:

281A.365 1. The Chair or presiding officer of a hearing concerning a first-party request for an opinion shall:

(a) Ascertain whether the subject of the first-party request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with NAC 281A.280, to the subject of the first-party request for an opinion and all persons whose testimony will be taken.

2. ~~The~~ *Except as otherwise provided in subsection 3 of NAC 281A.353, the* subject of the first-party request for an opinion must be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the first-party request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the first-party request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the first-party request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. Upon the conclusion of the closing comments by the subject of the first-party request for an opinion, the Commission will:

(a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;

(b) Render an opinion on the matter; and

(c) Submit a copy of the opinion to the subject.

7. The opinion rendered by the Commission ~~shall be~~ *is* binding upon the subject of the first-party request for an opinion as to his or her future conduct pursuant to subsection 1 of NRS 281A.440.

8. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

9. The first-party request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the opinion acts in a manner set forth in subsection 7 of NRS 281A.440 to waive the confidentiality of such information.

Sec. 12. NAC 281A.400 is hereby amended to read as follows:

281A.400 1. The Commission will only consider a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 which is ~~submitted in proper~~

on the form ~~[with the Executive Director at the principal office of]~~ *provided by* the Commission ~~[.]~~ *and submitted in the manner prescribed on the form.*

2. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 must contain:

(a) The original completed form for a third-party request for an opinion ; ~~[in the format required by the Commission;]~~

(b) Two copies of the completed form; and

(c) Three copies of all supporting documents and evidence.

3. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 must be accompanied by evidence which supports the allegation that the subject has violated a statutory ethical standard set forth in the third-party request for an opinion and demonstrates that the alleged conduct of the subject would constitute a violation of chapter 281A of NRS.

4. Once a third-party request for an opinion has been filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the requester may only withdraw the third-party request for an opinion with the consent of the Executive Director.

5. A request to withdraw a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 must be in writing and set forth the specific reasons for requesting the withdrawal of the third-party request for an opinion.

6. As used in this section, “evidence which supports the allegation” means any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support a

reasonable belief in the truth of the allegation made in the third-party request for an opinion. The term includes any evidence which is offered that corroborates a newspaper article or other media report. The term does not include a newspaper article or other media report if the article or report is offered as the only evidence to support the allegation.

Sec. 13. NAC 281A.405 is hereby amended to read as follows:

281A.405 1. The Executive Director shall confer with the Commission Counsel to determine whether:

(a) The Commission has jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440; and

(b) The third-party request for an opinion was ~~properly~~ filed with the Commission in ~~accordance~~ *compliance* with *the requirements of subsections 1, 2 and 3 of* NAC 281A.400.

2. If the Executive Director and Commission Counsel determine *pursuant to subsection 1* that the Commission has jurisdiction concerning the third-party request for an opinion and that the third-party request for an opinion was ~~properly~~ filed ~~pursuant to~~ *in compliance with the requirements of subsections 1, 2 and 3 of* NAC 281A.400, the Executive Director shall ~~investigate and proceed in the matter pursuant to NRS 281A.440.~~ *notify the requester and the subject of the request of the determination.*

3. The Executive Director shall notify the requester *of the determination* if the Executive Director and Commission Counsel determine *pursuant to subsection 1* that:

(a) The Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to subsection 1; or

(b) The third-party request for an opinion was not ~~properly~~ filed with the Commission in ~~accordance~~ *compliance* with *the requirements of subsections 1, 2 and 3 of* NAC 281A.400.

4. A person who receives a notice pursuant to ~~paragraph (a) of~~ subsection *2 or* 3 may request a review *by the Commission* of the determination ~~regarding jurisdiction by an investigatory panel.~~ *made pursuant to subsection 1.* Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the person received notification. ~~The Chair will appoint an investigatory panel to conduct the review of the determination regarding jurisdiction.~~

5. ~~If an investigatory panel appointed pursuant to subsection 4 determines that the Commission has jurisdiction concerning a third party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the Executive Director shall investigate and proceed in the matter pursuant to NRS 281A.440. Upon conclusion of the investigation, the Executive Director shall, to the extent possible, submit his or her recommendation regarding whether there is just and sufficient cause for the Commission to render an opinion to the same investigatory panel that determined that the Commission has jurisdiction concerning the third party request for an opinion.~~ *Upon receipt of a request for a review pursuant to subsection 4, the Executive Director shall notify the subject if the request for a review was made by the requester of the third-party request for an opinion, or the requester of the third-party request for an opinion if the request for a review was made by the subject. Such notification must include, without limitation:*

(a) The third-party request for an opinion;

(b) The determination of the Executive Director and Commission Counsel made pursuant to subsection 1;

(c) The request for a review made pursuant to subsection 4;

(d) The date on which the Commission will conduct its review; and

(e) Instructions for filing a response to the request for a review, which must be filed not less than 5 business days before the date on which the Commission will conduct its review.

