STATE OF NEVADA
COMMISSION ON ETHICS
http://ethics.nv.gov

NOTICE OF PUBLIC MEETING

NAME OF ORGANIZATION: NEVADA COMMISSION ON ETHICS

DATE & TIME OF MEETING: Wednesday, May 20, 2015 at 9:00 a.m.

PLACE OF MEETING: Members of the public may attend at the following location:

Grant Sawyer State Office Building
Gaming Control Board
Room 2450
555 E. Washington Avenue
Las Vegas, NV 89101

AGENDA

NOTES:

- Two or more agenda items may be combined for consideration.
- At any time, an agenda item may be taken out of order, removed, or delayed.
- Public comment will be accepted at the beginning of the open session and again before the conclusion of the open session of the meeting. Comment and/or testimony by the public may be limited to three (3) minutes. No action may be taken on any matter referred to in remarks made as public comment. Members of the public may also submit written public comment to the Commission at NCOE@ethics.nv.gov.

CLOSED SESSION:

For Possible Action*	A. **Closed Session** pursuant to NRS 281A.440(8) for consideration of a Jurisdictional Appeal by the Requesters of **Third-Party Request for Opinion No. 15-13N and Third-Party Request for Opinion No. 15-17N regarding confidential Subject,** submitted pursuant to NAC 281A.405.
For Possible Action*	B. **Closed Session** for presentation, discussion and consideration of a Motion concerning **Third-Party Request for Opinion No. 14-59C, regarding Gerald Antinoro, Sheriff, Storey County, State of Nevada,** submitted pursuant to NRS 281A.440(2). Although this RFO is no longer confidential under NRS 281A.440(8) after the determination of the Investigatory Panel, the Motion presented contains otherwise protected confidential information and materials, and the Motion will be considered in a Closed Session pursuant to NRS 281A.440(15).
For Possible Action*	C. **Closed Session** for discussion and consideration of a Proposed Stipulated Agreement concerning **Third-Party Request for Opinion No. 14-64C regarding Ashok Mirchandani, Director, Nevada Department of Business and Industry**, submitted pursuant to NRS 281A.440(2).

	D. **Closed Session** for discussion and consideration of potential or pending litigation.

OPEN SESSION:

	1. **Call to Order,** Roll Call, and Pledge of Allegiance to the Flag.
	2. **Open Session** for Public Comment. Comment and/or testimony by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
For Possible Action*	3. **Open Session** for determination of a Motion concerning **Third-Party Request for Opinion No. 14-59C regarding Gerald Antinoro, Sheriff, Storey County, State of Nevada,** submitted pursuant to NRS 281A.440(2). Although this RFO is no longer confidential under NRS 281A.440(8) after the determination of the Investigatory Panel, the Motion presented contains otherwise protected confidential information and materials, and the Motion will be presented, discussed and considered in a Closed Session pursuant to NRS 281A.440(15).
For Possible Action*	4. **Open Session** for consideration and approval of a Proposed Stipulated Agreement concerning **Third-Party Request for Opinion No. 14-64C regarding Ashok Mirchandani, Director, Nevada Department of Business and Industry**, submitted pursuant to NRS 281A.440(2).
For Possible Action	5. **Open Session** for consideration and approval of Minutes of the March 18, 2015 Commission Meeting.
For Possible Action	6. **Open Session** for report by the Executive Director and Commission Counsel on agency status and operations, including, without limitation, an update regarding the status of pending Requests for Opinions, the Executive Director's proposed outreach and education program, and the development of an externship program with UNLV's William S. Boyd School of Law.
For Possible Action	7. **Open Session** for discussion and potential direction to the Executive Director regarding the 2015 Session of the Nevada Legislature, including an update on the Commission's legislative measures (A.B. 60) and budget presentations before the Nevada Legislature.
	8. **Open Session** for Commissioner Comment on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.
	9. **Open Session** for Public Comment. Comment and/or testimony by any member of the public may be limited to three (3) minutes. No action will be taken under this agenda item.
	10. **Adjournment.**

***A meeting or hearing held by the Commission pursuant to NRS 281A.440 to receive information or evidence regarding the conduct of a public officer or employee, and deliberations of the Commission regarding such a public officer or employee, are exempt from the provisions of NRS Chapter 241, The Open Meeting Law. As a result, these agenda items, or any portion of them, may be heard in closed session.**

NOTES:

- The Commission is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada Commission on Ethics, in writing at 704 W. Nye Lane, Ste. 204, Carson City, Nevada 89703; via email at ncoe@ethics.nv.gov or call 775-687-5469 as far in advance as possible.

- To request an advance copy of the supporting materials for any open session of this meeting, contact Executive Director Yvonne Nevarez-Goodson, Esq. at ncoe@ethics.nv.gov or call 775-687-5469.

- This Agenda and supporting materials are posted and are available not later than the 3rd working day before the meeting at the Commission's office, 704 W. Nye Lane, Ste. 204, Carson City, Nevada, or on the Commission's website at www.ethics.nv.gov. A copy also will be available at the meeting location on the meeting day.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020 before 9:00 a.m. on the third working day before the meeting at the following locations:

- Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City
- Nevada Commission on Ethics' website: http://ethics.nv.gov
- 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

AGENDA ITEM NO. 3

AGENDA ITEM NO. 3

NEVADA ETHICS OPINION NO. 14-59C

RECEIVED
JUL 30 2014
COMMISSION ON ETHICS

NEVADA COMMISSION ON ETHICS
THIRD-PARTY REQUEST FOR OPINION

NRS 281A.440(2)

1. Provide the following information for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS Chapter 281A. ***(If you allege that more than one public officer or employee has violated the law, use a separate form for each individual.)***

NAME: (Last, First)	Gerald Antinoro	**TITLE OF PUBLIC OFFICE:** (Position: e.g. city manager)	Sheriff
PUBLIC ENTITY: (Name of the entity employing this position: e.g. the City of XYZ)	Storey County		
ADDRESS: (Street number and name)	PoB 498	**CITY, STATE, ZIP CODE**	Virginia City, NV. 89440
TELEPHONE:	**Work:** 775.847.0959 / **Other:** (Home, cell)	**E-MAIL:**	

2. Describe in specific detail the public officer's or employee's conduct that you allege violated NRS Chapter 281A. ***(You must include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)***

Check here ☑ if additional pages are attached.

See Attached Packet

3. Is the alleged conduct the subject of any action currently pending before another administrative or judicial body? If yes, describe:

No

4. What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Essence of Statute:
☑	NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
☑	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
☑	NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
☐	NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and any business entity in which he has a significant pecuniary interest.

☐	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
☐	NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
☐	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
☑	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
☑	NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
☑	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
☐	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
☐	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
☐	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
☐	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
☐	NRS 281A.430/530	Engaging in government contracts in which public officer or employee has a significant pecuniary interest.
☑	NRS 281A.500	Failing to timely file an ethical acknowledgment.
☐	NRS 281A.510	Accepting or receiving an improper honorarium.
☐	NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.
☐	NRS 281A.550	Failing to honor the applicable "cooling off" period after leaving public service.

5. Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Check here ☐ if additional pages are attached.

NAME and TITLE: (Person #1)	Timothy Guthrie (Law enforcement)			
ADDRESS:			**CITY, STATE, ZIP**	Carson City, Nevada
TELEPHONE:	**Work:** 775.671.8098	**Other:** *(Home, cell)* 775.297.3916	**E-MAIL:**	
NATURE OF TESTIMONY:				

NAME and TITLE: (Person #2)	Lance Andres (Law enforcement)			
ADDRESS:			**CITY, STATE, ZIP**	Reno, Nevada
TELEPHONE:	**Work:** 775.846.6463	**Other:** *(Home, cell)*	**E-MAIL:**	
NATURE OF TESTIMONY:				

6. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS PURSUANT TO NRS 281A.440(2)(b)(2). Attach all documents or items you believe provide credible evidence to support your allegations. NAC 281A.435(3) defines credible evidence as 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. A newspaper article or other media report will not support your allegations if it is offered by itself.

State the total number of additional pages attached (including evidence) 14.

7. REQUESTER'S INFORMATION:

YOUR NAME:	Shawn Mahan			
YOUR ADDRESS:	PO B 1134		**CITY, STATE, ZIP:**	Virginia City, Nevada 89440
YOUR TELEPHONE:	**Day:** 775.847.0696 Home	**Evening:** 775.345.4171 cell	**E-MAIL:**	Knowyourself@Yahoo.Com

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

I acknowledge that, pursuant to NRS 281A.440(8) and NAC 281A.255(3), this Request for Opinion, the materials submitted in support of the allegations, and the Commission's investigation are confidential until the Commission's Investigatory Panel renders its determination, unless the Subject of the allegations authorizes their release.

Signature: 7/30/2014 Date:

Shawn Mahan

Print Name:

You must submit an original and two copies of this form bearing your signature, and three copies of the attachments 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)

TELEPHONE REQUESTS FOR OPINION ARE NOT ACCEPTED.

7/30/2014

Nevada Commission on Ethics

Re: Gerald Antinoro

Sir:

I am writing in hopes of supervision, intervention and resolution of ongoing wrongdoings being experienced by myself personally and professionally. I am currently employed with the Storey County Sheriff's Office as a Deputy Sheriff, wherein my employment began in 2002. Over the past few years, personal and professional occurrences in unlawful misconduct have been focused at me directly from Storey County employee and Sheriff Gerald Antinoro. Gerald Antinoro has created a level of exemption from rules and regulations, which has allowed him to run amuck and remain unchecked.

I am now engaged in the political process and challenging Gerald Antinoro for the elected office of sheriff. Please understand my motivations are not based in disgruntled or vengeful retaliation towards Gerald Antinoro. To the contrary, I intend on elevating the appearance of Storey County's long-standing and negative reputation from such future occurrences. As a 14-year Storey County citizen, I feel compelled to uncover these misdoings. I present this objective and factual compilation for your review.

I herein attest that Sheriff Gerald Antinoro has violated local and state law pertaining to enforcement of laws. As a result of his own conduct Gerald Antinoro has:

- Intentionally impeded constitutional rights to pursue happiness, through my participation in political activity.
- Created a hostile working environment by oppression under color of authority.
- Promote criminal activities undertaken against me.
- Failed to take lawful action against criminal complaints filed against him.
- Purveyed lawful violations of the Nevada Peace Officers Bill of Rights, Storey County Administrative Policy, Storey County Sheriff's Office Policy and Nevada Revised Statutes (613.040).

On July 15, 2014 I was issued a Cease and Desist order Gerald Antinoro. This order demands I seek approval from Gerald Antinoro personally prior to conducting political events. As a citizen of Storey County, in pursuit of happiness, I feel this is an egregious violation. I have also been threatened with termination of employment from the Storey County Sheriff's Office if I proceed with this event. There was and is no nexus with my employment with the Storey County Sheriff's Office and the scheduled event. At no time did I interact with Infinity Health care professionals while in uniform or on duty. An illegal investigation into this matter has subsequently taken place against me as a result.

On Friday July 18, 2014 at approximately 1200 hours Sergeant Melanie Keener conducted an investigation while on duty at the Sheriff's Office. Sgt. Keener personally contacted Infinity HealthCare representative and coordinator Heather McCutcheon and began questioning her. This investigation, via telephone lasted at least thirty minutes with McCutcheon being asked such questions as (but not limited to): "Was deputy Mahan on duty when he made contact with you? How did Deputy Mahan and you meet? Have you ever had contact with deputy Mahan while he was on duty? Did Deputy Mahan offer

you money? Did Deputy Mahan ever represent the Storey County Sheriff's Office? Was Deputy Mahan in uniform when you had contact with him?" The medical professional is willing to testify.

On March 17, 2014, I introduced and presented a lawful police report (Storey County Case 14-200, Addendum A) for review by the sheriff. As is customary, this case was initially presented to my immediate supervisor Jeff Bowers. The case identified violations of law pertaining to illegal campaign practices by Antinoro while on duty and using a Storey County facilities for these purposes. Under the supervision of Gerald Antinoro, the case remained unrecognized until July 14, 2014. Currently, no investigative or lawful action has been applied to this case.

Storey County Administrative Policy and Procedure 213 strictly prohibits the aforementioned conduct specifically "Employees shall not engage in political activity of any kind during working hours. This includes, but is not limited to: soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office. Wearing or displaying of apparel, buttons, insignia, or other items which advocate for or against a political candidate or a political cause is also an example of prohibited political activity during work hours. Furthermore, no person shall attempt to coerce, command, or require a person holding or applying for any position, office, or employment, including a citizen requesting service supplied by employer, to influence or to give money, service, or other valuable thing to aid, promote, or defeat any political committee, or to aid, promote, or defeat the nomination or election of any person to public office" Further, "Employees are expressly forbidden to use any employer resources, including but not limited to: interoffice mail, email, telephone, fax machines, the Internet, or copy machines to engage in any political activity outside the approved scope of the employees' official duties"

There have been, and are, in place, clandestine efforts to sabotage my career and professional standing that are on file with Storey County Human resources and my local union (Operating Engineers #3). Another candidate and Storey County Deputy, Timothy Guthrie has and is undergoing extremely parallel circumstances. His grievances are also on file and he is willing to testify to Gerald Antinoro's misconducts.

Storey County Sheriff's Office Policy and Procedure **340.3.3** among other states: Discrimination, oppression or favoritism: (a) Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

Please accept this brief narrative as evidence towards the claims presented. It is my sincerest hope that among other things, truth and justice be revealed through this process. I understand the value of your time and convey my appreciation for your attention.

Shawn Mahan

Cease and Desist

Jeff Bowers
Sent: Tuesday, July 15, 2014 10:49 PM
To: Shawn Mahan
Cc: Gerald Antinoro

Deputy Mahan.

Pursuant to our telephone conversation this afternoon I am providing this e-mail with serves as a direct order to cease and desist any planned event regarding Infinity Hospice Care. The reason for this action is, but is not limited to, the following reasons:

1) You are, both on and off duty, a representative of the Storey County Sheriff's Office. I will refer you to existing policy if you are confused as to expected behavior. All conduct that directly or indirectly affects the Storey County Sheriff's Office falls under the purview of existing Policy & Procedure.

2) The Storey County Sheriff's Office already has in place a senior awareness program. Any and all activity which involves the seniors or any other demographic group in this county where you, as a representative of the Sheriff's office, present yourself as a member of this office, **whether explicit or implied,** is directly governed by the Sheriff or his designee. The Sheriff has given no authorization to present yourself in this event, nor has he sanctioned this event.

3) You have presented no assurance that Infinity Hospice Care is an appropriate entity to conduct business in this county. Further, you are expressly prohibited by policy to advocate for any for-profit business within this county. The fact that you announce only your name on the flyer announcing this event does not diminish the fact that you are in fact an employee of the Sheriff's office. Even were you allowed to seek such advocacy of a for-profit business from the Sheriff, you have presented no evidence that this company is competitive or offers superior service to county residents versus other, competing hospice care businesses. This is an eggregious violation of your oath of office and ethical codes of conduct.

4) SCSO Policy & Procedure 340.3.4 (ab) states: "you are prohibited from... Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Office or which is contrary to good order, efficiency or morale....." Your event only servers to confuse citizens of Storey County as to which program to trust (Infinity Hospice versus the existing Senior Program). As such, this event breaks down the order you are expected to maintain.

Lastly, the Sheriff, as your employer, has a duty to present to our citizens consistent and cohesive service. Your planned event is directly contrary to his intent due, among other things, a conflict with an existing sanctioned program. As your Sheriff, he has the right, and has exercised that right, to demand you seek his approval before any such event can be planned.

Participation in this program by you will result in severe disciplinary action being taken against you. I encourage you to seek approval from the Sheriff before any such event is planned in the future.

Sergeant Jeff Bowers
Storey County Sheriff's Office
(775) 847-1146
jbowers@storeycountyNV.org

STOREY COUNTY SHERIFF'S OFFICE

P O BOX 498 VIRGINIA CITY, NV 89440 775-847-0950

MISDEMEANOR REPORT

14-200

Printed by S023

Offenses	Description	Fel/Misd	Date Occurred	Time Occurred	Date Printed
General	Investigation		03/10/14-03/10/14	1055 - 1110	06/22/2014
			Date Reported	Time Reported	Time Printed
			03/10/2014	1115	16:28:58
			Related Cases		Incident #
					140310014

Location	Beat	Area	Disposition	Dispo Date
Sheriff Substation, Lockwood, 200 Canyon #B, Lockwood, NV 89432	4	6	Suspended (leads exhausted)	03/17/2014

Location Type	Location of Entry	Method of Entry	Point of Entry	Alarm System	Means of Attack (Robbery)
Street/Highway					

Reporting Party / Victim	Drivers License	Cell Phone	Email			
Residence Address	Notified of Victim Rights	Residence Phone	DOB	Age	Sex	Race
Business Name and Address		Business Phone	Height	Wt	Hair	Eyes
Assistance Rendered/Victim Disposition		Transporting Agency	Means of Attack (Assaults)			
Description of Injuries		Other Information				

Subject	Drivers License	Cell Phone	Email			
Mendoza, John-Michael	4600619158 NV	775-742-0768				
Residence Address		Residence Phone	DOB	Age	Sex	Race
PO Box 31, Virginia City, NV 89440		775-337-1387	06/11/1964	49		
Business Name and Address		Business Phone	Height	Wt	Hair	Eyes

Suspect Name	Action Taken	Charges			
Residence Address	Cell Phone	DOB	Age	Sex	Race
Business Name and Address	Business Phone	Height	Wt	Hair	Eyes
Identifying Features	Residence Phone	Drivers License		Arrest Number	

Status	Vehicle Make and Model	License/State	Vehicle Type
Involved	Tan Mercury	400TPV NV	Sports Utility Vehicle

No.	Status/Disposition	Property Description	Value	Val Recovered	Val Damaged

Solvability Factors

Suspect Confession

Prepared By	Date	Assisted By	Approved By	Date
S023 - Mahan, Shawn	03/10/2014			

Routed To	Date	Routed To	Date	Notes

Subject	Drivers License	Cell Phone	Email			
Antinoro, Gerald Cook						
Residence Address		**Residence Phone**	**DOB**	**Age**	**Sex**	**Race**
2589 Keystone Circle, Gold Hill, NV 89440 --- PO Box 88, Virginia City, NV 89440		881-8196	10/22/1964	49	M	W
Business Name and Address		**Business Phone**	**Height**	**Wt**	**Hair**	**Eyes**
			5`10"	160	BRO	BLU

Subject	Drivers License	Cell Phone	Email			
Miller, Merilee Ann	0802732161 NV					
Residence Address		**Residence Phone**	**DOB**	**Age**	**Sex**	**Race**
226 Rue De La Divoire, Sparks, NV 89434		775-342-6403	02/08/1944	70	F	W
Business Name and Address		**Business Phone**	**Height**	**Wt**	**Hair**	**Eyes**
			5`8"	150	GRY	BRO

Subject	Drivers License	Cell Phone	Email			
Welch, Joseph Adam	4200570497 NV	527-2164				
Residence Address		**Residence Phone**	**DOB**	**Age**	**Sex**	**Race**
857 Klien St, Dayton, NV 89403		775-434-7016	01/27/1978	36	M	W
Business Name and Address		**Business Phone**	**Height**	**Wt**	**Hair**	**Eyes**
Storey County .			5`6"	180	BRO	HAZ

On 03/11/2014 at approximately 1101 hours I was conducting Patrol duties in the Lockwood area of Storey County, Nevada.

While entering the Storey County Sheriffs Office Lockwood Substation parking lot, located at 420 Canyon Way, I observed approximately ten people standing at the rear staff entrance to the facility. The individuals appeared to be waiting to enter the building. I then realized the group was the "We Care" group, a non-profit Storey County entity.