6. The Commission will review a determination made by the Executive Director and the Commission Counsel pursuant to subsection 1 on the date provided in the notification made pursuant to subsection 5. Action taken by the Commission pursuant to this subsection is a final decision. The Commission will:

(a) Dismiss the matter without prejudice upon a finding that the third-party request for an opinion was not filed in compliance with the requirements of subsections 1, 2 and 3 of NAC 281A.400;

(b) Dismiss the matter upon a finding that the Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440; or

(c) Accept jurisdiction of the matter upon a finding that the third-party request for an opinion was filed in compliance with the requirements of subsections 1, 2 and 3 of NAC 281A.400 and that the Commission has jurisdiction concerning the third-party request for an opinion pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440.

7. The Executive Director shall:

(a) Notify the subject and the requester of the third-party request for an opinion of the action taken by the Commission pursuant to subsection 6; and

(b) If the Commission accepts jurisdiction of the matter, provide the notification required by NAC 281A.410.

Sec. 14. NAC 281A.410 is hereby amended to read as follows:

281A.410 1. Once a third-party request for an opinion has been ~~properly~~ filed with the Commission by a requester *in compliance with the requirements of subsections 1, 2 and 3 of NAC 281A.400* or initiated on the motion of the Commission and the Commission has determined that the Commission has jurisdiction over the matter presented in the third-party request for an opinion ~~is~~ *pursuant to NAC 281A.405*, the Executive Director shall forthwith ~~notify~~ :

(a) Notify the public officer or public employee who is the subject of the third-party request for an opinion ~~and provide~~ ;

(b) Provide the public officer or public employee an opportunity to respond to the allegations contained in the third-party request for an opinion ~~Such a~~ ; *and*

(c) Investigate and proceed in the matter pursuant to NRS 281A.440.

2. A notification *made pursuant to subsection 1* must ~~be~~ :

(a) Be in writing and sent to the subject of the third-party request for an opinion by:

~~(a)~~ (1) Personal delivery;

~~(b)~~ (2) Certified mail, return receipt requested; or

~~(c)~~ (3) Overnight delivery service in which proof of delivery is documented.

~~2. A notice of a third-party request for an opinion made pursuant to this section must include,]~~

(b) Include, without limitation:

~~[(a)]~~ *(1)* All information filed by the requester or information upon which the Commission based its motion, as appropriate;

~~[(b)]~~ A copy of chapter 281A of NRS;

~~—(c) A copy of this chapter;~~

~~—(d)]~~ *(2)* An outline of the process used by the Commission to resolve third-party requests for opinions; and

~~[(e)]~~ *(3)* A form prescribed by the Commission for waiving the time limits set forth in subsections 4, 5 and 6 of NRS 281A.440.

3. The subject of a third-party request for an opinion may, within the time limit set forth in subsection 3 of NRS 281A.440, file with the Commission a written response to the allegations contained in the third-party request for an opinion. If the subject of a third-party request for an opinion files with the Commission a waiver of the time limits set forth in subsections 4, 5 and 6 of NRS 281A.440, the Executive Director may, for good cause shown, authorize one or more extensions, of not more than 30 days each, of the time limit set forth in subsection 3 of NRS ~~[281.440]~~ **281A.440** for the subject to file a written response to the allegations contained in the third-party request for an opinion.

Sec. 15. NAC 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in NRS 281A.440, until the conclusion of the proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter:

(a) The Commission will not confirm or deny whether a third-party request for an opinion has been filed by a requester, or initiated upon the motion of the Commission, against a public officer or public employee; and

(b) All information related to the third-party request for an opinion in the possession of the Commission and its staff is confidential.

2. Upon the conclusion of the proceedings of an investigatory panel on a third-party request for an opinion, ~~the~~ *any* information related to the third-party request for an opinion, *except the investigative file of the Commission as described in subsection 16 of NRS 281A.440*, is a public record available for public review during normal business hours at the principal office of the Commission.

Sec. 16. NAC 281A.425 is hereby amended to read as follows:

281A.425 The proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion are confidential and closed to all persons except the ~~[parties to the third-party request for an opinion and any other person the investigatory panel deems necessary to the proceedings of the investigatory panel.]~~ *staff of the Commission.*

Sec. 17. NAC 281A.445 is hereby amended to read as follows:

281A.445 The Executive Director shall provide and make arrangements for a *written* record *or audio recording* to be made of any proceedings of an investigatory panel.