I was parked next to a tan sedan bearing Nevada License plate 400TPV known to me to belong to Storey County Sheriff's Office Volunteer and "We Care" President Merilee Miller. Miller, a Lockwood resident, approached my vehicle and asked me if "I was there to let them in?". She explained a scheduled 1100 meeting with the Storey County "We Care" group, Deputy John Mendoza and Gerald Antinoro was planned at 420 Canyon Way. Antinoro and Mendoza were late in attendance and had not arrived on scene. Deputy Mendoza was at the time on compensated Family and Medical Leave (FMLA) while attending this employment function.

I then observed two Black and Grey campaign signs stating "Gerald Antinoro for Storey County Sheriff" affixed to the front doors of Miller's vehicle. I asked Miller if she was aware of campaign practices displaying signage prior to election. Miller stated she drove her vehicle to the "We Care" meeting and her signs were there to show Gerald Antinoro. They were duly affixed to the vehicle and placed upon Storey County property, in clear public view upon my arrival.

I then opened 420 Canyon Way and granted the "We Care" group access to the building and departed the area. Upon my departure I observed Storey County Sheriff's Office employee John Mendoza, Storey Count Sheriff's Office Deputy Joe Welch and current Storey County Sheriff Gerald Antinoro arrive at 420 Canyon Way and drive into the parking lot.

I later spoke with Gerald Antinoro via telephone. I explained the circumstances and event to Antinoro, including Miller's vehicle placement, political signage and "We Care" activities while on Storey County property. Antinoro explained Miller was justified in having his personal campaign signs affixed to her vehicle and nothing could be done. Antinoro stated Miller was covered under Nevada Revised Statute governing public domain. Antinoro [paraphrasing] considered the matter closed at that time.

Having approved and condoned Miller's behavior, Antinoro demonstrated a conflict of interest and breach of ethical codes of conduct and authority. Antinoro used his position for personal interest. The "We Care" group, governed by Antinoro, yet a Storey County non-profit entity was granted exemption from the dictates of Storey County political activity. Specifically, policy 212, 213, 214 and 005 which prohibit such conduct. Section 17.84.110 also prescribes political signage regulations. Public domain is not a physical place rendering statutory protections nor should Storey County property have been utilized for the recognition of any political candidate. Ethical, professional and political conflicts have been established between the "We Care" group and the Storey County Sheriff's Office as a result of these actions.

Merilee Miller had knowingly placed Gerald Antinoro's Campaign signs on personal property (her vehicle) while on Storey County governmental property. Miller willfully promoted a political candidate,

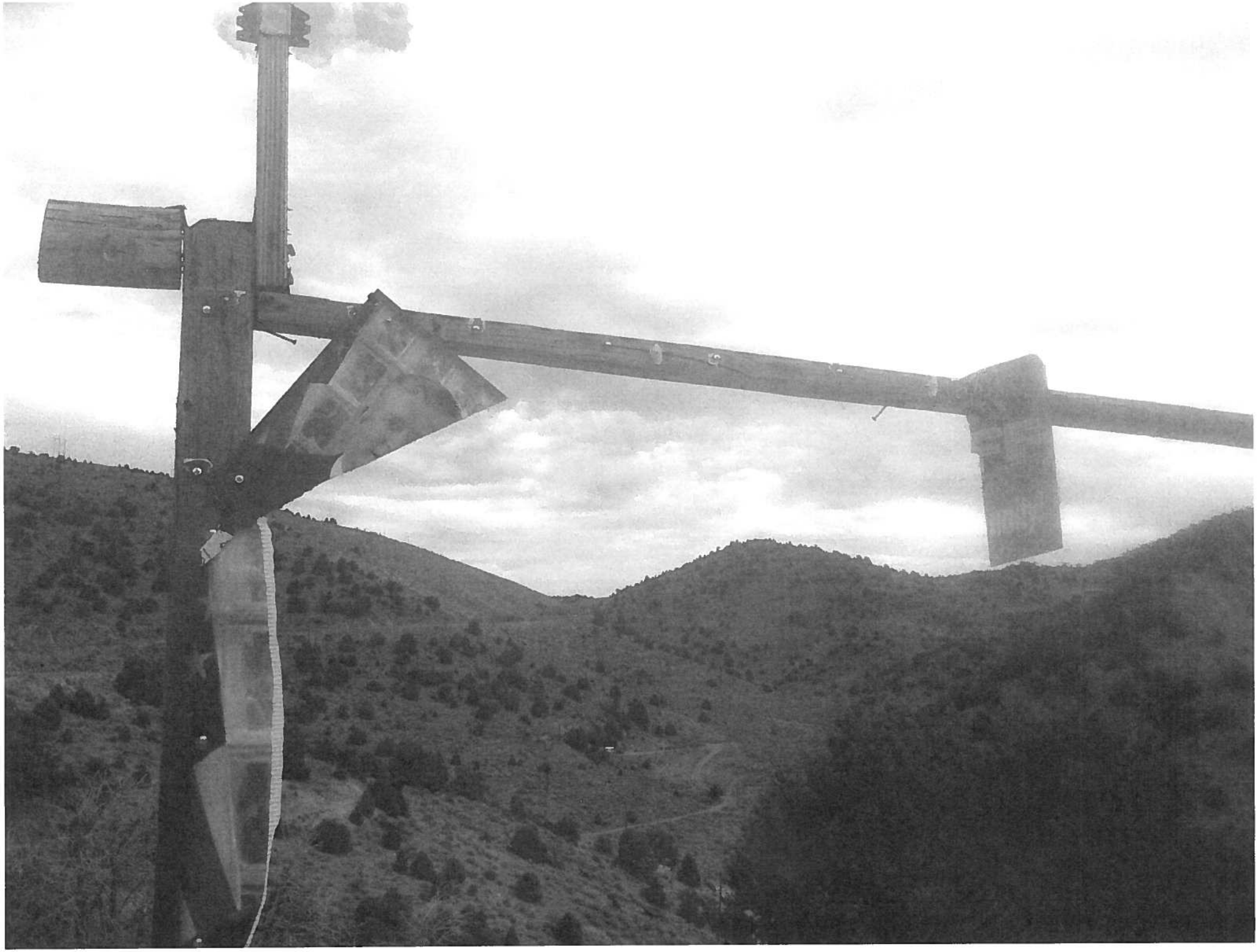
in this case, the current Sheriff Gerald Antinoro who is seeking re-election while on Storey County Property. Miller was at 420 Canyon Way in a professional capacity representing Storey County. As a representative of Storey County with "We Care" and as a Storey County Sheriff's Office Volunteer Miller's expression violated Storey County Sheriff's Office Policy and Procedure Manual (340.3.5, §Y). Miller also violated Storey County Administrative Policy prohibiting political activities on public grounds and buildings.

I am recommending admonishment be issued to Storey County Volunteer and "We Care" president Merilee Miller, Deputy John Mendoza for FMLA conflicts and the conduct violations of Antinoro (Storey County Policy and Storey County Sheriff's Office Policy and Procedures inclusive). I am recommending this case be forwarded to Storey County Sheriff's Office Investigator Keener, the District Attorney's Office and the State of Nevada Ethics Commission for review of latent and evident policy and procedural breaches. I am attaching the above mentioned Storey County Administrative Codes for reference. I recommend minutes of the "We Care" meeting conducted after this incident be included showing members present.

It must be noted, I am currently a registered candidate for the elected Office of Storey County Sheriff. Ethically and professionally, I would have taken precise and comparable actions towards any individual regardless of political affiliation or candidacy. This incident was not sought out or conducted with unlawfully.

Nothing further

unity!
Shawn
MAHAN
RE-ELECT
Geral
Antino
STOREY COUNTY
SHE



Gerald
Antinoro
SHERIFF
Shawn
MAHAN
Gerald
Antinoro
STOREY COUNTY SHERIFF

VOTE
Shawn
MAHAI
for
SHERIFF
SHERIFF

SHL

Gerald
Antinoro
SHERIFF

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JURISDICTIONAL DETERMINATION

RFO NO.: 14-59C	NAME: Gerald Antinoro
DATE REC'D: 7/30/14	POSITION: Sheriff, Storey County

The complaint was received ☐ **IN PROPER FORM** or ☒ **NOT IN PROPER FORM**. – waived req't for copies 7/31/14

If "not in proper form" state reason:
☒ **Does not include appropriate amount of copies.** ☐ **Not on NCOE form**

DETERMINATION BY EXECUTIVE DIRECTOR:

ALLEGATIONS:

Conflicts between Sheriff and Deputy, both are candidates for Sheriff in election

- Sheriff demands Deputy seek approval before conducting a political event off-duty
  - has investigation of Infinity Healthcare questioned re: contact related to
  - has failed to take action re: reports of misconduct/crim. complaint filed against him
  - used County facilities to further political campaign w/We Care group
  - threatened employment of challenger
  - brought actions against Requester and another candidate in an effort to sabotage reputation, career & status w/union
  - issued cease and desist order re: participating in a flyer to promote candidacy w/Hospice program.

NRS 281A.020 – conflict avoidance
- .400(1) - seeking improper gift/oppty
  - (2) - using position to secure unwarranted advantage
  - (7) - using County resources to further personal interests
  - (9) - attempting to benefit personal interest using influence over a subordinate
- .500 – failing to file ethics acknowl in a timely manner

☐	**IS** public employee as defined in NRS 281A.150	
☒	**IS NOT** public employee as defined in NRS 281A.150	
☒	**IS** a public officer as defined in NRS 281A.160	Sheriff (elected)
☐	**IS NOT** a public officer as defined in NRS 281A.160	
☒	Complaint **DOES** contain allegations of the Ethics in Government Law, NRS 281A.010-281A.660.	
☐	Complaint **DOES NOT** contain allegations of the Ethics in Government Law, NRS 281A.010-281A.660.	

JURISDICTIONAL DETERMINATION

Alleged Statute Violation	Behavior alleged/credible evidence provided to support claim:
NRS 281A. 400 (1)	Report, testimony that office & power used to harass opponent, use of facility to further campaign interests
NRS 281A. 400(2)	testimony, Report – see (1) above and oppty to intimidate opponents who are subordinate, extending policies beyond intent.
NRS 281A. 400(7)(8) 8 does not apply to Sheriff	email, staff time to further campaign
NRS 281A. 500 281A.400(9)	letter/emails authored by Sergeant to further campaign
NRS 281A. 020	Cease & desist letter is a conflict, policy
Other:	

Based upon the foregoing analysis, I have determined that the Commission ☒ **DOES** or ☐ **DOES NOT** have the jurisdiction to accept the RFO and the evidence required to take appropriate action regarding NRS 281A. 400(1)(2)(7)(9) & .020, but no evidence to support .400(8) or .500.

Dated: 7/31/14

Executive Director

COMMISSION COUNSEL REVIEW:

☑ **DO CONCUR** or ☐ **DO NOT CONCUR**

Pursuant to NAC 281A.405, RFO includes "evidence which supports the allegation" for the allegations implicating NRS 281A.020, 281A.400(1),(2),(7)+(9).
NRS 281A 400(8) applies only to State Legislators and no evidence of a failure to file an acknowledgement form per 281A.500.
Allegations suggest that Subject's conduct, even if authorized by law and internal policy, also amounted to conduct undertaken to benefit personal campaign. Need to confirm what activities were authorized by law/policy and confirm connection to alleged conflicts of interest.
Also, to extent allegations cross-over into allegations of interfering with Requester's rt to seek office = outside scope of Ethics Law and sufficient constitutional case law regarding subject of rt to seek office vs. rt to maintain employment while seeking office.

Dated: 8/4/14

Commission Counsel

STATE OF NEVADA
COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
http://ethics.nv.gov

In the Matter of the Third-Party Request for Opinion Concerning the Conduct of **Gerald Antinoro**, Sheriff, Storey County, State of Nevada,

Public Officer. /

Request for Opinion No. **14-59C**

NOTICE TO SUBJECT OF REQUEST FOR OPINION

Pursuant to NRS 281A.440(2) and NAC 281A.410

NOTICE IS HEREBY GIVEN that the Nevada Commission on Ethics (Commission) received a Request for Opinion (RFO) alleging that you may have engaged in conduct contrary to certain provisions of Nevada Revised Statutes (NRS) Chapter 281A.010-281A.550, the Nevada Ethics in Government Law (see sections checked below).

√	Statute	Essence of Statute:
√	NRS 281A.020(1)	Failing to honor commitment to avoid conflicts; appropriately separating personal and public roles.
√	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of public duties.
√	NRS 281A.400(2)	Using position to secure or grant unwarranted privileges, preferences, exemptions or advantages for self, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
	NRS 281A.400(3)	Participating as government agent in negotiating or executing a contract between the government and a business entity in which he has a significant pecuniary interest.
	NRS 281A.400(4)	Accepting a salary, retainer, augmentation, expense allowance or other compensation from any private source for performing public duties.
	NRS 281A.400(5)	Acquiring, through public duties or relationships, information which by law or practice is not at the time available to people generally, and using it to further the pecuniary interests of self or other person or business entity.

	NRS 281A.400(6)	Suppressing governmental report or other document because it might tend to unfavorably affect pecuniary interests.
√	NRS 281A.400(7)	Using government time, property, equipment or other resources for personal or financial interest. (Some exceptions apply.)
	NRS 281A.400(8)	State Legislator using government time, property, equipment or other facility for a nongovernment purpose or for the private benefit of himself or any other person, or having a legislative employee, on duty, perform personal services or assist in a private activity. (Some exceptions apply.)
√	NRS 281A.400(9)	Attempting to benefit personal or financial interest by influencing a subordinate.
	NRS 281A.400(10)	Seeking other employment or contracts through official position.
	NRS 281A.410	Failing to file a disclosure of representation and counseling a private person before public agency for compensation.
	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest for which disclosure is required.
	NRS 281A.420(3)	Acting on a matter in which abstention was required.
	NRS 281A.430	Engaging in contracts in which the Subject has an interest.
	NRS 281A.500	Failing to timely file an ethical acknowledgment.
	NRS 281A.510	Accepting an improper honorarium.
	NRS 281A.520	Causing a government entity to support or oppose a ballot question or candidate.

A copy of the RFO is attached, together with a copy of the relevant provisions of the NRS and the Nevada Administrative Code (NAC). You may also find the relevant provisions of NRS and NAC and a searchable database of Commission Opinions on the Commission's website at www.ethics.nv.gov.

Please note that the Commission will not investigate your allegation pertaining to NRS 281A.400(8) because it applies only to state legislators, or NRS 281A.500 because no reliable evidence to support this allegation was provided with the RFO. However, pursuant to NAC 281A.405(4), you may request a panel of Commissioners to review this determination.

Pursuant to NRS 281A.440(3) through (6), the Commission's process is as follows:

1. Within 70 days after the receipt of a request for opinion, the Executive Director investigates the allegations and makes a written recommendation to a two-Commission-member investigatory panel whether just and sufficient cause is present for the full Commission to render an opinion in the matter.

2. Within 15 days after the Executive Director provides her written recommendation, the panel considers the RFO and related materials and makes a final determination regarding whether just and sufficient cause exists for the Commission to hold a public hearing and render an opinion.

3. If the investigatory panel determines that just and sufficient cause exists, within 60 days after the panel determination (unless the statutory timelines are waived), the Commission will conduct a public evidentiary hearing and render an opinion whether the public officer or employee's conduct violated provisions of the Ethics in Government Law.

Pursuant to NRS 281A.440(3), should you wish to respond to these allegations, the Commission must receive your written response no later than 30 days after the date you receive this notice. A lack of response on your part is not deemed an admission that the allegations are true.

You may be entitled to representation by the attorney advising the public department or body you serve. Please notify the Commission if you will be represented by counsel.

Swift resolution of the RFO is beneficial to all concerned; however, you may waive any or all deadlines set forth by statute or regulation in this matter. A waiver of statutory time form is enclosed. Should you wish to request an extension of or waive any of the statutory deadlines, please complete the waiver and return it to the Commission's office as soon as possible.

Except as otherwise provided in NRS 281A.440, the Commission will hold its activities in response to this RFO (and even the fact that it received the RFO) confidential until its investigatory panel determines whether just and sufficient cause exists to hold a hearing and render an opinion. However, the Commission has no authority to require the requester to do so. As a result, information may appear in the media. Rest assured that the Commission will not be the source of any public information until the investigatory panel has completed its review and has rendered its determination. You will be provided notice of the Panel Determination when the Panel's investigation and consideration is completed.

If you have any questions regarding this notice, please contact me on my direct line at (775) 687-4313.

Dated this 5th ay of August, 2014.

Caren Cafferata-Jenkins, Esq
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing, via U.S. Postal Service, certified mail, return receipt requested, through the State of Nevada mailroom, a true and correct copy of the **Notice to Subject** addressed as follows:

Gerald Antinoro
P.O. Box 88
Virginia City, NV 89440

Cert. Mail No.: 7008 0150 0002 6137 3979

Dated: 8/5/14.

Employee, Nevada Commission on Ethics

RECEIVED
AUG 14 2014
COMMISSION
ON ETHICS

Caren Cafferata-Jenkins, Esq.
State of Nevada
Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

August 12, 2014

RE: Request for Opinion No. 14-58C

I am writing in response to the allegations made in the above referenced request. First, I will say that these allegations are ludicrous and part of a continuing pattern of conduct by the individual requesting the opinion. I will now address each individual allegation to the best of my ability.

NRS 281A.020 (1) Failing to honor commitment to avoid conflicts; appropriately separating personal and public roles.

There is nothing in the complaint or supporting documents I see that indicates there is any conflict between my public and private role. The singular allegation, "*The case identified violations of law pertaining to illegal campaign practices by Antinoro while on duty and using a Storey County facilities for these purposes*" is misleading to say the least. The specific incident referred to was a meeting of Sheriff's Office volunteers at the Lockwood Substation. Prior to the meeting commencing, one of the volunteers present placed magnetic signs on her vehicle in the parking lot of the substation that contained the verbiage "Antinoro for Sheriff." There was no use of county facilities for political purposes. Merely magnetic signs on a private individual's vehicle.

Subsequent to Mr. Mahan's complaint I sought an opinion from Storey County District Attorney Bill Maddox regarding political signs on vehicles. Mr. Maddox opined that signs/bumper stickers on a vehicle did not violate state statutes. Mr. Mahan was advised of this in writing by Mr. Maddox, as were all candidates for all offices in Storey County. The individual did not surrender her First Amendment rights merely by becoming a volunteer for the Sheriff's Office, nor was any county function, equipment, or other resources used. I took no action because I perceived no violation of law or Sheriff's Office policy as a result of the individual's exercise of her First Amendment rights.

As for Mr. Mahan's allegation that I interfered with processing the case and forwarding it to the District Attorney, I did not interfere or direct anyone else too. His direct supervisor returned the case to him on more than one occasion due to errors, which to my knowledge have still not been corrected. This is a normal part of the reporting process. The case itself will not be forwarded to the District Attorney for prosecution due to the fact he has already opined that there is no violation of law. To send it to him for review at this time would be squandering his time, ergo county resources, for a case that has no merit. Again, a standard part of the review process; cases without merit are closed, not forwarded to the District Attorney.

NRS 281A.400 (1) Seeking or accepting any gift, service, favor, employment, or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of public duties.

Again, there is no specific allegation here. There are innuendo and inference but nothing that indicates I have sought or accepted anything for any reason. There is nothing further I can offer in regards to this without some type of specific reference. Anything that is offered as evidence or indicator I have violated this statute I will readily respond to.

NRS 281A.400 (2) Using position to secure or grant unwarranted privileges, preferences, exemptions or advantages for self, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.

Yet again, I see no specific allegation that this has occurred. There is inference that I did this in the case of the above referenced signage issue at the Sheriff's Office Substation however as stated, there was no crime. As the individual being responsible for the conduct and actions of the Sheriff's Office, ultimately I make the decisions. That being said, often times, supervisors make similar decisions or confer with me with for a joint decision, however there are other cases wherein I directed something not be pursued as there was no violation to be pursued. If doing my job constitutes a violation of the law or is the "granting of privileges" than we have a problem with the Office of Sheriff and law enforcement in general. I have never asked for anything politically or professionally nor have I ever granted favor to anyone for political or professional purposes. I have prided myself on fair and impartial application of the law in Storey County and there is a plethora of people throughout the county who support my re-election for that very reason.