Sec. 18. NAC 281A.475 is hereby amended to read as follows:

281A.475 The Commission will only consider those requests for an opinion filed pursuant to subsection 6 of NRS 281A.550 that are ~~submitted to the Commission in proper~~ *on the form provided by the Commission and submitted in the manner prescribed on the form.*

Sec. 19. NAC 281A.495 is hereby amended to read as follows:

281A.495 1. The Chair or presiding officer of a hearing concerning a request for an opinion filed pursuant to subsection 6 of NRS 281A.550 shall:

(a) Ascertain whether the subject of the request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with NAC 281A.280, to the subject of the request for an opinion and all persons whose testimony will be taken.

2. ~~The~~ *Except as otherwise provided in subsection 3 of NAC 281A.480, the* subject of the request for an opinion must be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. Upon the conclusion of the closing comments by the subject of the request for an opinion, the Commission will:

(a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;

(b) Render an opinion on the matter; and

(c) Submit a copy of the opinion to the subject.

7. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

8. The request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the request for an opinion acts in a manner set forth in subsection 7 of NRS 281A.550 to waive the confidentiality of such information.

Sec. 20. NAC 281A.550 is hereby amended to read as follows:

281A.550 1. *The Commission Counsel shall, if directed by the Commission, prepare:*

(a) A written opinion of the Commission regarding a first-party request for an opinion, a third-party request for an opinion or a request for an opinion submitted pursuant to subsection 6 of NRS 281A.550; and

(b) An abstract of any written opinion which is confidential pursuant to subsection 7 of NRS 281A.440 or subsection 7 of NRS 281A.550.

2. A written opinion *or abstract* of the Commission must plainly state:

(a) If the opinion concerns a third-party request for an opinion, each violation alleged against the public officer or public employee who is the subject of the third-party request for an opinion;

(b) Except as otherwise provided in subsection 7 of NRS 281A.440, if the opinion concerns a first-party request for an opinion, each question for which the public officer or employee seeks guidance concerning the interpretation of a statutory ethical standard;

(c) If the opinion concerns a request for an opinion filed pursuant to subsection 6 of NRS 281A.550, the relevant facts in the case that do or do not justify relief from the strict application of the provisions of subsection 3 or 5 of NRS 281A.550, as applicable;

(d) The determination of the Commission with regard to each allegation, question or fact, as applicable; and

(e) The applicable findings of fact and conclusions of law and any specific guidance concerning the interpretation of a statutory ethical standard provided by the Commission to a public officer or public employee who is the subject of a first-party request for an opinion.

~~[2.]~~ 3. Each written opinion *and abstract* must be numbered, dated and signed by the Chair or presiding officer.

~~[3.]~~ 4. The Commission will:

(a) Provide a copy of each written opinion *and abstract* to each person who is a party;

(b) Post a copy of each written opinion *which is not confidential and each abstract* on the *Internet* website of the Commission at <http://ethics.nv.gov>; and

(c) Deliver a copy of a written opinion *which is not confidential or an abstract, as applicable*, to any person who requests such a copy.

5. As used in this section, “abstract” means a version of a confidential written opinion that has been redacted or amended to keep the identity of the requester of the opinion confidential.

Sec. 21. NAC 281A.560 is hereby amended to read as follows:

281A.560 1. Except as otherwise provided in this section, ~~[to obtain copies of public records from]~~ the Commission ~~[- a person must:~~

~~—(a) File a written request at the principal office of the Commission or appear personally at an office of the Commission; and~~

~~—(b) Before the copies are made, pay the actual cost of the copies or an estimate of the actual cost, as determined by the Commission’s staff, unless the Commission’s staff, in its discretion and based upon its experience with the person requesting the copies, allows the person to pay the actual cost of the copies when the copies are provided to the person.~~

~~—2. Except as otherwise provided in this section, the cost of obtaining copies of]~~ *will make* public records ~~[from]~~ *of* the Commission ~~[is 25 cents for each page of the public record that is copied.~~

~~—3.]~~ *available for inspection and copying in accordance with the provisions of chapter 239 of NRS.*

2. Except as otherwise provided in this section, to obtain copies of a transcript concerning a matter that was recorded by the Commission, a person must file a written request at the principal office of the Commission and make arrangements directly with the court reporter.

~~[4.— A person may not obtain]~~

3. *The Commission will not authorize a court reporter to provide* copies of a transcript concerning a matter that was recorded by the Commission *to a person seeking such a transcript pursuant to subsection 2* unless the contents of the proceedings concerning that matter may be disclosed to that person pursuant to the provisions of chapter 281A of NRS and NAC 281A.250 to ~~[281A.290,]~~ *281A.310*, inclusive.

~~[5.]~~ 4. A court reporter ~~[may]~~ *shall* not provide to a person copies of a transcript concerning a matter that was recorded by the Commission or any other documents unless the court reporter has received written permission from the Commission . ~~[to do so.]~~

~~—6.]~~ 5. The Commission may waive all or a portion of the cost of obtaining copies of public records *made available pursuant to subsection 1* if the person requesting the copies files a written request for such a waiver at the principal office of the Commission and the Commission determines that:

- (a) The copies requested are reasonable in quantity; and
- (b) The person requesting the copies is a party to a matter before the Commission and does not have the financial ability to pay for all or a portion of the cost of the copies.

Sec. 22. NAC 281A.615 is hereby amended to read as follows:

281A.615 1. The following documents must be ~~[filed in proper form:]~~ *on the form provided by the Commission and submitted in the manner prescribed on the form:*

- (a) A disclosure of representation and counseling required pursuant to NRS 281A.410; and
- (b) An acknowledgment of the statutory ethical standards required pursuant to NRS 281A.500.

2. The form for each document specified in subsection 1 is available at the principal office of the Commission and on the *Internet* website of the Commission.

Sec. 23. NAC 281A.040, 281A.080, 281A.085 and 281A.185 are hereby repealed.

TEXT OF REPEALED SECTIONS

281A.040 “Information related to the third-party request for an opinion” defined.

(NRS 281A.290) “Information related to the third-party request for an opinion” includes, without limitation:

1. A third-party request for an opinion;
2. All investigative materials and information related to the third-party request for an opinion, including, without limitation, any investigation report;
3. Each document in the possession of the Commission or its staff related to the third-party request for an opinion; and
4. The record of the proceedings of an investigatory panel related to the third-party request for an opinion.

↪ The term does not include any confidential information unless the confidentiality of the information has been expressly or impliedly waived.

281A.080 “Proper form” defined. (NRS 281A.290) “Proper form” means a form, available from an office or website of the Commission, which is:

1. Created by the Commission for the intended purpose of the form; and
2. Submitted to the Commission at the principal office of the Commission with all required information clearly and legibly printed or typed on the form.

281A.085 “Record of the proceedings of an investigatory panel” defined. (NRS 281A.290) “Record of the proceedings of an investigatory panel” means written or audio documentation memorializing the deliberations of an investigatory panel during the proceedings of the investigatory panel.

281A.185 Preparation of written opinions by Commission Counsel. (NRS 281A.290)

In addition to any other duties imposed on him or her by the Commission, the Commission Counsel shall, in a timely manner, prepare a written opinion for each third-party request for an opinion, first-party request for an opinion and request for an opinion filed pursuant to subsection 6 of NRS 281A.550 that is heard by the Commission.



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STATEMENT REGARDING SMALL BUSINESS IMPACT
(NRS 233B.0608 and 233B.0609)

I, Caren Cafferata-Jenkins, being the duly appointed Executive Director of the Nevada Commission on Ethics, do hereby certify that, to the best of my knowledge or belief:

1. The proposed regulations reflect amendments to NRS Chapter 281A made pursuant to Senate Bill 228 of the 2013 Legislative Session (Chapter 551), which include provisions relating to Commission procedures for jurisdiction, notice and investigations of third-party requests for opinion, confidentiality of certain information and documents, the applicability of certain relationships as those within the third degree of consanguinity or affinity, and other matters related thereto.

2. The proposed regulations are not likely to: (a) impose a direct or significant economic burden upon a small business, or (b) directly restrict the formation, operation or expansion of a small business. (NRS 233B.0608(1))

3. Commission staff analyzed whether the proposed regulations could cause small business any economic burden, and none of the proposals were found to directly or significantly affect business in Nevada. Only in the narrow circumstance where a public officer or public employee holds a significant pecuniary interest in a business would the Ethics regulations apply at all.

In fact, this occasional indirect effect will not increase with the proposed regulation; by incorporating the effect of SB 228 of the 2013 Legislative Session which changed the interest triggering the Ethics Law from a public officer or public employee having *any* pecuniary interest to the requirement of *a significant* pecuniary interest before requiring action or abstention, the regulations will have even less of an impact.

The Nevada Ethics in Government Law in NRS and NAC Chapters 281A does not directly govern or affect any small business in Nevada. Rather, the Commission and the Ethics Law govern only the conduct of public officers and employees to ensure that they commit themselves to avoid conflicts between their private interests and those of the general public whom they serve. Based on the foregoing, Commission staff concluded that the proposed regulations will have no effect on small business. (NRS 233B.0608(3))

4. Comment by small business has not been solicited or summarized. Because small businesses generally are not likely to be affected by the adoption of these proposed regulations, no assessment of the burden or economic impact can be completed. (NRS 233B.0608(2)(a))

Respectfully submitted,

DATED: May 6, 2014



CAREN CAFFERATA-JENKINS, ESQ.
Executive Director