NRS 281A.400 (7) Using government time, property, equipment or other resources for personal or financial interest.

Again the complaint is devoid of substantive basis for such an allegation. I have not utilized any Storey County resource for my personal or financial gain. To the contrary, to avoid the appearance of impropriety, often times since filing for re-election, I will use my personal vehicle during the day and dress in plain clothes or a simple polo shirt in case something "political" may arise (such as a citizen wanting to discuss the campaign). The Office of Special Counsel has acknowledged the uniqueness of the Office of Sheriff being a "uniformed" position and allows the elected Sheriff some leeway due to this however to avoid even the appearance of impropriety, as indicated, often I utilize <u>my</u> personal resources for county benefit, not county resources for mine.

NRS 281A.400 (9) Attempting to benefit personal or financial interest by influencing a subordinate.

I can only assume that this allegation in in reference to the event Mr. Mahan details regarding Infinity Health Care. Contrary to Mr. Mahan's claim there is no nexus to his employment, there is. Mr. Mahan is a deputy of the Sheriff's Office. The Sheriff's Office works with the state

department of Aging Services and has a Senior Outreach program wherein we work with a variety of service providers for our senior population. We have worked hard to ensure our senior citizens receive accurate and timely services from whoever the provider is as well as working hard to develop professional relationships with said providers.

Storey County is a very small county as you well know. The fact that Mr. Mahan is a deputy has not gone without notice to the citizens of the county. As such, there is little ability for him to completely separate himself from his position. As soon as Mr. Mahan started advertising his "event" that was politically based, people contacted the Sheriff's Office confused as to if it were Deputy Mahan or the regularly assigned deputy handling the outreach. Service providers contacted the Sheriff's Office with the same question, and one Senior Advocate from the Department of Aging said she did not even know who this provider was. She went on to tell me that hospice services (as offered by Infinity Health Care) were a prescription service and are normally channeled through a person's medical provider. She said they (the State) will offer an overview of hospice services but do not advocate for any specific provider because of the unique nature of hospice. Suffice it to say, Mr. Mahan's "event" caused significant question, distress, and the potential for harm to the programs and relationships the Sheriff's Office has fostered.

As such, Sgt. Jeff Bowers, Mr. Mahan's supervisor, spoke to him in regards to his "event" as evidenced by Mr. Mahan's attachment of the email from Sgt. Bowers. Sgt. Bowers was of the belief that such conduct (the presentation Mr. Mahan arranged with Infinity Health Care) would be in violation of Sheriff's Office policy, which spells out the circumstances the Office can dictate off-duty conduct. It was his opinion, as well as mine, that such action would be contrary to the good order and efficient operation of the office. Such dictates have been long supported by the courts when the off-duty actions of an employee have negative impact on the employer. In this instance, based on the concerns and confusion evidenced by contact with the Sheriff's Office seeking clarification, it need not be assumed but was in fact contrary to the good order and efficient operation of the Office.

As for his warning of possible disciplinary action, I expect supervisors to advise subordinates if/when their actions may be contrary to policy heading them towards discipline. The language, "…will result in severe disciplinary action…" is consistent with all warnings wherein someone is being forewarned of potential action. As for Sgt. Keener contacting the company regarding Mr. Mahan's actions, Sgt. Keener is in essence the second in command of the Sheriff's Office. It is my opinion that she acted prudently in trying to ascertain the circumstances when a potential policy violation came to light. In the case of both Sgt. Bowers and Sgt. Keener, supervisors doing their duties does not constitute and "illegal investigation" as alleged by Mr. Mahan.

Nothing has been done to unduly impede Mr. Mahan's run for political office. To the contrary, many things have been overlooked to prevent conflict or the appearance of retaliation while still trying to administer the duties of the Office of Sheriff and the duties related thereto. Mr. Mahan is of the belief that so long as he does anything under the auspices of his political campaign, it cannot be redressed or constitutes some harassment or breach of ethics.

In conclusion, Mr. Mahan has a long history of making allegations to further his own agenda. This can be evidenced through contact with Storey County Personnel Director Austin Osborne

and Jojo Meyers of Matrix Leadership. Mr. Mahan has for years made allegations against those he perceives as hindering or impeding his personal desires. Likewise, his allegations such as this one, are blustery yet contain little if any specific fact. I too could attach pictures of political signs that have been vandalized or questionably placed yet they do not speak to the circumstances at hand and are merely designed to inflame opinion where facts are lacking. Further, the inclusion of an official Storey County Sheriff's Office report (which still has not been approved by a supervisor) as "evidence" that Mr. Mahan has coveted for his own gain without proper authorization, is an example of his own ethical and policy failings.

At the present time I do not feel an attorney is necessary however, should one become necessary, District Attorney Bill Maddox has indicated he will represent me in this matter. I hope this has answered all the question regarding this baseless allegation. If additional information is necessary, please do not hesitate to contact me.

Gerald Antinoro
Storey County Sheriff
PO Box 88
Virginia City, NV 89440
(775) 881-8196

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request for Opinion Concerning the Conduct of **Gerald Antinoro**, Sheriff, Storey County, State of Nevada,
Public Officer. /

Request for Opinion No. **14-59C**

PANEL DETERMINATION

NRS 281A.440(5); NAC 281A.440

The Nevada Commission on Ethics received a Third-Party Request for Opinion (RFO), No. 14-59C, regarding the conduct of Gerald Antinoro ("Antinoro") alleging certain violations of the Ethics in Government Law set forth in NRS 281A.

At the time of the alleged conduct, Antinoro served as Sheriff of Storey County, a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers pursuant to NRS 281A.280. Therefore, the Commission has jurisdiction in this matter.

On February 18, 2015, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Gregory J. Gale and Cheryl A. Lau, Esq. reviewed the following: 1) Request for Opinion; 2) Subject's written response; 3) the results of the Commission's related investigation and 4) the Associate Counsel's Report and Recommendation on behalf of the Executive Director.

Under NAC 281A.435, the Panel concludes that the facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to consider the alleged violations of NRS 281A.400(1) and (7). Therefore, these allegations are dismissed.

However, the Panel unanimously concludes that credible evidence does support just and sufficient cause for the Commission to hold a hearing and render an opinion regarding whether Antinoro violated NRS 281A.020 and NRS 281A.400(2) and (9).

Therefore, the Investigatory Panel refers the alleged violations of NRS 281A.020 and NRS 281A.400(2) and (9) to the Commission to hold a hearing and render an opinion. Under NRS 281A.440, a notice of hearing and a procedural order will follow.

Dated: February 26, 2015

By: /s/ Yvonne M. Nevarez-Goodson
Yvonne M. Nevarez-Goodson, Esq.
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **PANEL DETERMINATION** in Request for Opinion **No. 14-59C**, via and E-mail and U.S. Mail to the parties and interested persons as follows:

Gerald Antinoro
P.O. Box 88
Virginia City, NV 89440

Email: gantinoro@storeycounty.org

Shawn Mahan
P.O. Box 1134
Virginia City, NV 89440

DATED: February 26, 2015

Employee of the Nevada Commission on Ethics

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request for Opinion Concerning the Conduct of **Gerald Antinoro**, Sheriff, County of Storey, State of Nevada, Subject. /	Request for Opinion No. **14-59C**

THIRD-AMENDED NOTICE OF HEARING AND SCHEDULING ORDER

This Third-Amended Scheduling Order amends all previously issued scheduling orders.

Approval of Stipulation Regarding Scheduling

Subject Gerald Antinoro, by and through his attorney of record, Brent Kolvet, Esq. has indicated an intent to file a Motion to Dismiss Third-Party Request for Opinion No. 14-59C ("Motion"). Mr. Kolvet and Associate Counsel, Jill C. Davis, Esq.[1] have stipulated to a proposed Briefing Schedule for the Motion and imposition of rescheduling of proceedings until a decision on the Motion is rendered by the Nevada Commission on Ethics ("Commission"). If the Motion rendered by the Commission is not dispositive, the hearing before the Commission on the Third-Party Request for Opinion No. 14-59C is to be scheduled in July of 2015, or as soon thereafter as the matter may be heard by the Commission.

NOTICE OF HEARING ON MOTION TO DISMISS

PLEASE TAKE NOTICE that, subject to a Motion being filed, the Commission has accepted the proposed briefing schedule for the Motion as outlined below and has set a hearing for the Commission to consider the Motion at the following time and location:

The Hearing Will Take Place:

Wednesday, May 20, 2015 at 10:00 a.m., or as soon thereafter as the Commission is able to hear the matter, at the following location:

Grant Sawyer State Office Building
Gaming Control Board Room
Room 2450
555 E. Washington Avenue
Las Vegas, NV 89101

[1] In accordance with NRS 281A.440 and NAC 281A.460(1)(e) and 281A.500, the Commission has engaged the services of an Associate Counsel to ensure administrative due process with the duties of the position of the Executive Director to present the evidence and legal arguments to the Commission and respond to the Subject's presentations and contentions.

The Briefing Schedule for the Motion is as follows:

Motion Deadline: Last date to file and serve the Motion is Friday, April 24, 2015, on or before 5:00 p.m. Since this date is on a Friday by stipulation of the Parties[2], filing of such Motion with the Commission and service on opposing Party shall be via e-mail.

Opposition Deadline: Last date to file and serve the Opposition is Monday, May 4, 2015.

Reply Deadline: Last date to file and serve the Reply is Monday, May 11, 2015.

Subject Antinoro may appear in person or through his attorney of record at the hearing on the Motion. If the Motion is not dispositive of all issues in this matter, the Commission has set the matter for hearing in accordance with the following notice of hearing.

NOTICE OF HEARING ON THIRD-PARTY REQUEST FOR OPINION

PLEASE TAKE NOTICE, the Commission has set a hearing for **July 15-16, 2015** to consider alleged violations of the Nevada Ethics in Government Law set forth in Chapter 281A of the Nevada Revised Statutes ("NRS") by Subject Gerald Antinoro ("Subject").

On or about February 26, 2014, the Commission served Subject with: (1) a Panel Determination enumerating the allegations to be considered by the Commission in accordance with NRS Chapter 281A and Chapter 281A of the Nevada Administrative Code ("NAC"), and (2) a Notice of Hearing and Scheduling Order. A First-Amended Notice of Hearing and Scheduling Order was issued on March 17, 2015. This Second-Amended Notice of Hearing and Scheduling Order was issued on April 8, 2015. This amended Notice and Order shall supersede the provisions of all previous Notices and Orders. Pursuant to NRS 281A.440(6), Subject waived the statutory time limits for a hearing in this matter.

The hearing will assist the Commission to determine whether a violation of the Nevada Ethics in Government Law occurred and, if a violation is found, whether such violation is willful and whether any penalties will be imposed by the Commission pursuant to NRS 281A.480.

THE HEARING WILL TAKE PLACE:

Wednesday, July 15, 2015 at a time to be determined, and may continue, if necessary, on Thursday, July 16, 2015 at a time to be announced by the Commission, at a location to be determined and noticed at a later date.

Subject must be present at the hearing location when this matter is called. If Subject is not present when this hearing is called, the Commission may consider as true the alleged violations specified in the Panel Determination. Please direct any hearing scheduling matters to Commission Counsel, Tracy L. Chase, Esq., at (775) 687-5469 or via email at tchase@ethics.nv.gov.

Although the hearing is exempt from Nevada's Open Meeting Law pursuant to NRS 281A.440(15), the Commission makes every effort to open the hearing to the public. A record

[2] In accordance with NAC 281A.060, the Subject or his or her counsel, any staff of the Commission who investigate a third-party request for opinion and any other person who the Commission reasonably determines will be treated as a party in the matter before the Commission are considered "Parties."

will be made by a certified court reporter. Subject has the right to appear, be represented by legal counsel, hear evidence presented, respond to evidence, and present evidence on his behalf.

In accordance with the Scheduling Order outlined below, Subject has the right to request that the Commission issue subpoenas on his behalf to compel witnesses to testify and/or produce evidence. In making this request, Subject may be required to demonstrate the relevance of the witnesses' testimony and/or evidence. Other rights are found in NRS 281A, NRS 233B and NAC 281A. The Commission must support any finding of a violation of NRS 281A by a preponderance of the evidence.

SCHEDULING ORDER

The Commission is scheduled to hear this matter on **July 15-16, 2015**. The Commission's Executive Director, through the Associate Counsel, and the Subject (hereafter referred to respectively as a "Party" or the "Parties," as applicable) shall comply with the following scheduling order:

1. APPEARANCE.

Pursuant to NRS 281A.300, the Commission has already requested the appearance at hearing of Subject in its prior Notices and Scheduling Orders and has received a confirmation that Subject will appear at the hearing in July.

2. SUBPOENA POWERS.

On or before **Monday, May 25, 2015**, the Parties may submit a written request for the Commission to issue subpoenas for the production of documents or to compel the attendance of witnesses, if any, pursuant to NRS 281A.300. Each Party shall serve such subpoenas in the manner provided in the Nevada Rules of Civil Procedure for service of subpoenas in a civil action and must pay the costs of such service.

3. DISCOVERY/INVESTIGATION.

Pursuant to NRS 281A.290 and 281A.440 and NAC 281A.270, on or before **Monday, June 15, 2015**, the Parties may engage in continued investigation of facts and exchange written discovery interrogatories and requests for production. Such requests shall not be costly or burdensome. All responses to written discovery requests must be completed not later than 3 business days after receipt of the discovery request. Within the limits of time available for satisfying the requirements and deadlines set forth in this scheduling order and preparing for hearing, a party may request to depose any witnesses. Such depositions may be taken by telephone as agreed by counsel. Any disagreement regarding depositions of witnesses may be resolved by issuing subpoenas to compel the testimony of such witnesses at the hearing.

4. MOTIONS.

On or before **Monday, June 15, 2015**, the Parties may submit written discovery-related and procedural motions to the Commission**.** The opposing Party shall submit a written response to any such motion not later than 3 business days after receipt of the motion. A reply to any responsive pleading may be provided by oral argument during the hearing at the discretion of the Commission.

On or before **Monday, June 22, 2015**, the Parties may submit written non-discovery-related and substantive/dispositive motions to the Commission. The opposing Party shall submit

a written response to any such motion not later than 3 business days after receipt of the motion. A reply to any responsive pleading may be provided by oral argument during the hearing at the discretion of the Commission.

The Parties shall submit to the Commission twelve (12) copies of any motion or response, including exhibits to the motion or response. All motions and responses must be bound and page numbered. The Executive Director/Associate Counsel's motions or responses must include a green cover sheet and the Subject's motions or responses must include a yellow or goldenrod cover sheet.

5. PREHEARING STATEMENTS.

On or before **Thursday, June 25, 2015**, the Parties shall submit written prehearing statements to the Commission.

The Parties shall submit to the Commission twelve (12) copies of the prehearing statement. The prehearing statements must be bound and page numbered. The Executive Director/Associate Counsel's prehearing statement must include a green cover sheet and the Subject's prehearing statement must include a yellow or goldenrod cover sheet.

The Prehearing Statements must include the following information:

a) Statement of Relevant Facts

A brief statement of relevant facts, including any admitted or undisputed facts, not to exceed one page.

b) Claims and Defenses

A concise statement, not to exceed 2 pages, of the party's allegations or defenses and the facts supporting the same. Such allegations, defenses and facts shall be organized by listing each essential element of the allegation or defense and stating the facts in support of each such element as they relate to specific provisions of NRS Chapter 281A.

c) Statement of Issues of Law

A statement of any issues of law, not to exceed 2 pages, supported by authorities with a brief summary of the relevant rule and without additional argument. The parties should emphasize any Commission opinions deemed relevant and applicable.

d) Witnesses

The names of each witness, except impeaching witnesses, the party expects to call, a clear statement of the expected testimony of each witness and its relevance, and an estimate of the time the party will require for the testimony of each witness. To the extent possible, provide an estimate of time for cross-examination of the opposing party's witnesses.

e) Exhibits

A list of the exhibits expected to be identified and introduced at hearing for the purpose of developing the evidentiary record and a concise statement of the relevancy of each exhibit.

f) Stipulations

A concise statement of any stipulations regarding the admissibility of an exhibit or expected testimony of any witness offered by the opposing party.

g) Motions

A brief summary of any pre-hearing procedural or substantive motions, not to exceed one paragraph. Except for any procedural or substantive motions that arise during the hearing, all pre-hearing procedural and substantive motions must be submitted in accordance with this Scheduling Order.

h) Other

Any other appropriate comments, suggestions or information which may assist the Commission in the disposition of the case, not to exceed one page.

6. EXHIBIT BOOKS.

On or before **Thursday July 2, 2015**, the Parties shall submit to the Commission twelve (12) copies of an exhibit book(s) consisting of the exhibits, if any, expected to be identified and introduced as evidence at the hearing. The exhibit book(s) must include an index of the exhibits and be bound and Bates numbered.

a) The cover of the Executive Director/Associate Counsel's exhibit book(s) must be green and the exhibit book(s) must be tabbed and identified by numbers.

b) The cover of the Subject's exhibit book(s) must be yellow or goldenrod and the exhibit book must be tabbed and identified by letters.

7. OBJECTIONS.

On or before **Tuesday, July 7, 2015**, the Parties shall submit a concise statement of any objections to the admissibility of any exhibit identified by the other party and, to the extent possible, the expected testimony of any witnesses. Such statement shall not exceed 2 pages. If no objection is stated as to any exhibit or expected testimony, the Commission will presume that there is no objection to the admission of the listed exhibit or expected testimony into evidence.

8. SUBMISSION AND SERVICE REQUIREMENTS.

The Parties shall submit all documents not later than 5:30 p.m. (the Commission's close of business) on the respective dates outlined herein to the Office of the Commission located at 704 W. Nye Lane, Suite 204, Carson City, Nevada 89703, care of Commission Counsel, Tracy L. Chase, Esq., or electronically to tchase@ethics.nv.gov. Electronic submission does not eliminate the Parties' obligations to provide physical copies of relevant documents to the Commission as outlined herein.

Each Party shall serve its documents on the other Party by physical delivery or electronic mail not later than 5:30 p.m. on the respective dates outlined herein as follows:

Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 West Nye Lane, Suite 204 Carson City, NV 89703 ynevarez@ethics.nv.gov Jill C. Davis, Esq. Associate Counsel Nevada Commission on Ethics 704 West Nye Lane, Suite 204 Carson City, NV 89703 jilldavis@ethics.nv.gov	Brent Kolvet, Esq. Thorndal Armstrong et al 6590 S. McCarran Blvd. Suite B Reno, NV 89509 btk@thorndal.com

A certificate of service shall be included verifying service as required herein.

9. SUGGESTED QUESTIONS FOR WITNESSES.

If Shawn Mahan, the Requester, wishes to question a witness at the hearing as authorized by NRS 281A.440(11), he must submit such questions in writing to the Commission's Executive Director, in care of Jill C. Davis, Esq., on or before **Monday, July 6, 2015**. The Executive Director may submit the questions to the Commission if she deems the questions relevant and appropriate. The Commission is not required to ask any question so submitted.

10. EXTENSIONS AND CONTINUANCES.

The Parties may not agree to extensions of the deadlines included herein without the written consent of the Commission. Extensions will not be granted except in the case of good cause shown.

No request for continuance of the scheduled hearing will be granted except upon extraordinary circumstances stated in written motion.

11. PREHEARING CONFERENCE.

After the receipt of Prehearing Statements, the Commission will set a prehearing conference between the Parties and the Chair to be held before the hearing set for this matter.

12. HEARING SCHEDULE.

The Commission will set a hearing schedule after receipt of Prehearing Statements.

DATED: April 15, 2015

/s/ Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **THIRD-AMENDED NOTICE OF HEARING AND SCHEDULING ORDER** in Request for Opinion No. 14-59C, via email and U.S. Mail, addressed as follows:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Email: ynevarez@ethics.nv.gov

Jill C. Davis, Esq.
Associate Counsel
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Email: jilldavis@ethics.nv.gov

Brent Kolvet, Esq.
Thorndal Armstrong et al
6590 S. McCarran Blvd., Suite B
Reno, NV 89509

Email: btk@thorndal.com

Shawn Mahan
P.O. Box 1134
Virginia City, NV 89440

Email: knowyourself@yahoo.com

DATED: April 15, 2015

An employee, Nevada Commission on Ethics

AGENDA ITEM NO. 4

AGENDA ITEM NO. 4

NEVADA ETHICS COMMISSION

14-64

RECEIVED

SEP 22 2014

COMMISSION ON ETHICS

NEVADA COMMISSION ON ETHICS
THIRD-PARTY REQUEST FOR OPINION

NRS 281A.440(2)

1. Provide the following information for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS Chapter 281A. ***(If you allege that more than one public officer or employee has violated the law, use a separate form for each individual.)***

NAME: *(Last, First)*	Ashok Mirchandani		**TITLE OF PUBLIC OFFICE:** *(Position: e.g. city manager)*	Deputy Director
PUBLIC ENTITY: *(Name of the entity employing this position: e.g. the City of XYZ)*	Department of Business and Industry			
ADDRESS: *(Street number and name)*	555 E. Washington Ave.		**CITY, STATE, ZIP CODE**	Las Vegas, NV 89101
TELEPHONE:	**Work:** 702-486-2750	**Other:** *(Home, cell)*	**E-MAIL:**	

2. Describe in specific detail the public officer's or employee's conduct that you allege violated NRS Chapter 281A. ***(You must include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)***

Check here ☑ if additional pages are attached.

See the attached Report and Supporting Documentation.

3. Is the alleged conduct the subject of any action currently pending before another administrative or judicial body? If yes, describe:

Initial report has been made to the Office of the Attorney General and the United States Department of the Treasury.

4. What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Essence of Statute:
☑	NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
☐	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
☑	NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
☐	NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and any business entity in which he has a significant pecuniary interest.

☐	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
☑	NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
☐	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
☐	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
☐	NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
☑	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
☐	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
☐	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
☑	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
☑	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
☐	NRS 281A.430/530	Engaging in government contracts in which public officer or employee has a significant pecuniary interest.
☐	NRS 281A.500	Failing to timely file an ethical acknowledgment.
☐	NRS 281A.510	Accepting or receiving an improper honorarium.
☐	NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.
☐	NRS 281A.550	Failing to honor the applicable "cooling off" period after leaving public service.

5. Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Check here ☑ if additional pages are attached.

NAME and TITLE: (Person #1)	See Report and Documentation Submitted Herewith.			
ADDRESS:			**CITY, STATE, ZIP**	
TELEPHONE:	**Work:**	**Other:** *(Home, cell)*	**E-MAIL:**	
NATURE OF TESTIMONY:				

NAME and TITLE: (Person #2)				
ADDRESS:			**CITY, STATE, ZIP**	
TELEPHONE:	**Work:**	**Other:** *(Home, cell)*	**E-MAIL:**	
NATURE OF TESTIMONY:				

6. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS PURSUANT TO NRS 281A.440(2)(b)(2).
Attach all documents or items you believe provide credible evidence to support your allegations. NAC 281A.435(3) defines credible evidence as 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. A newspaper article or other media report will not support your allegations if it is offered by itself.

State the total number of additional pages attached (including evidence) 214.

7. REQUESTER'S INFORMATION: Ms. Madeline Bravo-Pritchard

YOUR NAME:	Nevada Affordable Housing Assistance Corporation			
YOUR ADDRESS:	5485 Kietzke Lane		**CITY, STATE, ZIP:**	Reno, NV 89511
YOUR TELEPHONE:	**Day:** 775-284-0302	**Evening:**	**E-MAIL:**	mbravopritchard@nahac.org

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

I acknowledge that, pursuant to NRS 281A.440(8) and NAC 281A.255(3), this Request for Opinion, the materials submitted in support of the allegations, and the Commission's investigation are confidential until the Commission's Investigatory Panel renders its determination, unless the Subject of the allegations authorizes their release.

Madeline Bravo-Pritchard
Signature:

9/20/2014
Date:

Senior Compliance Investigator of the Nevada Affordable Housing Assistance Corporation
Print Name: Madeline Bravo-Pritchard

You must submit an original and two copies of this form bearing your signature, and three copies of the attachments 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)

TELEPHONE REQUESTS FOR OPINION ARE NOT ACCEPTED.

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JURISDICTIONAL DETERMINATION

RFO NO.: 14-64C	NAME: Ashok Mirchandani
DATE REC'D: 9/22/14	POSITION: Deputy Director - NV State Dept. of Business & Industry

The complaint was received ☑ **IN PROPER FORM** or ☐ **NOT IN PROPER FORM**.

If "not in proper form" state reason:
☐ **Does not include appropriate amount of copies.** ☐ **Not on NCOE form**

DETERMINATION BY EXECUTIVE DIRECTOR:

ALLEGATIONS:

Associate Counsel - As Deputy Director of Business and Industry (B&I) Mirchandani was managing through the Federal backed Nevada Affordable Housing Assistance Corp (NAHAC} and State sponsored Home Means Nevada non-profits all of the money designated to helping underwater homeowners. Mirchandani was an officer in both entities, Chairman of NAHAC and Director, Secretary & Treasurer of Home Means Nevada. The evidence provided indicates that federal money that was for the Hardest Hit Fund, administered through NAHAC was used to pay for start up and other expenses for Home Means Nevada, Mirchandani's own personal expenses (some of which appear to have been reimbursed) Mirchandiani's position at B&I. relates directly to both entities. Both non-profits are essentially state- sponsored and were formed to dole out funds from the federal government and/or AG settlements to underwater homeowners. If not for his position at B&I, and B&I's close links with both organizations those organizations would not exist. There is tremendous overlap between B&I and the two non- profits. The evidence suggests misuse of funds.

☑	**IS** public employee as defined in NRS 281A.150	
☐	**IS NOT** public employee as defined in NRS 281A.150	
☑	**IS** a public officer as defined in NRS 281A.160	
☐	**IS NOT** a public officer as defined in NRS 281A.160	
☑	Complaint **DOES** contain allegations of the Ethics in Government Law, NRS 281A.010-281A.660.	
☐	Complaint **DOES NOT** contain allegations of the Ethics in Government Law, NRS 281A.010-281A.660.	

JURISDICTIONAL DETERMINATION

Alleged Statute Violation	Behavior alleged/credible evidence provided to support claim:
NRS 281A. 020(1)	failed to avoid conflicts - B&I position vs. fiduciary duties to entities he is an officer of
NRS 281A. 400(2)	used position at B&I to grant funds to programs/non-profits where he serves as a fiduciary
NRS 281A. 400(4)	used credit cards of the organizations for personal items- which is govt. money
NRS 281A. 400(5)	used non-public information to serve his personal interests
NRS 281A. 400(7)	used govt resources for his own benefit through personal purchases and trips
Other: 400(9) 420(1)(3)	(9) used subordinate to direct govt funds own use/ 420 not disclose/abstain conflicts to gov

Based upon the foregoing analysis, I have determined that the Commission ☑ **DOES** or ☐ **DOES NOT** have the jurisdiction to accept the RFO and the evidence required to take appropriate action regarding NRS 281A. 020(1), 400(2), (4), (5), (7), (9) and 420(1), (3) - Commission Does have jurisdiction.

Dated: October 15, 2014

/s/ Jill Davis, Associate Counsel (for ED)
Executive Director

COMMISSION COUNSEL REVIEW:

☑ **DO CONCUR** or ☐ **DO NOT CONCUR**

Pursuant to NAC 281A.400 and 281A.405, the evidence presented supports the allegations that the Subject has a private commitment to the Nonprofit organizations as an officer and/or director of those organizations, and he appears to be using his official government position to direct and/or influence expenditures of State and Federal funds through his agency to the nonprofit organizations. This represents a conflict of interest between his official duties and private interests implicating the statutes identified above.

Under Commission precedent, public officers and employees have a commitment in a private capacity to the nonprofit organizations which they serve as officers and directors.

Dated: October 21, 2014

/s/ Yvonne M. Nevarez-Goodson
Commission Counsel

CONFIDENTIAL

STATE OF NEVADA
COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
http://ethics.nv.gov

In the Matter of the Third-Party Request for Opinion Concerning the Conduct of **Ashok Mirchandani**, Deputy Director, Department of Business and Industry, State of Nevada,

Subject. /

Request for Opinion No. **14-64C**

NOTICE TO SUBJECT OF REQUEST FOR OPINION
Pursuant to NRS 281A.440(2) and NAC 281A.410

NOTICE IS HEREBY GIVEN that the Nevada Commission on Ethics (Commission) received a Request for Opinion (RFO) alleging that you may have engaged in conduct contrary to certain provisions of Nevada Revised Statutes (NRS) Chapter 281A.010-281A.550, the Nevada Ethics in Government Law (see sections checked below).

√	Statute	Essence of Statute:
√	NRS 281A.020(1)	Failing to honor commitment to avoid conflicts; appropriately separating personal and public roles.
	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of public duties.
√	NRS 281A.400(2)	Using position to secure or grant unwarranted privileges, preferences, exemptions or advantages for self, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
	NRS 281A.400(3)	Participating as government agent in negotiating or executing a contract between the government and a business entity in which he has a significant pecuniary interest.
√	NRS 281A.400(4)	Accepting a salary, retainer, augmentation, expense allowance or other compensation from any private source for performing public duties.
√	NRS 281A.400(5)	Acquiring, through public duties or relationships, information which by law or practice is not at the time available to people generally, and using it to further the pecuniary interests of self or other person or business entity.
	NRS 281A.400(6)	Suppressing governmental report or other document because it might tend to unfavorably affect pecuniary interests.
√	NRS 281A.400(7)	Using government time, property, equipment or other resources for personal or financial interest. (Some exceptions apply.)

	NRS 281A.400(8)	State Legislator using government time, property, equipment or other facility for a nongovernment purpose or for the private benefit of himself or any other person, or having a legislative employee, on duty, perform personal services or assist in a private activity. (Some exceptions apply.)
√	NRS 281A.400(9)	Attempting to benefit personal or financial interest by influencing a subordinate.
	NRS 281A.400(10)	Seeking other employment or contracts through official position.
	NRS 281A.410	Failing to file a disclosure of representation and counseling a private person before public agency for compensation.
√	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest for which disclosure is required.
√	NRS 281A.420(3)	Acting on a matter in which abstention was required.
	NRS 281A.430	Engaging in contracts in which the Subject has an interest.
	NRS 281A.500	Failing to timely file an ethical acknowledgment.
	NRS 281A.510	Accepting an improper honorarium.
	NRS 281A.520	Causing a government entity to support or oppose a ballot question or candidate.

A copy of the RFO is attached, together with a copy of the relevant provisions of the NRS and the Nevada Administrative Code (NAC). You may also find the relevant provisions of NRS and NAC and a searchable database of Commission Opinions on the Commission's website at www.ethics.nv.gov.

Pursuant to NRS 281A.440(3) through (6), the Commission's process is as follows:

1. Within 70 days after the receipt of a request for opinion, the Executive Director investigates the allegations and makes a written recommendation to a two-Commission-member investigatory panel whether just and sufficient cause is present for the full Commission to render an opinion in the matter.

2. Within 15 days after the Executive Director provides a written recommendation, the panel considers the RFO and related materials and makes a final determination regarding whether just and sufficient cause exists for the Commission to hold a public hearing and render an opinion.

3. If the investigatory panel determines that just and sufficient cause exists, within 60 days after the panel determination (unless the statutory timelines are waived), the Commission will conduct a public evidentiary hearing and render an opinion whether the public officer or employee's conduct violated provisions of the Ethics in Government Law.

Pursuant to NRS 281A.440(3), should you wish to respond to these allegations, the Commission must receive your written response no later than 30 days after the date you receive this notice. A lack of response on your part is not deemed an admission that the allegations are true.

You may be entitled to representation by the attorney advising the public department or body you serve. Please notify the Commission if you will be represented by counsel.

Swift resolution of the RFO is beneficial to all concerned; however, you may waive any or all deadlines set forth by statute or regulation in this matter. A waiver of statutory time is enclosed. Should you wish to request an extension of or waive any of the statutory deadlines, please complete the waiver and return it to the Commission's office as soon as possible.

Except as otherwise provided in NRS 281A.440, the Commission will hold its activities in response to this RFO (and even the fact that it received the RFO) confidential until its investigatory panel determines whether just and sufficient cause exists to hold a hearing and render an opinion. However, the Commission has no authority to require the requester to do so. As a result, information may appear in the media. Rest assured that the Commission will not be the source of any public information until the investigatory panel has completed its review and has rendered its determination. You will be provided notice of the Panel Determination.

If you have any questions regarding this notice, please contact me at (775) 687-5469.

Dated this 21st day of October, 2014.

/s/ Yvonne M. Nevarez-Goodson
Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel/
Acting Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing, via U.S. Postal Service, certified mail, return receipt requested, through the State of Nevada mailroom, a true and correct copy of the **Notice to Subject** addressed as follows:

Ash Mirchandani, Deputy Director
Department of Business and Industry
555 E. Washington Ave, Suite 4900
Las Vegas, NV 89101

Cert. Mail # 9171 9690 0935 0037 6370 30

Dated: 10/21/14.

Employee, Nevada Commission on Ethics

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

STATE OF NEVADA
COMMISSION ON ETHICS
http://ethics.nv.gov

MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS

March 18, 2015

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts of the open sessions are available for public inspection at the Commission's office located in Carson City.

The Commission on Ethics held a public meeting on Wednesday, March 18, 2015, at 10:00 a.m. at the following location:

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703

OPEN SESSION:

1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.

Vice-Chairman, Gregory J. Gale called the meeting to order at 10:02 a.m. Commissioners John C. Carpenter, Tim Cory, Esq., Cheryl A. Lau, Esq., James M. Shaw and Keith A. Weaver appeared via telephone.

Present in Carson City, Nevada were Executive Director, Yvonne Nevarez-Goodson, Esq., Commission Counsel, Tracy L. Chase, Esq. and Senior Legal Researcher, Darci Hayden. Associate Counsel, Jill C. Davis, Esq. appeared via telephone.

Chairman Paul H. Lamboley, Esq., and Commissioner Magdalena Groover were excused from this meeting.

2. Open Session for Public Comment.

No public comment.

3. Open Session for consideration and approval of Minutes from the January 5, 2015 Personnel Subcommittee Meeting, January 13, 2015 Commission Meeting, February 10, 2015 Personnel Subcommittee Meeting and February 18, 2015 Commission meeting.

Vice-Chairman Gale called for approval of the meeting Minutes and asked if the Minutes from the Subcommittee meetings and the Commission Meetings should be voted on together or separately. Commission Counsel, Tracy L. Chase, Esq., recommended approving the Minutes separately so that a commissioner could abstain from voting to approve Minutes from a meeting in which the commissioner did not serve and/or was not present. The Commission proceeded accordingly with Commissioners Carpenter, Shaw and Weaver abstaining from voting to approve the January 5, 2015 and February 10, 2015 Personnel Subcommittee meeting Minutes.

The January 5, 2015 Personnel Subcommittee consisted of Chairman Lamboley, Vice-Chairman Gale, and Commissioners Cory and Lau. Commissioner Lau moved to approve the January 5, 2015 Personnel Subcommittee meeting minutes. Commissioner Cory seconded the motion. The motion was put to a vote and carried unanimously, with Chairman Lamboley absent.

Vice-Chairman Gale noted a timeline discrepancy in the draft Minutes for the January 13, 2015 Commission meeting at Page 2, Item 3, regarding the notation for the break, and Executive Director Yvonne Nevarez-Goodson confirmed that the clerical error would be corrected before publishing.

Commissioner Lau moved to approve the January 13, 2015 Commission Meeting Minutes. Commissioner Cory seconded the motion. The motion was put to a vote and carried unanimously, with Chairman Lamboley and Commissioner Groover absent.

Commissioner Lau moved to approve the February 10, 2015 Personnel Subcommittee Meeting Minutes. Commissioner Cory seconded the motion. The motion was put to a vote and carried unanimously, with Chairman Lamboley absent.

Commissioner Lau moved to approve the February 18, 2015 Commission Meeting Minutes. Commissioner Shaw seconded the motion. The motion was put to a vote and carried unanimously, with Chairman Lamboley and Commissioner Groover absent.

The meeting was called into closed session at 10:28 a.m.

CLOSED SESSION:

4. Closed Session pursuant to NRS 281A.440(8) for consideration of a Jurisdictional Appeal by the Requester of Third-Party Request for Opinion No. 14-89N, submitted pursuant to NAC 281A.405.

This agenda item was held in closed session and will not be available to the public.

5. Closed Session for discussion and consideration of a Proposed Stipulation concerning Third-Party Request for Opinion No. 14-15C regarding Gary Lambert, Commissioner, Nevada Commission on Off-Highway Vehicles, submitted pursuant to NRS 281A.440(2)

This agenda item was held in closed session and will not be available to the public.

The meeting was called back into open session at 10:53 a.m.

OPEN SESSION:

6. Open Session pursuant to NRS 281A.440(8) for consideration and approval of a proposed Stipulation concerning Third-Party Request for Opinion No. 14-15C regarding Gary Lambert, Commissioner, Nevada Commission on Off-Highway Vehicles, submitted pursuant to NRS 281A.440(2).

Commissioner Weaver disclosed his private representation of a client in a lawsuit brought by Mr. Honey, Counsel for the Subject in RFO 14-15C, on a matter involving the private interests of Mr. Honey and his spouse. Commissioner Weaver abstained from participating in the matter based on the nature of his private representation and his role in the matter, even though it did not involve Mr. Lambert's specific matter before the Commission.

Ms. Nevarez-Goodson summarized the terms of the proposed Stipulated Agreement regarding Gary Lambert, Commissioner of the Nevada Commission on Off-Highway Vehicles

("NCOHV") to include a single, non-willful violation of the Ethics in Government Law for his failure to adequately disclose his conflict of interest and his advocacy on behalf of that private interest. Ms. Nevarez-Goodson also noted two amendments to the draft Stipulated Agreement proposed by Chairman Lamboley and advised the Commission to go into Closed Session with Subject's counsel and Commission's Associate Counsel to approve the changes before returning to the open record.

The meeting was called briefly called back into closed session at 10:58 a.m.

The meeting was reconvened in open session at 11:00 a.m.

Vice-Chairman Gale commented that the resolution proposed through the Stipulated Agreement would provide NCOHV with training from the Ethics Commission to adjust their internal policies and practices consistent with ethics laws.

Commissioner Lau moved to approve the Stipulated Agreement as proposed and revised regarding RFO No. 14-15C in the matter of conduct of Gary Lambert, Vice Chair, Nevada Commission on Off-Highway Vehicles. Commissioner Shaw seconded the motion and the motion carried unanimously.

Ms. Nevarez-Goodson then summarized for the record the facts and issues in the Stipulated Agreement and noted that the final Stipulated Agreement would be available to the public upon formal execution by the Parties.

7. Open Session for report by the Executive Director on agency status and operations.

Ms. Nevarez-Goodson began her report by welcoming the Commission's new Commission Counsel, Tracy Chase, Esq., and noted that Ms. Chase will be sharing in the agency status update in future sessions with the Commission.

Ms. Nevarez-Goodson reported that staff has been busy finalizing outstanding investigations and that all first-party requests are up to speed. Ms. Nevarez-Goodson further reported the status of outreach and training regarding the Ethics in Government Law has stalled recently, primarily due to early training conducted in the northern jurisdictions at the beginning of the calendar year, However, Ms. Nevarez-Goodson planned to schedule training in the southern jurisdictions coordination with the May meeting of the Commission in Las Vegas.

Ms. Nevarez-Goodson also reported that a temporary administrative employee would be hired to cover Valerie Carter's upcoming leave and the goal was to have the temporary employee start while Ms. Carter was still here to provide training. Vice-Chairman Gale asked where the funds were coming from to pay for the temporary employee and Ms. Nevarez-Goodson explained that the Commission had available funds remaining from the court reporter budget, and she clarified that the temporary employee would be in place for approximately 12 weeks and that there were sufficient funds within our existing budget through a work program without needing to get approval for additional funds from the Interim Finance Committee.

Vice Chairman Gale asked one last question regarding scheduling Ethics Law training with the Nevada Commission on Off-Highway Vehicles, and Ms. Nevarez-Goodson reported that she would be reaching out to that Commission to schedule training as soon as possible.

8. Open Session for discussion and potential direction to the Executive Director regarding the 2015 Session of the Nevada Legislature, including an update on the Commission's legislative measures (A.B. 60) and budget presentations before the Nevada Legislature.

Ms. Nevarez-Goodson reported that, with regard to A.B. 60, she was still waiting for the mock amendment from LCB's legal division to place it on the agenda for the Assembly Committee

on Legislative Operations and Election, with the deadline to get it through the first house coming up April 10, 2015. Ms. Nevarez-Goodson reported that she was hopeful that the efforts undertaken in the working group for the bill would satisfy the local governments who had some concerns about that legislation so that it would be placed on the work session of the Assembly Committee.

Ms. Nevarez-Goodson reported that she was notified only two days ago that our budget closing would occur on Monday, March 23 in the morning before both House budget committees, and that we still had not been able to fully vet the issue about salary enhancements, which the Governor had not approved. The Commission directed Ms. Nevarez-Goodson to pursue those budget proposals before the Legislature and follow any possible avenues for getting the salary enhancements through the legislative process, i.e., fixed through the unclassified pay bill. Ms. Nevarez-Goodson stated that with full respect for the Governor's recommended budget, the Commission has historically pursued legislative approval given our unique agency status including appointments by the legislature. Ms. Nevarez-Goodson pointed out that Legislators were receptive to the salary issues during her meetings in prior weeks.

Ms. Nevarez-Goodson also reminded the Commission regarding the history of acquiring the new Associate Counsel position in the last legislative session, including that the position was intended to be subordinate to the duties of the Executive Director regarding third-party cases and the Commission Counsel for Legal support in all other matters. The position was listed in the Unclassified Pay Bill at the last minute as another Commission Counsel position to get a competitive salary for the Associate Counsel position. However, this resulted in a conflict with the statute that allows for only one Commission Counsel position in our agency and an equivalent salary as the Executive Director and Commission Counsel. Staff has been trying to correct this since the last legislative session, though unsuccessful to date. Staff was told that the primary way to correct the problem (resulting in an increase to the Executive Director and Commission Counsel salary and a correction to the Associate Counsel title in the pay bill) was to work it through this legislative session's Unclassified Pay Bill.

Ms. Nevarez-Goodson then asked the Commission to advise as to how to proceed from this point forward. Discussion ensued regarding the Commission's support for the salary and title adjustments, noting that the Governor did not support any pay raises this session, but also noting that it is the right thing for the agency and employees to proceed with aligning the salaries and titles that were left incomplete from last session. The Commission asked Ms. Nevarez-Goodson to provide further information on the status and next steps before the Legislature.

Commissioner Cory asked to be excused from the meeting and dropped off the conference call.

9. <u>Open Session for Commissioner comments on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.</u>

Vice-Chairman Gale noted his approval and acceptance of the Commission Counsel's offer to meet with the individual Commissioners and the Executive Director to discuss goals and to brainstorm ideas for the agency. Ms. Nevarez-Goodson confirmed that efforts to schedule meetings in the various locations with the respective Commissioners would ensue, starting with the travel already scheduled for Las Vegas for the May meeting. No other items were offered for discussion.

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10. Open Session for Public Comment. Comment and/or testimony by any member of the public may be limited to three (3) minutes. No action will be taken under this agenda item.

No public comment.

11. Adjournment.

Vice-Chairman Gale adjourned the meeting at 11:40 a.m.

Minutes prepared by:

Darci Hayden
Senior Legal Researcher

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved: May 20, 2015:

Gregory J. Gale
Vice-Chairman

AGENDA ITEM NO. 6

AGENDA ITEM NO. 6

State of Nevada Commission on Ethics
Requests for Opinion FY 2014-2015 Log

RFO No.	Date Filed	Jurisdiction	Subject of RFO	Requester	Juris-dictional Appeal Hrg Date	Panel date	Hearing date	Final Disposition Issued (date)	Statutes implicated	Waiver of Time/ Confidentiality Other NOTES	# days from **Hrg** to Disposition of RFO	# days from **Filing** to Disposition of RFO
15-29	Email 5/4/15	XXXXXX	XXXXXX	XXXXXX						Pending receipt of original RFO via mail		
15-28A	5/4/15	XXXXXX	XXXXXX	Self			Pending					
15-27N	4/29/15	XXXXXX	XXXXXX	XXXXXX								
15-26C	4/29/15	XXXXXX	XXXXXX	XXXXXX		Pending Response to RFO						
15-25A	4/16/15	XXXXXX	XXXXXX	Self			5/6/15	Confidential Opinion Pending				
15-24W	4/20/15	XXXXXX	XXXXXX	Self				Withdrawn via email on 4/28/15				8
15-23N	4/6/15	XXXXXX	XXXXXX	XXXXXX								
15-22N	4/6/15	XXXXXX	XXXXXX	XXXXXX								
15-21C	3/30/15	XXXXXX	XXXXXX	XXXXXX		Pending Investigation						
15-20N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-19N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-18N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-17N	3/30/15	XXXXXX	XXXXXX	XXXXXX	Pending JD Appeal 5/20/15							
15-16N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-15N	3/30/15	XXXXXX	XXXXXX	XXXXXX								

State of Nevada Commission on Ethics
Requests for Opinion FY 2014-2015 Log

RFO No.	Date Filed	Jurisdiction	Subject of RFO	Requester	Juris-dictional Appeal Hrg Date	Panel date	Hearing date	Final Disposition Issued (date)	Statutes implicated	Waiver of Time/ Confidentiality Other NOTES	# days from **Hrg** to Disposition of RFO	# days from **Filing** to Disposition of RFO
15-14N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-13N	3/30/15	XXXXXX	XXXXXX	XXXXXX	Pending JD Appeal 5/20/15							
15-12N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-11N	3/30/15	XXXXXX	XXXXXX	XXXXXX								
15-10N	3/24/15	XXXXXX	XXXXXX	XXXXXX								
15-09N	2/26/15	XXXXXX	XXXXXX	XXXXXX								
15-08C	2/9/15	XXXXXX	XXXXXX	XXXXXX		Pending Investigation						
15-07C	2/9/15	XXXXXX	XXXXXX	XXXXXX		Pending Investigation						
15-06W	2/9/15	XXXXXX	XXXXXX	Self				Withdrawn via email on 3/4/15				23
15-05N	2/9/15	XXXXXX	XXXXXX	XXXXXX								
15-04W	2/4/15	XXXXXX	XXXXXX	Self				Withdrawn via email on 2/26/15				17
15-03C	2/4/15	XXXXXX	XXXXXX	XXXXXX		Pending Investigation						
15-02C	1/29/15	XXXXXX	XXXXXX	XXXXXX		Pending Investigation						
15-01N	1/5/15	XXXXXX	XXXXXX	XXXXXX								
14-93N	12/24/14	XXXXXX	XXXXXX	XXXXXX								
14-92N	12/22/14	XXXXXX	XXXXXX	XXXXXX								

State of Nevada Commission on Ethics
Requests for Opinion FY 2014-2015 Log

RFO No.	Date Filed	Jurisdiction	Subject of RFO	Requester	Juris-dictional Appeal Hrg Date	Panel date	Hearing date	Final Disposition Issued (date)	Statutes implicated	Waiver of Time/ Confidentiality Other NOTES	# days from **Hrg** to Disposition of RFO	# days from **Filing** to Disposition of RFO
14-91N	12/22/14	XXXXXX	XXXXXX	XXXXXX								
14-90N	12/22/14	XXXXXX	XXXXXX	XXXXXX								
14-89N	12/15/14	XXXXXX	XXXXXX	XXXXXX	3/18/15			Order re JD issued 3/19/15		No Jurisdiction		94
14-88N	12/15/14	XXXXXX	XXXXXX	XXXXXX								
14-87N	12/15/14	XXXXXX	XXXXXX	XXXXXX								
14-86N	12/15/14	XXXXXX	XXXXXX	XXXXXX								
14-85N	12/15/14	XXXXXX	XXXXXX	XXXXXX								
14-84N	10/27/14	XXXXXX	XXXXXX	XXXXXX	1/21/15			Order re JD issued 1/26/15		No Jurisdiction		91
14-83N	12/8/14	XXXXXX	XXXXXX	XXXXXX								
14-82A	12/8/14	XXXXXX	XXXXXX	Self			12/17/14	Confidential Opinion 2/26/15		Pending Abstract		
14-81N	12/3/14	XXXXXX	XXXXXX	XXXXXX								
14-80N	12/2/14	XXXXXX	XXXXXX	XXXXXX	1/21/15			Order re JD issued 1/27/15		No Jurisdiction		56
14-79C	11/24/14	XXXXXX	XXXXXX	XXXXXX		Pending Investigation						
14-78A	11/17/14	XXXXXX	XXXXXX	Self			1/21/15	Confidential Opinion 3/24/15		Confidentiality waived via email 4/28/15	62	127
14-77N	11/12/14	XXXXXX	XXXXXX	XXXXXX								

State of Nevada Commission on Ethics
Requests for Opinion FY 2014-2015 Log

RFO No.	Date Filed	Jurisdiction	Subject of RFO	Requester	Juris-dictional Appeal Hrg Date	Panel date	Hearing date	Final Disposition Issued (date)	Statutes implicated	Waiver of Time/ Confidentiality Other NOTES	# days from **Hrg** to Disposition of RFO	# days from **Filing** to Disposition of RFO
14-76N	10/16/14	XXXXXX	XXXXXX	XXXXXX								
14-75C	10/27/14	XXXXXX	XXXXXX	XXXXXX	12/17/14	3/18/15		Dismissed by Panel 3/30/15		Subject appealed JD, Appeal denied via Order issued 12/18/14	12	154
14-74N	10/27/14	XXXXXX	XXXXXX	XXXXXX	1/21/15			Order re JD issued 1/26/15		No Jurisdiction		91
14-73C	10/23/14	XXXXXX	XXXXXX	XXXXXX		Pending Panel				Waiver of Time (I&H) rec. 12/1/14		
14-72N	10/20/14	XXXXXX	XXXXXX	XXXXXX	12/17/14			Order re JD issued 12/18/14		No Jurisdiction		59
14-71C	10/13/14	Elko County	Jim Pitts, Elko County Sheriff	Melinda Kahle		Panel Hrg 1/21/15 Panel II Hrg 4/23/15	Pending Hearing on Mtn 8/19/15			Notice on Additional issues 1/29/15		
14-70C	10/6/14	XXXXXX	XXXXXX	XXXXXX		Pending Panel 5/20/15						
14-69N	9/30/14	XXXXXX	XXXXXX	XXXXXX								
14-68N	9/29/14	XXXXXX	XXXXXX	XXXXXX								
14-67N	9/29/14	XXXXXX	XXXXXX	XXXXXX								

State of Nevada Commission on Ethics
Requests for Opinion FY 2014-2015 Log

RFO No.	Date Filed	Jurisdiction	Subject of RFO	Requester	Juris-dictional Appeal Hrg Date	Panel date	Hearing date	Final Disposition Issued (date)	Statutes implicated	Waiver of Time/ Confidentiality Other NOTES	# days from **Hrg** to Disposition of RFO	# days from **Filing** to Disposition of RFO
14-66A	9/24/14	State of Nevada	Roger Zingre, Emmission Control Techinician II, DMV	Self			10/15/14	Opinion 11/18/2014	410(1(b), 550(3)(5)(6)	Confidentiality Waived	34	55
14-65N	9/23/14	XXXXXX	XXXXXX	XXXXXX								
14-64C	9/22/14	State of Nevada	Ashok Mirchandani, Deputy Director, Dept. of Business & Industry	M. Bravo-Pritchard		Panel Waived	Pending Hrg on Stip 5/20/15			Waiver of Time (I&H) rec. 11/20/14 Waiver of Panel and Confidentiality rec. 5/4/15		
14-63N	8/25/14	XXXXXX	XXXXXX	XXXXXX								
14-62N	8/18/14	XXXXXX	XXXXXX	XXXXXX								
14-61C	8/4/14	State of Nevada	Tim Kuzanek, Undersheriff, Washoe County	John Litz		Panel Waived	1/21/15	Stipulation 2/4/2015	NRS 281A.020, 400(7)	Waiver of Time (I & H) rec'd 10/2/14	14	184
14-60W	7/31/14	XXXXXX	XXXXXX	Self	8/20/14			Withdrawn via email 12/23/14				145
14-59C	7/30/14	Storey County	Gerald Antinoro, Sheriff, Storey County	Shawn Mahan		2/26/15 (dismissed in part)	Pending Mtn 5/20/15			Waiver of Time (I & H) rec'd 9/29/14 Certain allegations forwarded to Commission by Panel on 2/26/15		

State of Nevada Commission on Ethics
Requests for Opinion FY 2014-2015 Log

RFO No.	Date Filed	Jurisdiction	Subject of RFO	Requester	Juris-dictional Appeal Hrg Date	Panel date	Hearing date	Final Disposition Issued (date)	Statutes implicated	Waiver of Time/ Confidentiality Other NOTES	# days from **Hrg** to Disposition of RFO	# days from **Filing** to Disposition of RFO
14-58N	7/23/14	XXXXXX	XXXXXX	XXXXXX								
14-57N	7/7/14	XXXXXX	XXXXXX	XXXXXX								
14-56N	7/1/14	XXXXXX	XXXXXX	XXXXXX								
			FISCAL YEAR 2014-2015									
14-22C	3/5/14	State of Nevada	Jim Wheeler, Assemblyman, Nevada Legislature	Fred Voltz	Hrg on Mtn2Dis-miss/JD 11/19/14	Pending				Waiver of Time 4/7/14, Stayed pending Petition4Review on JD, Confidentiality Waived		
14-21C	3/5/14	State of Nevada	Ira Hansen, Assemblyman, Nevada Legislature	Fred Voltz	Hrg on Mtn2Dis-miss/JD 11/19/14	Pending				Waiver of Time 4/17/14, Stayed pending Petition4Review on JD, Confidentiality Waived		
14-09A	1/29/14	XXXXXX	XXXXXX	Self			3/18/14	Confidential Opinion Pending				
			FISCAL YEAR 2013-2014									

XXXXXX = Confidential

AGENDA ITEM NO. 7

AGENDA ITEM NO. 7

AGENDA ITEM 7

JUDICIAL DISCIPLINE BUDGET AND EXHIBIT

JUDICIAL DISCIPLINE

101-1497

PROGRAM DESCRIPTION

The Nevada Commission on Judicial Discipline was created by constitutional amendment on November 2, 1976, and charged with the responsibility of investigating allegations of misconduct, violations of the code of judicial conduct, or disability of judges. The seven-member Commission receives and investigates complaints against full-time and part-time judges. For a time, the Commission's proceedings were governed by administrative and procedural rules of the Nevada Supreme Court. However, on February 21, 2003, the Nevada Supreme Court repealed Part VII of its rules and the Commission has since adopted its own procedural rules to govern its proceedings. Statutory Authority: Nevada Constitution, Art. 6, Section 21.

The Standing Committee on Judicial Ethics was created in 1998 by Supreme Court Rule to resolve ethical disputes arising in the course of campaigns for judicial office. It also provides judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service or in the elective or appointment process. In 2011, the Nevada Supreme Court repealed a section of the rule and eliminated the need for the Committee to resolve ethical disputes arising in the course of campaigns for judicial office. The Committee continues to consider opinion requests regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointment process. The Standing Committee also assists the Nevada Supreme Court by studying and recommending additions to, amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates. Statutory Authority: NRS 1.425 to 1.4695, inclusive. Rule Authority: Nevada Supreme Court's Inherent Power to Make Rules.

BASE

This request continues funding for 3.51 positions and associated operating costs. One-time expenditures have been eliminated and partial year costs have been annualized.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	647,511	643,129	753,035	722,596	753,562	723,061
BALANCE FORWARD TO NEW YEAR NEW B/A	-56,532	0	0	0	0	0
TRANSFER FROM INTERIM FINANCE	170,272	0	0	0	0	0
TOTAL RESOURCES:	**761,251**	**643,129**	**753,035**	**722,596**	**753,562**	**723,061**
EXPENDITURES:						
PERSONNEL	313,365	378,466	400,092	400,743	399,464	400,111
IN-STATE TRAVEL	19,622	15,725	19,622	19,622	19,622	19,622
OPERATING EXPENSES	415,493	240,111	301,742	286,836	302,662	287,757
INFORMATION SERVICES	7,378	3,307	3,988	3,988	3,988	3,988
TRAINING	1,961	5,370	3,706	0	3,706	0
DEPARTMENT OF ADMINISTRATION CST ALLOC	0	0	23,735	11,257	23,970	11,433
OPERATING SYS REPLACEMENT	3,282	0	0	0	0	0
PURCHASING ASSESSMENT	150	150	150	150	150	150
TOTAL EXPENDITURES:	**761,251**	**643,129**	**753,035**	**722,596**	**753,562**	**723,061**
TOTAL POSITIONS:	**3.51**	**3.51**	**3.51**	**3.51**	**3.51**	**3.51**

MAINTENANCE

M100 STATEWIDE INFLATION

This request funds rate changes for internal service funds such as the Attorney General, Fleet Services, information technology services, state-owned building rent, vehicle insurance, personnel assessments, and property and contents insurance.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	-357	726	-357	1,308
TOTAL RESOURCES:	**0**	**0**	**-357**	**726**	**-357**	**1,308**
EXPENDITURES:						
OPERATING EXPENSES	0	0	0	-16	0	-17
INFORMATION SERVICES	0	0	-357	742	-357	999
PURCHASING ASSESSMENT	0	0	0	0	0	326
TOTAL EXPENDITURES:	**0**	**0**	**-357**	**726**	**-357**	**1,308**

M300 FRINGE BENEFITS RATE ADJUSTMENT

This request funds changes to fringe benefits rates.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	0	2,979	0	1,747
TOTAL RESOURCES:	**0**	**0**	**0**	**2,979**	**0**	**1,747**
EXPENDITURES:						
PERSONNEL	0	0	0	2,979	0	1,747
TOTAL EXPENDITURES:	**0**	**0**	**0**	**2,979**	**0**	**1,747**

ENHANCEMENT

E225 EFFICIENT AND RESPONSIVE STATE GOVERNMENT

This request funds access to the Federal Civil Procedures and Rules database to ensure the most current guidelines are available to staff.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	0	2,340	0	2,340
TOTAL RESOURCES:	**0**	**0**	**0**	**2,340**	**0**	**2,340**
EXPENDITURES:						
OPERATING EXPENSES	0	0	0	2,340	0	2,340
TOTAL EXPENDITURES:	**0**	**0**	**0**	**2,340**	**0**	**2,340**

E248 EFFICIENT AND RESPONSIVE STATE GOVERNMENT

This request funds the relocation of the office and related expenses.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	40,632	40,630	21,715	21,723
TOTAL RESOURCES:	**0**	**0**	**40,632**	**40,630**	**21,715**	**21,723**
EXPENDITURES:						
OPERATING EXPENSES	0	0	28,067	28,065	21,715	21,723
INFORMATION SERVICES	0	0	12,565	12,565	0	0
TOTAL EXPENDITURES:	**0**	**0**	**40,632**	**40,630**	**21,715**	**21,723**

E249 EFFICIENT AND RESPONSIVE STATE GOVERNMENT

This request provides funding to increase one half-time position to full-time to assist with research and writing workload for both the Judicial Commission and the Standing Committee.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	39,303	39,505	39,218	39,510
TOTAL RESOURCES:	**0**	**0**	**39,303**	**39,505**	**39,218**	**39,510**

JUDICIAL DISCIPLINE
101-1497

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
EXPENDITURES:						
PERSONNEL	0	0	39,154	39,331	39,069	39,335
OPERATING EXPENSES	0	0	60	58	60	58
INFORMATION SERVICES	0	0	89	116	89	117
TOTAL EXPENDITURES:	**0**	**0**	**39,303**	**39,505**	**39,218**	**39,510**
TOTAL POSITIONS:	**0.00**	**0.00**	**0.49**	**0.49**	**0.49**	**0.49**

E710 EQUIPMENT REPLACEMENT

This request replaces computer hardware and associated software per the Enterprise Information Technology Services' recommended replacement schedule.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	12,278	12,298	42	37
TOTAL RESOURCES:	**0**	**0**	**12,278**	**12,298**	**42**	**37**
EXPENDITURES:						
INFORMATION SERVICES	0	0	12,278	12,298	42	37
TOTAL EXPENDITURES:	**0**	**0**	**12,278**	**12,298**	**42**	**37**

E711 EQUIPMENT REPLACEMENT

This request funds replacement of the software utilized to track judicial discipline matters, which is not supported and has failed.

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	0	0	16,786	16,786	2,710	2,710
TOTAL RESOURCES:	**0**	**0**	**16,786**	**16,786**	**2,710**	**2,710**
EXPENDITURES:						
INFORMATION SERVICES	0	0	9,086	9,086	2,710	2,710
TRAINING	0	0	7,700	7,700	0	0
TOTAL EXPENDITURES:	**0**	**0**	**16,786**	**16,786**	**2,710**	**2,710**

JUDICIAL DISCIPLINE
101-1497

E999 UNFUNDED

	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
UNFUNDED DECISION UNITS	0	0	99,538	0	124,094	0
TOTAL RESOURCES:	**0**	**0**	**99,538**	**0**	**124,094**	**0**

SUMMARY

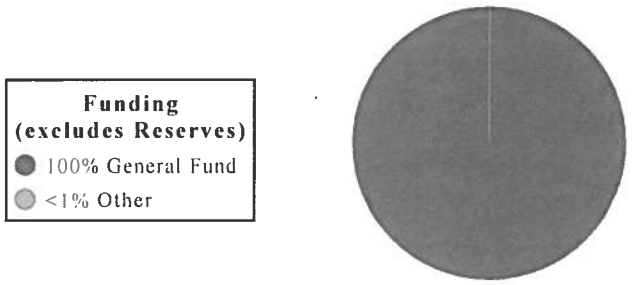
	2013-2014 ACTUAL	2014-2015 WORK PROGRAM	2015-2016 AGENCY REQUEST	2015-2016 GOVERNOR RECOMMENDS	2016-2017 AGENCY REQUEST	2016-2017 GOVERNOR RECOMMENDS
RESOURCES:						
APPROPRIATION CONTROL	647,511	643,129	961,215	837,860	940,984	792,436
BALANCE FORWARD TO NEW YEAR NEW B/A	-56,532	0	0	0	0	0
TRANSFER FROM INTERIM FINANCE	170,272	0	0	0	0	0
TOTAL RESOURCES:	**761,251**	**643,129**	**961,215**	**837,860**	**940,984**	**792,436**
EXPENDITURES:						
PERSONNEL	313,365	378,466	557,897	443,053	589,754	441,193
IN-STATE TRAVEL	19,622	15,725	21,762	19,622	21,762	19,622
OPERATING EXPENSES	415,493	240,111	289,142	317,283	284,441	311,861
EQUIPMENT	0	0	3,600	0	0	0
INFORMATION SERVICES	7,378	3,307	41,605	38,795	6,811	7,851
TRAINING	1,961	5,370	23,212	7,700	13,962	0
DEPARTMENT OF ADMINISTRATION CST ALLOC	0	0	23,847	11,257	24,104	11,433
OPERATING SYS REPLACEMENT	3,282	0	0	0	0	0
PURCHASING ASSESSMENT	150	150	150	150	150	476
TOTAL EXPENDITURES:	**761,251**	**643,129**	**961,215**	**837,860**	**940,984**	**792,436**
PERCENT CHANGE:		**-15.52%**	**49.46%**	**30.28%**	**-2.10%**	**-5.42%**
TOTAL POSITIONS:	**3.51**	**3.51**	**4.00**	**4.00**	**4.00**	**4.00**

JUDICIAL DISCIPLINE COMMISSION - The Judicial Discipline Commission enforces the Nevada Code of Judicial Conduct, protecting the integrity and ethical quality of the state judicial system and promoting public confidence in the courts; gives judges greater awareness of proper judicial behavior, improving and strengthening the judiciary; and ensures that all branches of state government honor the state's constitutional separation of powers.

Department Budget Highlights:

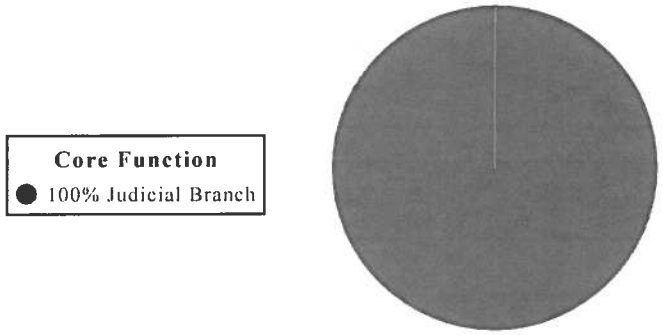
1. **Judicial Discipline** - The Governor's Executive Budget contains no significant changes for this agency.

Department Biennium Total by Funding Source



Department	2016	2017
Total $	837,860	792,436
Total FTE	4.00	4.00

Department Biennium Total by Core Function



Activity: Conduct Judicial Discipline Investigations and Adjudicatory Proceedings

Judicial Discipline proceedings investigate alleged violations of the Nevada Code of Judicial Conduct. Hearings protect the public by: ensuring unfit judges are not allowed to serve on the bench; imposing lesser forms of discipline where warranted; and determining whether a judge is too physically or mentally disabled to continue judicial service.

Performance Measures

1. Percent of Cases Imposing Discipline

	2012	2013	2014	2015	2016	2017
Type:	Actual	Actual	Actual	Projected	Projected	Projected
Percent:	7.48%	2.58%	1.49%	4.55%	5.96%	6.80%

2. Days to Conduct Preliminary Review and Commission to Take Initial Action

	2012	2013	2014	2015	2016	2017
Type:	Actual	Actual	Actual	Projected	Projected	Projected
Amount:	105	105	102	87	77	77

Population / Workload

1. Number of Judges and Judicial Officers

	2014	2015	2016	2017
Type:	Actual	Projected	Projected	Projected
Amount:	315	315	320	320

2. New Complaints Filed

	2012	2013	2014	2015	2016	2017
Type:	Actual	Actual	Actual	Projected	Projected	Projected
Amount:	147	147	201	220	235	250

3. Number of Cases Investigated

	2012	2013	2014	2015	2016	2017
Type:	Actual	Actual	Actual	Projected	Projected	Projected
Amount:	24	32	38	45	52	59

Resources

Funding		FY 2016	FY 2017
General Fund	$	670,791	633,949
	FTE	3.20	3.20
TOTAL	$	670,791	633,949
	FTE	3.20	3.20

Objectives	FY 2016	FY 2017
Judicial Branch	670,791	633,949

Activity: Issue Judicial Ethics Advisory Opinions to Judicial Officers & Aspirants

The Standing Committee on Judicial Ethics provides judges and aspiring judges advisory opinions on judicial ethics, including the elective and appointment process. It also assists the Supreme Court by studying and recommending changes to the Nevada Code of Judicial Conduct or other laws governing judges and judicial aspirants' conduct.

Performance Measures

1. Average Days to Issue Advisory Opinions

	2013	2014	2015	2016	2017
Type:	Actual	Actual	Projected	Projected	Projected
Amount:	43	40	40	40	40

2. Number of Advisory Opinions Issued

	2012	2013	2014	2015	2016	2017
Type:	Actual	Actual	Actual	Projected	Projected	Projected
Amount:	16	6	12	12	16	18

Population / Workload

1. Judges, Judicial Officers, and Aspirants to Judicial Office

	2013	2014	2015	2016	2017
Type:	Actual	Actual	Projected	Projected	Projected
Amount:	315	315	315	320	320

2. Number of Advisory Opinions Issued

	2012	2013	2014	2015	2016	2017
Type:	Actual	Actual	Actual	Projected	Projected	Projected
Amount:	16	6	12	16	16	16

Resources

Funding		FY 2016	FY 2017
General Fund	$	167,069	158,487
	FTE	0.80	0.80
TOTAL	$	167,069	158,487
	FTE	0.80	0.80

Objectives	FY 2016	FY 2017
Judicial Branch	167,069	158,487

Commission on Judicial Discipline
and
Standing Committee on Judicial Ethics

Budget Account 1497

Paul C. Deyhle, General Counsel and Executive Director

Assembly Ways and Means Committee
and
Senate Finance Committee
Friday, February 20, 2015, 9:00 a.m.

Resources

- 100% of BA 1497 is General Fund appropriation

Constitutional Authority, Chapter 1 of the NRS

- 3.51 positions in Base Budget
- One location

Changes to Base Budget

- Modifications to reflect actual expenditures

Enhancements:

The exhibits attached hereto include supporting memoranda, along with legal and newspaper articles addressing the Commission's challenges and supporting its recent efforts to increase its funding and staffing needs.

E247 funds participation in judicial training opportunities

- Furthers the Commission's goal to "teach rather than catch."
- Allows taking an active role in judicial training.
- Expands the level and quality of service to judges and taxpayers.
- A more informed judiciary works to improve public perception of judges and the court system as a whole.
- $10,256 in FY 16 and $10,256 in FY 17.

E248 funds relocation from the Commission's 1,066 square foot office space occupied since 2000. ***See Tab "A" attached.***

- Present location is plagued by antiquated telephone lines and data transmission cables, thereby preventing the Commission from utilizing commonly used equipment and technology.
- Allows for increased productivity and efficiency.

- Provides a meeting/conference room – confidential conferences are currently held at a folding plastic table in the office common area at the MAII's desk.
- Allows sufficient space for existing positions.
- Provides space for additional staffing, if approved.
- Allows for increased security of personnel who are threatened regularly by disgruntled criminal and civil litigants.
- Provides secure storage space for confidential files (currently stacked in boxes in each office and along the walls in the common area) and supplies (currently stored in the single restroom).
- $40,632 in FY16 and $21,715 in FY 17.

E249 increases one staff member position (MAII) from half to full time. 0.49 FTE. ***See* Tab "B" attached.**

- Allows for more effective recruitment and retention (half-time positions are historically difficult to fill and retain).
- Allows Commission to keep pace with the significant increase in the number of complaints filed and investigations conducted.
- Provides much needed assistance with administrative, investigative and legal support functions.
- Significantly reduces contract staffing expenses and provides continuity in operations.
- $39,303 in FY 16 and $39,218 in FY 17

E250 funds the addition of an Associate General Counsel ("AGC") 1.0 FTE. ***See* Tab "C" attached.**

- Saves taxpayers' money.
- Current General Counsel performs the functions of 3 positions (Executive Director of the Commission, General Counsel to the Commission and Executive Director of the Standing Committee on Judicial Ethics).

- Enhances the Commission's ability to meet its constitutional and statutory mandates within the statutory 18-month timeframe.
- Allows Commission to keep pace with the significant increase in the number of complaints filed and investigations conducted.
- Significantly reduces contract attorney expenses incurred for complaint processing and complex, high-profile litigation cases.
- Significantly reduces average time to review and process complaints to completion.
- Significantly improves review, supervision and oversight of investigations.
- Significantly decreases investigative costs.
- Increases control and oversight of caseload.
- Allows for more adequate and timely research with respect to issuance of ethical opinions.
- Provides more timely guidance and service to Nevada's judges and taxpayers.
- Assists in training to further the Commission's goal to "teach rather than catch."
- Assists General Counsel with administrative matters, processing complaints, overseeing investigations and providing timely answers to judges' inquiries.
- $73,230 in FY 16 and $97,884 in FY 17.

E710 replaces 60 GB server purchased in 2003 per the EITS recommended replacement schedule (long overdue). $12,278 in FY 16 and $42 in FY 17.

E711 replaces the Commission's 1996 case management software which has been unsupported since 2002 and has recently failed. $16,786 in FY 16 and $2,710 in FY 17.

E804 funds the Centralized Human Resources Services cost allocation for administrative (non-advisory services). $112 in FY 16 and $134 in FY 17.

E849 reclassifies a Management Analyst II position to Paralegal/Management Analyst IV. ***See* Tab "D" attached.**

- Reclassifies position commensurate with actual duties required and performed, including supervising two other positions.
- Allows this small agency to recruit and maintain qualified and versatile employees.
- Reduces the need for more costly contract staffing expenses in the form of retired employees.
- Reduces the need for more costly contract attorney expenses for legal research.
- Reduces the need for more costly investigative contract services.
- Increases attention to case management, analysis and planning, costs, and budgetary and administrative matters.
- $15,940 in FY 16 and $15,820 in FY 17.

Category 82 consists of the Centralized Personnel Cost Allocation and the Administrative Services Division of the Department of Administration standardizing the Commission's administrative and record-keeping functions and ensuring compliance with human resource and fiscal protocols and procedures. $23,847 in FY 16 and $24,104 in FY 17.

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TAB A

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Chairman

STATE OF NEVADA
COMMISSION ON JUDICIAL DISCIPLINE
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PAUL C. DEYHLE
General Counsel and
Executive Director

MEMORANDUM

DATE: August 25, 2014

TO: Colleen Murphy, Budget Analyst

FROM: Paul C. Deyhle, General Counsel and Executive Director
Nevada Commission on Judicial Discipline

SUBJECT: Space Request

The Commission on Judicial Discipline ("Commission") relocated to its present rented office space in 2001 from another suite within the same building. Since that time, there have been no modifications or improvements to the suite or the building. The Commission's workload and staffing needs have grown considerably over the years from 2 persons to 5. The Commission and the Standing Committee on Judicial Ethics ("Committee") are operated from a consolidated General Fund budget account (BA 1497). Staffing has increased only once since the functions were combined in 1998. Vacant positions have now been filled and additional staffing requested.

In the Commission's current location (containing 1,066 square feet), there are serious space constraints and, if additional staffing is approved, there would be no available area in the current location to house the new personnel. Further, there is no room in the Commission's current location to adequately store its files and supplies or to conduct its regularly scheduled meetings. There are no other state agencies housed in this building with which to share meeting or work space. Up to this point, the Commission has been dependent upon the generosity and availability of member judges' jury rooms or the Nevada State Bar Association for use of its conference/meeting rooms to conduct meetings and hearings.

Due to the busy nature of these alternate locations, it is often difficult to schedule meetings among numerous Commissioners who reside throughout the state. Technological limitations at these locations have also hampered the Commission in conducting its meetings. In January 2014, a high-profile disciplinary hearing had to be halted and moved to another location as a result of communication equipment problems.

The Commission needs a suitable location to hold confidential meetings and conferences to resolve its cases and conduct the Commission's business. Due to space and funding constraints, the Commission's confidential meetings are currently conducted telephonically in a common area at the Management Analyst's desk, augmented by a plastic folding table.

The current office location is also without a sufficient work space, secure file storage area, supply storage or a sink or counter area. Files are boxed and stored against the walls of each office and common area, and supplies are stored against the walls and in the single bathroom. Visitors to the office have no place to gather or sit. Any dishware must be washed in the lavatory sink basin. Moreover, the telephone lines and data cables in the current location are extremely antiquated and cannot support commonly used equipment and technological upgrades. Due to the age of the phone lines, the Commission's 1987 phone system cannot be upgraded.

The Commission's office is also located beside a fitness center. At certain times of the day, the office walls shake from impacts and other activities during fitness classes and loud music can be heard. This is not a proper environment to conduct Commission business.

The lease at the current location expires July 31, 2015, however, larger accommodations may be required earlier. A conservative space request has been submitted to Buildings and Grounds and quotes for moving the Commission's office have been obtained from "good of the state" moving companies.

The Commission's workload has steadily increased over the last 10 years, and with the additional media attention garnered by recent high-profile cases, that workload is expected to continue to increase in the years to come. In short, the Commission has significantly outgrown its current location and is in dire need of adequate space to house its staff and properly conduct its business in fulfilment of its constitutional and statutory mandates. Attached are two articles authored by the Chief Judge of the Second Judicial District Court and published in The Writ in April 2014 and February 2013, respectively, discussing the Commission's challenges and supporting its recent efforts to increase its funding and staffing needs.

JUDICIAL ETHICS

Hon. David Hardy, Chief Judge, Second Judicial District Court

"Well-funded commissions discipline judges more often than underfunded commissions. This finding demonstrates the importance of adequately funding these commissions and suggests the dangers to the integrity of the judiciary that could occur from cutting the commissions' funding"[1]

A Nevada judge was recently the subject of intense media attention and public scrutiny. High-profile judicial discipline proceedings reveal the public's interest in punishing unethical judges. But because much of the Nevada Commission on Judicial Discipline's work is not public, these high-profile proceedings also reveal the substantial investigative and legal work underlying a discipline action. If the first purpose of judicial discipline is to protect the public, and if the public thirsts for accountability from judges who violate the Nevada Code of Judicial Conduct, the Commission must be given the resources to invigorate its constitutional and statutory mandates.

When I was a lawyer, prospective clients would often ask me to quote a price and predict how long they would need my services. I always answered that I needed to know who the adverse litigant and opposing attorney were. Fees and duration are incurred bi-laterally and unsusceptible to single control. Similarly, the Commission cannot control the number of complaints it receives, and because each complaint is different, the scope of its work is difficult to predict. It is therefore problematic to mandate procedural and timing requirements upon the Commission but expect the Commission to operate with a static budget. As complex and high-profile cases arise, resources are unexpectedly depleted and less serious but important complaints languish. Sometimes all Commission work is suspended toward the end of a fiscal year when budget authority is exhausted.

A survey of discipline commissions from 35 states recently published in the *Stanford Law Review* statistically supports what is intuitive: the number of disciplinary actions a state judicial discipline commission takes is strongly correlated with the size of the commission's budget.[2] I further suggest the numeric quantity and substantive quality of discipline proceedings is determined by the funding resources available to the discipline commission. For these reasons, Nevada should decide if policing the judiciary is a worthwhile policy. If it is, the 2015 legislature could consider if the Commission on Judicial Discipline is adequately staffed and funded to be effective.

Nevada has 82 district judges, 67 justices of the peace, and 21 municipal court judges. The Commission oversees each of these judges and additional senior judges, masters, commissioners, and pro-tem masters as "a court of judicial performance."[3] The Commission staff is comprised of an executive director, a management analyst, a paralegal, and a panel of assigned judges and citizen volunteers. The staff also oversees the Standing Committee on Judicial Ethics, which will issue more than 25 advisory opinions this biennium. This fiscal year the Commission's budget was $589,787.

The Commission has authority to censure, retire, remove, or otherwise discipline judges. The range of subordinate discipline includes suspension, probation, remedial education and training, fines, and public or private reprimands. The Commission may also issue non-disciplinary "letters of caution." The imposition of discipline often requires some form of "after care" supervision to ensure judges comply with the discipline. In 2010, the Nevada Legislature imposed procedural phases and timing requirements to govern the Commission's work. Not every judicial misstep is worthy of public condemnation. The Commission's response should be commensurate with the judicial action under scrutiny, and it should have resources to respond to complaints alleging low- and mid-grade misconduct.

Every complaint must be reviewed to determine if an investigation is warranted. A majority of complaints are dismissed without investigation because the complainants seek relief beyond the Commission's jurisdiction or allege non-specific and unverifiable judicial bias. If the complaint sets forth a "reasonable inference of misconduct or incapacity, the Commission initiates an investigation using a private investigative agency. The Commission reviews all investigative reports to determine if it could find "a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action." If so, the judge is directed to respond to the complaint. The Commission considers the judge's response to determine if the allegations will still sustain discipline by clear and convincing evidence. Only then does the complaint become public.

The Commission recently filed its biennial report, which reveals some troubling statistics. The number of complaints is increasing and the number of complaints pending review remains too high. In the past two years, the Commission received 302 complaints. More than 50% were dismissed without an investigation. 41 complaints were investigated and 23 of those complaints were dismissed after the investigation results were reviewed. The Commission informally resolved several complaints, but at the time the biennial report was filed in October, 2013, there were 141 complaints pending investigation and more than 100 complaints pending initial Commission consideration.[4]

My experience is that Nevada judges care deeply about their work. They seek to exemplify the highest standards of professionalism. But judges are also fallible, subject to isolated errors and chronic misconduct. Judges must be accountable to the citizens they serve. An important tool for accountability is adherence to the Nevada Code of Judicial Conduct, which is the barometer for excellence. I do not wish to foment unnecessary discipline, particularly because I respect my Nevada colleagues so much. Nonetheless, to the extent Nevada places a premium on judicial excellence it should fund the Commission's mandate to examine conduct that falls below public expectations.

The old adage "you get what you pay for" applies to the Commission. During this next legislative session the Commission will be asked how much budget authority it needs to perform its services. I suspect a slightly different formulation may be better. The Commission may wish to compare its funding relative to other states' commissions and then answer the question with a question: "What type of discipline commission does Nevada want?" If Nevada wants a Commission that will 1) eliminate the backlog of pending complaints, 2) timely review all complaints and fully investigate complaints with inferential merit, and 3) pursue informally or publicly each meritorious matter, then the legislature will need to increase its funding to reach these admirable goals.

NOTES

[1] Jonathan Abel, *Testing Three Commonsense Intuitions About Judicial Conduct Commissions*, 64 Stan. L. Rev. 1021 (2012).

[2] *Id.* at 1046.

[3] Nevada Commission on Judicial Discipline, Standing Committee on Judicial Ethics, [4]*Id* at 9-11 and Appendix C.

This is number 76 in a series of essays on judicial ethics authored by Chief Judge David Hardy, Second Judicial District Court, Dept. 15.

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THE RESOLUTION EXPERTS JAMS

Judicial Ethics

Hon. David Hardy, Second Judicial District Court, Department 15

"Judicial misconduct is the dirty little secret of the state judiciary, well known but rarely discussed."[1]

A Nevada judge was indicted in October for his alleged involvement in fraudulent investment schemes. The indictment is merely a statement of charges and not evidence against the judge. This essay is not about a colleague who presently enjoys a constitutional presumption of innocence. I write this essay to support the Nevada Commission on Judicial Discipline, who is again besieged by allegations of secrecy, missteps, and impermissible delays. (The Commission was recently described in a pleading as "a Commission that hasn't found a rule it couldn't break or a procedural safeguard it couldn't circumvent.")[2]

The indicted judge was the subject of a 2006 judicial discipline complaint that included allegations of misconduct dating back to 1996. The complaint was recently unsealed and its contents were widely reported in the news media. The media coverage was not kind to the Commission. According to one newspaper editorial, the confidentiality and slow pace of the discipline proceeding prevented voters from casting informed votes in 2010. It continued: "We hold judges to the highest standards of legal and ethical behavior because they wield so much power from the bench: the authority to take away freedom, property and family. Justice demands that judges be beyond reproach."[3]

Another editorial described the 2006 complaint as languishing in "limbo land" and suggested a legislator may want to ask about the delays when the Commission "defends its request for funding" during the next session.[4] I agree, but for different reasons. The editorial implies Commission funding should be reduced because of substandard Commission performance. In contrast, I rely upon recent research to urge the legislature to increase its funding to *improve* Commission performance.

Judges are imperfect and misbehavior is part of the human dynamic. Decisional error is corrected by appellate courts, whereas behavioral error falls under the authority of a state judicial conduct commission. Every state has some form of judicial conduct commission that is "charged with the critical function of preserving the integrity of the judiciary."[5] These commissions investigate and prosecute judges for violations of a state judicial ethics code. The commissions are administrative, each governed by specific state regulation and law. Each commission is also dependent upon state funding to accomplish its charge.

The first judicial conduct commission was established in California in 1960. Before then, "there was no dedicated body responsible for making sure judges behaved appropriately. Judges were shielded from disciplinary oversight in an attempt to protect their independence."[6]

The Nevada Constitution was amended in 1976 to create the Nevada Commission on Judicial Discipline. In 2006, the Nevada Supreme Court formed a blue ribbon commission to study all aspects of the Nevada judiciary. Then Chief Justice Robert Rose suggested an important issue for consideration was the accountability and discipline of Nevada judges. A subcommittee examined the Commission on Judicial Discipline's average annual workload and concluded:

> Judges are imperfect and misbehavior is part of the human dynamic.

Prompt resolution of complaints of judicial misconduct benefits both the public and judges. However, gathering clear and convincing evidence of misconduct and providing a meaningful opportunity for a judge to respond can be a lengthy process, longer than the public may understand.

The primary reason for the delay in proceedings for which the Judicial Discipline Commission has been criticized is the lack of staffing and funding, which requires the Judicial Discipline Commission to place holds on investigations, particularly for less serious allegations. *Speeding up the process will require a substantial additional commitment of public funds.*[7]

The subcommittee then recommended, with the assumption "*the Legislature makes the commitment to fund the Judicial Discipline Commission to effective levels,*" the adoption of procedural time guidelines to ensure prompt resolution of discipline complaints. The subcommittee also recommended annual and biennial reports to increase the Commission's accountability to the public it serves. The 2009 legislature codified the reports recommendations at NRS 1.464(1). The Commission must now prepare an annual report summarizing its activities during the preceding year and provide information about complaint dispositions, length of pending proceedings, and a statement of its budget and expenses.

The subcommittee's focus on funding cannot be overstated, as a recent study published in the Stanford Law Review demonstrated that funding levels are

statistically correlated to judicial discipline success. Although intuitive, this concept had not previously been proven by empirical data. A student researcher at Stanford Law School discovered there is a large disparity in the adjusted number of judicial discipline actions by state, even though every state has a judicial conduct commission. He developed the following three hypotheses to explain the disparity.[8]

1. Commissions controlled by laypeople impose more discipline than commissions controlled by judges and lawyers.[9] According to some, lawyers and judges are more sympathetic to accused judges and are therefore less inclined to impose discipline. This intuitive concept led to legislative change in California and Washington so non-lawyers would compose a majority on the state conduct commissions.

2. Commissions issue more disciplinary actions against elected judges than appointed judges.[10] Many national commentators have suggested that elected judges are more susceptible to discipline because of the temptations associated with campaign fundraising and other election-driven misconduct. To some, elected judges are more political and less devoted to the rule of law. Therefore, states that elect judges should have higher incidents of judicial discipline.

3. Commissions with higher budgets issue more disciplinary actions.[11] This hypothesis is intuitive because commissions with adequate money complete more investigations and conduct more proceedings. If proven, the relationship implicates the balance of power among the branches of government. The legislature may control, through funding, the efficacy of the judiciary.

With these hypotheses to prove or disprove, the researcher compiled a 35-state dataset that included the number of disciplinary actions against judges between 2000 and 2010. The study standardized definitions and data, compiled broad data, and considered how unobserved variables might influence the result. Contrary to conventional wisdom, the data did not show a relationship between discipline activity and the composition of the commission among judges, lawyers, and laypeople. The study also failed to support the second hypothesis, that judicial election states discipline judges more frequently than judicial appointment states. Finally, and most important to the Nevada Commission on Judicial Discipline, the study revealed that the number of disciplinary actions a state commission takes is strongly correlated with the size of the commission's budget. The resulting article explains:

The final hypothesis to test is whether states that spend more money on their commissions see higher levels of disciplinary activity. That is the commonsense intuition in judicial conduct circles, and the data appear to bear it out. Looking at the average level of discipline per year against the average annual budgets for 2000 through 2010, we see that states that consistently spend more on their commissions wind up disciplining more judges, even adjusting for population and caseload. [The figure] shows that discipline per capita and discipline per case are strongly correlated with budget per capita and budget per case. Better-funded commissions rack up more discipline.[12]

The study is interesting for several reasons. It summarizes the history of code commission among the various states. It uses statistical analyses and introduces social science and economic themes into legal scholarship. And like all valuable research, its usefulness extends beyond the world of ideas. In this instance, the Nevada Commission on Judicial Discipline can use the research to defend the need for adequate legislative funding. Judicial discipline is more than a slogan. It is a policy of high value. It is difficult to investigate and prosecute judges for misconduct. The Commission must be given the tools to perform its essential work on behalf of all Nevada litigants, lawyers, and citizens.

NOTES

1 Jonathan Abel, *Testing Three Commonsense Intuitions About Judicial Conduct Commissions*, 64 STAN. L. REV. 1021, 1023 (2012).

2 Petition for Writ of Mandamus at 6, *Jones v. Nevada. Comm'n on Judicial Discipline*, No. 61902 (Nev. Oct. 16, 2012).

3 Editorial, *Kept in the dark: End secrecy in judicial discipline inquiries*, LAS VEGAS REVIEW-JOURNAL, Nov. 13, 2012, available at http://www.lvrj.com/opinion/kept-in-the-dark-end-secrecy-in-judicial-discipline-inquiries-179071921.html.

4 Jane Ann Morrison, *Complaint stalled, and panel won't say why*, LAS VEGAS REVIEW-JOURNAL, Dec. 27, 2012, available at http://www.lvrj.com/news/complaint-stalled-and-panel-won-t-say-why-184907111.html

5 Abel, *supra* note 1, at 1025.

6 *Id.* at 1027.

7 Supreme Court of Nevada Article 6 Commission, Judicial Discipline Proceedings Report and Recommendations (Feb. 2009), http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/708/ (emphasis added.)

8 Abel, *supra* note 1.

9 *Id.* at 1034–39.

10 *Id.* at 1040–46.

11 *Id.* at 1046–48.

12 *Id.* at 1066.

This is number 63 in a series of essays on judicial ethics authored by Chief Judge David Hardy, Second Judicial District Court, Dept. 15.

Judicial discipline commission hopes to add staff as caseload grows

By JEFF GERMAN LAS VEGAS REVIEW-JOURNAL

Posted December 28, 2014 - 10:08pm

Nevada Commission on Judicial Discipline Executive Director Paul Deyhle. (File/Las Vegas Review-Journal)

image

Complaints against judges across the state are rising, but the Nevada Commission on Judicial Discipline is having a tough time keeping up.

Executive Director Paul Deyhle said the commission lacks modern-day resources, manpower and in some instances authority to handle the growing caseload.

The backlog is the result of years of being underfunded and ignored within state government, he said.

This past year, the seven-member commission spent $183,300 — more than three-quarters of its budget — pursuing a single disciplinary action against former Family Court Judge Steven Jones, who fought the panel every step of the way.

For its efforts, the commission ended up giving Jones a three-month suspension without pay over his mishandling of a romantic relationship with a prosecutor who appeared before him.

It took the federal government to get Jones off the bench. He resigned in September as part of a deal with federal prosecutors to plead guilty to a felony in a decade-long $2.6 million investment scheme.

Deyhle has big plans to get the struggling commission what it needs to go after errant judges like Jones in the future.

"We're trying to bring the office back into the 21st century," said Deyhle, who has been at its helm since November 2013. "Not much has been done for the commission in many, many years. It's time."

During a time of fiscal restraint, Deyhle has requested a 40-percent increase in his new two-year budget, bringing it up to $902,971. He wants to add an associate general counsel and a management analyst and take other long-overdue measures to improve the commission's daily operations.

The commission, which received roughly 225 complaints against judges this year, has had only three full-time staffers, including Deyhle, to process those cases. Deyhle has doubled as general counsel.

The new hires would eliminate the frequent need to pay expensive private lawyers to handle disciplinary cases and move the cases along quicker, Deyhle said.

His budget request also includes money to replace outdated computers and software and a telephone system installed in 1987 that can't be updated.

It allows for the purchase of a new Internet server to store and protect commission documents, along with a new electronic case management system that should have been installed years ago. The current system isn't supported by the manufacturer, which is no longer in business.

Deyhle said he also hopes to use the additional funds to provide more ethics training to judges around the state.

One of his bigger priorities is finding a new and larger office in Carson City. The current office is in a building with no other state agencies and sits next to a fitness center. At times during the day, the walls shake from the impact of the fitness classes and their blaring music, Deyhle said.

The office is so cramped that case files have to be stacked in boxes along the walls in public view. Supplies are stored in the bathroom, and there is no conference room or place for visitors to sit, he said.

Commissioners also are forced to conduct confidential conference calls from a common office area at a staffer's desk with the help of a plastic folding table, he added.

Deyhle's push to beef up the office also includes seeking financial help from the Nevada Legislature in the case of an emergency.

He has submitted a bill draft that would give the judicial commission an opportunity to draw money from a state contingency fund if it finds itself short of operating cash because of another high-profile case like the one involving Jones.

Another bill draft would more clearly define the commission's ability to take certain action against judges and expand its authority to remove a judge without pay.

Over the past several months, Deyhle has been working hard behind the scenes lobbying for the changes.

"We're trying to improve the operational efficiency of the office," he said. "We're trying to effect a positive change, so the commission can better carry out its constitutional and statutory mandates. It's not unreasonable."

Contact Jeff German at jgerman@reviewjournal.com or 702-380-8135. Follow @JGermanRJ on Twitter.

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TAB B

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PAUL C. DEYHLE
General Counsel and
Executive Director

MEMORANDUM

DATE: August 25, 2014

TO: Colleen Murphy, Budget Analyst

FROM: Paul C. Deyhle, General Counsel and Executive Director
Nevada Commission on Judicial Discipline

SUBJECT: Reclassification of Management Analyst position - Half-time to Full-time

---

The Commission on Judicial Discipline ("Commission") is administered by the General Counsel and Executive Director ("GCED") and two full-time Management Analysts. The Standing Committee on Judicial Ethics (sometimes referred to herein as the "Committee") is administered by the Executive Director and a one-half time Management Analyst. All members of the Commission and the Committee are appointees who serve as full-time judges, lawyers (private and governmental), and business or retired persons who are neither lawyers nor judges.

The Commission and the Committee are operated from a consolidated General Fund budget account. Staffing has increased only once since the functions were combined in 1998. The proposed budget for FY 16 and FY 17 includes a request for reclassification of one of its Management Analyst II ("MAII") positions from half-time to full-time. The proposal includes costs for revision of the salary for this position.

The number of complaints against judges filed with the Commission rose from 147 in 2012 to 175 in 2013. Projections for 2014 are expected to exceed 225. From 2007 to 2012, the average number of complaints received by the Commission was 140. The actual number of complaints received in 2013 and the number received in the first half of 2014 indicate that the Commission may expect a 61% increase in the number of complaints it receives over the next biennium.

Further, in the last several years the number of complex cases has increased as well. This trend was reflected both in the Commission's increased workload and in the media this last fiscal year. Additionally, the trend toward increased complexity and litigation of its cases, combined with print, television and social media attention, has significantly increased the Commission's workload. Contract attorneys and an outside investigation firm have been utilized in the past to analyze and investigate the Commission's complaints. Administrative duties and overflow office work have been completed by temporary office help in the form of retired Management Analysts. With the addition of new staff, these duties will be performed by current staff members, allowing for use of contract staff for less urgent needs. The Commission proposes to reclassify one of the existing MAII positions from a half-time to a full-time position to further reduce or negate the Commission's utilization of contract workers.

The current half-time MAII performs administrative and legal support duties pertaining to the Committee and also assists the MAII whose duties revolve around the Commission's activities. These duties are performed under the limited supervision of the GCED. The overflow workload of the Commission's MAII position is currently contracted to a temporary staffing agency, however, with the requested increase, this additional work could be completed effectively and efficiently without the cost of outside contractors.

The Commission and Committee staff is very small, which requires the recruitment and maintenance of a versatile and resourceful staff. Historically it has been difficult to recruit and maintain half-time staff with the required qualifications and skills. Increasing the half-time position to full-time would make recruitment less burdensome and reduce the need for contract workers thereby providing a more consistent work product and increased efficiency.

In short, the reclassification of the MAII position from half-time to full-time would provide the Commission and the Committee with sufficient resources to fulfill their constitutional and statutory mandates and better serve our state's judges and citizens. Attached are two articles authored by the Chief Judge of the Second Judicial District Court and published in The Writ in April 2014 and February 2013, respectively, discussing the Commission's challenges and supporting its recent efforts to increase its funding and staffing needs.

JUDICIAL ETHICS

Hon. David Hardy, Chief Judge, Second Judicial District Court

"Well-funded commissions discipline judges more often than underfunded commissions. This finding demonstrates the importance of adequately funding these commissions and suggests the dangers to the integrity of the judiciary that could occur from cutting the commissions' funding"[1]

A Nevada judge was recently the subject of intense media attention and public scrutiny. High-profile judicial discipline proceedings reveal the public's interest in punishing unethical judges. But because much of the Nevada Commission on Judicial Discipline's work is not public, these high-profile proceedings also reveal the substantial investigative and legal work underlying a discipline action. If the first purpose of judicial discipline is to protect the public, and if the public thirsts for accountability from judges who violate the Nevada Code of Judicial Conduct, the Commission must be given the resources to invigorate its constitutional and statutory mandates.

When I was a lawyer, prospective clients would often ask me to quote a price and predict how long they would need my services. I always answered that I needed to know who the adverse litigant and opposing attorney were. Fees and duration are incurred bi-laterally and unsusceptible to single control. Similarly, the Commission cannot control the number of complaints it receives, and because each complaint is different, the scope of its work is difficult to predict. It is therefore problematic to mandate procedural and timing requirements upon the Commission but expect the Commission to operate with a static budget. As complex and high-profile cases arise, resources are unexpectedly depleted and less serious but important complaints languish. Sometimes all Commission work is suspended toward the end of a fiscal year when budget authority is exhausted.

A survey of discipline commissions from 35 states recently published in the *Stanford Law Review* statistically supports what is intuitive: the number of disciplinary actions a state judicial discipline commission takes is strongly correlated with the size of the commission's budget.[2] I further suggest the numeric quantity and substantive quality of discipline proceedings is determined by the funding resources available to the discipline commission. For these reasons, Nevada should decide if policing the judiciary is a worthwhile policy. If it is, the 2015 legislature could consider if the Commission on Judicial Discipline is adequately staffed and funded to be effective.

Nevada has 82 district judges, 67 justices of the peace, and 21 municipal court judges. The Commission oversees each of these judges and additional senior judges, masters, commissioners, and pro-tem masters as "a court of judicial performance."[3] The Commission staff is comprised of an executive director, a management analyst, a paralegal, and a panel of assigned judges and citizen volunteers. The staff also oversees the Standing Committee on Judicial Ethics, which will issue more than 25 advisory opinions this biennium. This fiscal year the Commission's budget was $589,787.

The Commission has authority to censure, retire, remove, or otherwise discipline judges. The range of subordinate discipline includes suspension, probation, remedial education and training, fines, and public or private reprimands. The Commission may also issue non-disciplinary "letters of caution." The imposition of discipline often requires some form of "after care" supervision to ensure judges comply with the discipline. In 2010, the Nevada Legislature imposed procedural phases and timing requirements to govern the Commission's work. Not every judicial misstep is worthy of public condemnation. The Commission's response should be commensurate with the judicial action under scrutiny, and it should have resources to respond to complaints alleging low- and mid-grade misconduct.

Every complaint must be reviewed to determine if an investigation is warranted. A majority of complaints are dismissed without investigation because the complainants seek relief beyond the Commission's jurisdiction or allege non-specific and unverifiable judicial bias. If the complaint sets forth a "reasonable inference of misconduct or incapacity, the Commission initiates an investigation using a private investigative agency. The Commission reviews all investigative reports to determine if it could find "a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action." If so, the judge is directed to respond to the complaint. The Commission considers the judge's response to determine if the allegations will still sustain discipline by clear and convincing evidence. Only then does the complaint become public.

The Commission recently filed its biennial report, which reveals some troubling statistics. The number of complaints is increasing and the number of complaints pending review remains too high. In the past two years, the Commission received 302 complaints. More than 50% were dismissed without an investigation. 41 complaints were investigated and 23 of those complaints were dismissed after the investigation results were reviewed. The Commission informally resolved several complaints, but at the time the biennial report was filed in October, 2013, there were 141 complaints pending investigation and more than 100 complaints pending initial Commission consideration.[4]

My experience is that Nevada judges care deeply about their work. They seek to exemplify the highest standards of professionalism. But judges are also fallible, subject to isolated errors and chronic misconduct. Judges must be accountable to the citizens they serve. An important tool for accountability is adherence to the Nevada Code of Judicial Conduct, which is the barometer for excellence. I do not wish to foment unnecessary discipline, particularly because I respect my Nevada colleagues so much. Nonetheless, to the extent Nevada places a premium on judicial excellence it should fund the Commission's mandate to examine conduct that falls below public expectations.

The old adage "you get what you pay for" applies to the Commission. During this next legislative session the Commission will be asked how much budget authority it needs to perform its services. I suspect a slightly different formulation may be better. The Commission may wish to compare its funding relative to other states' commissions and then answer the question with a question: "What type of discipline commission does Nevada want?" If Nevada wants a Commission that will 1) eliminate the backlog of pending complaints, 2) timely review all complaints and fully investigate complaints with inferential merit, and 3) pursue informally or publicly each meritorious matter, then the legislature will need to increase its funding to reach these admirable goals.

NOTES

[1] Jonathan Abel, *Testing Three Commonsense Intuitions About Judicial Conduct Commissions*, 64 Stan. L. Rev. 1021 (2012).

[2] *Id.* at 1046.

[3] Nevada Commission on Judicial Discipline, Standing Committee on Judicial Ethics, [4]*Id* at 9-11 and Appendix C.

This is number 76 in a series of essays on judicial ethics authored by Chief Judge David Hardy, Second Judicial District Court, Dept. 15.

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THE RESOLUTION EXPERTS JAMS

Judicial Ethics

Hon. David Hardy, Second Judicial District Court, Department 15

"Judicial misconduct is the dirty little secret of the state judiciary, well known but rarely discussed."[1]

A Nevada judge was indicted in October for his alleged involvement in fraudulent investment schemes. The indictment is merely a statement of charges and not evidence against the judge. This essay is not about a colleague who presently enjoys a constitutional presumption of innocence. I write this essay to support the Nevada Commission on Judicial Discipline, who is again besieged by allegations of secrecy, missteps, and impermissible delays. (The Commission was recently described in a pleading as "a Commission that hasn't found a rule it couldn't break or a procedural safeguard it couldn't circumvent.")[2]

The indicted judge was the subject of a 2006 judicial discipline complaint that included allegations of misconduct dating back to 1996. The complaint was recently unsealed and its contents were widely reported in the news media. The media coverage was not kind to the Commission. According to one newspaper editorial, the confidentiality and slow pace of the discipline proceeding prevented voters from casting informed votes in 2010. It continued: "We hold judges to the highest standards of legal and ethical behavior because they wield so much power from the bench: the authority to take away freedom, property and family. Justice demands that judges be beyond reproach."[3]

Another editorial described the 2006 complaint as languishing in "limbo land" and suggested a legislator may want to ask about the delays when the Commission "defends its request for funding" during the next session.[4] I agree, but for different reasons. The editorial implies Commission funding should be reduced because of substandard Commission performance. In contrast, I rely upon recent research to urge the legislature to increase its funding to *improve* Commission performance.

Judges are imperfect and misbehavior is part of the human dynamic. Decisional error is corrected by appellate courts, whereas behavioral error falls under the authority of a state judicial conduct commission. Every state has some form of judicial conduct commission that is "charged with the critical function of preserving the integrity of the judiciary."[5] These commissions investigate and prosecute judges for violations of a state judicial ethics code. The commissions are administrative, each governed by specific state regulation and law. Each commission is also dependent upon state funding to accomplish its charge.

The first judicial conduct commission was established in California in 1960. Before then, "there was no dedicated body responsible for making sure judges behaved appropriately. Judges were shielded from disciplinary oversight in an attempt to protect their independence."[6]

The Nevada Constitution was amended in 1976 to create the Nevada Commission on Judicial Discipline. In 2006, the Nevada Supreme Court formed a blue ribbon commission to study all aspects of the Nevada judiciary. Then Chief Justice Robert Rose suggested an important issue for consideration was the accountability and discipline of Nevada judges. A subcommittee examined the Commission on Judicial Discipline's average annual workload and concluded:

> Judges are imperfect and misbehavior is part of the human dynamic.

Prompt resolution of complaints of judicial misconduct benefits both the public and judges. However, gathering clear and convincing evidence of misconduct and providing a meaningful opportunity for a judge to respond can be a lengthy process, longer than the public may understand.

The primary reason for the delay in proceedings for which the Judicial Discipline Commission has been criticized is the lack of staffing and funding, which requires the Judicial Discipline Commission to place holds on investigations, particularly for less serious allegations. *Speeding up the process will require a substantial additional commitment of public funds.*[7]

The subcommittee then recommended, with the assumption "*the Legislature makes the commitment to fund the Judicial Discipline Commission to effective levels,*" the adoption of procedural time guidelines to ensure prompt resolution of discipline complaints. The subcommittee also recommended annual and biennial reports to increase the Commission's accountability to the public it serves. The 2009 legislature codified the reports recommendations at NRS 1.464(1). The Commission must now prepare an annual report summarizing its activities during the preceding year and provide information about complaint dispositions, length of pending proceedings, and a statement of its budget and expenses.

The subcommittee's focus on funding cannot be overstated, as a recent study published in the Stanford Law Review demonstrated that funding levels are

statistically correlated to judicial discipline success. Although intuitive, this concept had not previously been proven by empirical data. A student researcher at Stanford Law School discovered there is a large disparity in the adjusted number of judicial discipline actions by state, even though every state has a judicial conduct commission. He developed the following three hypotheses to explain the disparity.[8]

1. Commissions controlled by laypeople impose more discipline than commissions controlled by judges and lawyers.[9] According to some, lawyers and judges are more sympathetic to accused judges and are therefore less inclined to impose discipline. This intuitive concept led to legislative change in California and Washington so non-lawyers would compose a majority on the state conduct commissions.

2. Commissions issue more disciplinary actions against elected judges than appointed judges.[10] Many national commentators have suggested that elected judges are more susceptible to discipline because of the temptations associated with campaign fundraising and other election-driven misconduct. To some, elected judges are more political and less devoted to the rule of law. Therefore, states that elect judges should have higher incidents of judicial discipline.

3. Commissions with higher budgets issue more disciplinary actions.[11] This hypothesis is intuitive because commissions with adequate money complete more investigations and conduct more proceedings. If proven, the relationship implicates the balance of power among the branches of government. The legislature may control, through funding, the efficacy of the judiciary.

With these hypotheses to prove or disprove, the researcher compiled a 35-state dataset that included the number of disciplinary actions against judges between 2000 and 2010. The study standardized definitions and data, compiled broad data, and considered how unobserved variables might influence the result. Contrary to conventional wisdom, the data did not show a relationship between discipline activity and the composition of the commission among judges, lawyers, and laypeople. The study also failed to support the second hypothesis, that judicial election states discipline judges more frequently than judicial appointment states. Finally, and most important to the Nevada Commission on Judicial Discipline, the study revealed that the number of disciplinary actions a state commission takes is strongly correlated with the size of the commission's budget. The resulting article explains:

The final hypothesis to test is whether states that spend more money on their commissions see higher levels of disciplinary activity. That is the commonsense intuition in judicial conduct circles, and the data appear to bear it out. Looking at the average level of discipline per year against the average annual budgets for 2000 through 2010, we see that states that consistently spend more on their commissions wind up disciplining more judges, even adjusting for population and caseload. [The figure] shows that discipline per capita and discipline per case are strongly correlated with budget per capita and budget per case. Better-funded commissions rack up more discipline.[12]

The study is interesting for several reasons. It summarizes the history of code commission among the various states. It uses statistical analyses and introduces social science and economic themes into legal scholarship. And like all valuable research, its usefulness extends beyond the world of ideas. In this instance, the Nevada Commission on Judicial Discipline can use the research to defend the need for adequate legislative funding. Judicial discipline is more than a slogan. It is a policy of high value. It is difficult to investigate and prosecute judges for misconduct. The Commission must be given the tools to perform its essential work on behalf of all Nevada litigants, lawyers, and citizens.

NOTES

1 Jonathan Abel, *Testing Three Commonsense Intuitions About Judicial Conduct Commissions*, 64 STAN. L. REV. 1021, 1023 (2012).

2 Petition for Writ of Mandamus at 6, *Jones v. Nevada. Comm'n on Judicial Discipline*, No. 61902 (Nev. Oct. 16, 2012).

3 Editorial, *Kept in the dark: End secrecy in judicial discipline inquiries*, LAS VEGAS REVIEW-JOURNAL, Nov. 13, 2012, available at http://www.lvrj.com/opinion/kept-in-the-dark-end-secrecy-in-judicial-discipline-inquiries-179071921.html.

4 Jane Ann Morrison, *Complaint stalled, and panel won't say why*, LAS VEGAS REVIEW-JOURNAL, Dec. 27, 2012, available at http://www.lvrj.com/news/complaint-stalled-and-panel-won-t-say-why-184907111.html

5 Abel, *supra* note 1, at 1025.

6 *Id.* at 1027.

7 Supreme Court of Nevada Article 6 Commission, Judicial Discipline Proceedings Report and Recommendations (Feb. 2009), http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/708/ (emphasis added.)

8 Abel, *supra* note 1.

9 *Id.* at 1034–39.

10 *Id.* at 1040–46.

11 *Id.* at 1046–48.

12 *Id.* at 1066.

This is number 63 in a series of essays on judicial ethics authored by Chief Judge David Hardy, Second Judicial District Court, Dept. 15.

Judicial discipline commission hopes to add staff as caseload grows

By JEFF GERMAN LAS VEGAS REVIEW-JOURNAL

Posted December 28, 2014 - 10:08pm

Nevada Commission on Judicial Discipline Executive Director Paul Deyhle. (File/Las Vegas Review-Journal)

image

Complaints against judges across the state are rising, but the Nevada Commission on Judicial Discipline is having a tough time keeping up.

Executive Director Paul Deyhle said the commission lacks modern-day resources, manpower and in some instances authority to handle the growing caseload.

The backlog is the result of years of being underfunded and ignored within state government, he said.

This past year, the seven-member commission spent $183,300 — more than three-quarters of its budget — pursuing a single disciplinary action against former Family Court Judge Steven Jones, who fought the panel every step of the way.

For its efforts, the commission ended up giving Jones a three-month suspension without pay over his mishandling of a romantic relationship with a prosecutor who appeared before him.

It took the federal government to get Jones off the bench. He resigned in September as part of a deal with federal prosecutors to plead guilty to a felony in a decade-long $2.6 million investment scheme.

Deyhle has big plans to get the struggling commission what it needs to go after errant judges like Jones in the future.

"We're trying to bring the office back into the 21st century," said Deyhle, who has been at its helm since November 2013. "Not much has been done for the commission in many, many years. It's time."

During a time of fiscal restraint, Deyhle has requested a 40-percent increase in his new two-year budget, bringing it up to $902,971. He wants to add an associate general counsel and a management analyst and take other long-overdue measures to improve the commission's daily operations.

The commission, which received roughly 225 complaints against judges this year, has had only three full-time staffers, including Deyhle, to process those cases. Deyhle has doubled as general counsel.

The new hires would eliminate the frequent need to pay expensive private lawyers to handle disciplinary cases and move the cases along quicker, Deyhle said.

His budget request also includes money to replace outdated computers and software and a telephone system installed in 1987 that can't be updated.

It allows for the purchase of a new Internet server to store and protect commission documents, along with a new electronic case management system that should have been installed years ago. The current system isn't supported by the manufacturer, which is no longer in business.

Deyhle said he also hopes to use the additional funds to provide more ethics training to judges around the state.

One of his bigger priorities is finding a new and larger office in Carson City. The current office is in a building with no other state agencies and sits next to a fitness center. At times during the day, the walls shake from the impact of the fitness classes and their blaring music, Deyhle said.

The office is so cramped that case files have to be stacked in boxes along the walls in public view. Supplies are stored in the bathroom, and there is no conference room or place for visitors to sit, he said.

Commissioners also are forced to conduct confidential conference calls from a common office area at a staffer's desk with the help of a plastic folding table, he added.

Deyhle's push to beef up the office also includes seeking financial help from the Nevada Legislature in the case of an emergency.

He has submitted a bill draft that would give the judicial commission an opportunity to draw money from a state contingency fund if it finds itself short of operating cash because of another high-profile case like the one involving Jones.

Another bill draft would more clearly define the commission's ability to take certain action against judges and expand its authority to remove a judge without pay.

Over the past several months, Deyhle has been working hard behind the scenes lobbying for the changes.

"We're trying to improve the operational efficiency of the office," he said. "We're trying to effect a positive change, so the commission can better carry out its constitutional and statutory mandates. It's not unreasonable."

Contact Jeff German at jgerman@reviewjournal.com or 702-380-8135. Follow @JGermanRJ on Twitter.

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Chairman

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PAUL C. DEYHLE
General Counsel and
Executive Director

MEMORANDUM

DATE: August 25, 2014

TO: Colleen Murphy, Budget Analyst

FROM: Paul C. Deyhle, General Counsel and Executive Director PCD
Nevada Commission on Judicial Discipline

SUBJECT: New Position - Associate General Counsel

The Commission on Judicial Discipline ("Commission") is administered by the General Counsel and Executive Director ("GCED") and two full-time Management Analysts. The Standing Committee on Judicial Ethics (sometimes referred to herein as the "Committee") is administered by the Executive Director and a one-half time Management Analyst. All members of the Commission and the Committee are appointees who serve as full-time judges, lawyers (private and governmental), and business or retired persons who are neither lawyers nor judges.

The Commission and the Committee are operated from a consolidated General Fund budget account. Staffing has increased only once since the functions were combined in 1998. The proposed budget for FY 16 and FY 17 includes a request for one additional staff member in the form of an Associate General Counsel ("AGC") in the non-classified service. The proposal includes costs for office furnishings (computer, phone, desk, etc.) as well as the normal personnel/salary expenses.

The number of complaints against judges filed with the Commission rose from 147 in 2012 to 175 in 2013. Projections for 2014 are expected to exceed 225. From 2007 to 2012, the average number of complaints received by the Commission was 140. The actual number of complaints received in 2013 and the number received in the first half of 2014 indicate that the Commission may expect at least a 61% increase in the number of complaints it receives over the next biennium.

Further, in the last several years the number of complex cases has increased as well. This trend was reflected both in the Commission's increased workload and in the media this last fiscal year. The cases involving Judge Steven Jones in Las Vegas received a great deal of media attention. One of these cases was the subject of a public hearing in December 2013 and culminated in disciplinary proceedings in January 2014. This particular case was also litigated in the Eighth Judicial District Court and in four (4) separate matters in the Nevada Supreme Court. Following the imposition of discipline, a sixth litigation matter, an appeal of the disciplinary decision, was filed in the Nevada Supreme Court. This matter is currently pending briefing. The trend toward increased complexity and litigation of its cases, combined with print, television and social media attention has significantly increased the Commission's workload.

In addition, a second highly publicized case involving Judge Jones is in the initial stages of the Commission's complaint process which is expected to require the expenditure of significant resources not only in this fiscal year but quite possibly into the next biennium. The magnitude of this particular case will require a great deal of the GCED's attention. The Commission seeks to avoid the additional backlog of cases that will surely occur as this particular case moves forward. This anticipated backlog is in addition to the backlog that has already occurred and will continue to occur as a result of a bare-bones staff, increased caseload, and the increasing prevalence of more complex cases.

These more complex cases require a significant expenditure of time and oversight in analysis. Unfortunately, this time and oversight diverts the GCED from focusing his attention as is necessary on less complex cases which also contributes to a backlog of cases. This additional workload has significantly contributed to longer processing times. In fact, when the current GCED started in his position in November 2013, cases dating back two years still had not been processed and/or concluded. The GCED and staff continue to work feverishly to reduce this backlog while at the same time having to process the increasing number of new cases received. Without the addition of an AGC, one backlog will only be replaced with another backlog, thereby continuing the futile "hamster wheel" approach of exerting a tremendous amount of effort but getting nowhere in the process. These backlogs and associated delays are unacceptable and wholly unresponsive to the many Nevada citizens and taxpayers whom the Commission serves.

The Commission expects that with a more attentive media and the trend toward complex litigation of its cases, the Commission's workload will continue to increase. While exceptionally complex matters are not frequent, they are expected and should be considered in determining the Commission's staffing.

The Commission is required to dispose of all cases within 18 months of receipt. NRS 1.4655. It has been the Commission's practice to utilize the services of contract attorneys for review of cases when a backlog of cases develops or when complex, highly litigated cases have required the

GCED's attention. The Commission has historically operated with an absolute minimum of staff. While seemingly frugal, this bare-bones approach to staffing which occurred in the past has lead to a long-running and significant backlog of complaints and less than desirable attention to administrative matters. The backlog has been recently addressed by utilizing the services of contract attorneys at considerable expense. It is in this area that the Commission seeks to save by making the addition of an AGC. Contract attorney expenses for FY 14 were $151,376.54. Category 01 projections for the addition of an AGC are $135,401/year. The continued use of contract attorneys as a regular course represents an increased cost to the Nevada taxpayers that need not be incurred if the Commission and Committee are properly staffed.

The Commission's constitutional and statutory mandates can best be carried out by a sufficient number of properly supervised and dedicated staff members. Although the attorneys with whom the Commission contracts are seasoned professionals, the Commission believes that in-house review and resolution of its cases will yield a more timely and productive result. While contract attorneys attend strictly to the matters assigned to them, additional in-house counsel would provide the added benefit of assistance with the Commission's general litigation matters and increased workload, the ability to more timely respond to the many inquiries the Commission receives from judges, as well as the capability to utilize adequate resources to perform the necessary research in connection therewith.

The addition of an AGC would also free up scarce time and resources for the GCED, thereby allowing for more detailed oversight of the Commission's caseload as well as the administrative duties of the office which seemingly have been ignored over the past 10 years. Moreover, the assistance of an AGC would allow the GCED to commit more time to providing needed training on judicial ethics issues which has been sorely lacking over the recent past. The Commission's continuing priority will be to "teach rather than catch" from here on out.

In addition to the foregoing responsibilities, the GCED is also responsible for and oversees the work of the Standing Committee on Judicial Ethics. The Committee accommodates numerous requests for advisory opinions and guidance from judges and aspirants to judicial office. The Committee issued 15 opinions in 2011, 11 opinions in 2012, and 6 in 2013. The Committee has already received 7 requests for advisory opinions in 2014. The Committee receives advisory opinion requests, researches the issues presented, and then meets telephonically to discuss the request, after which the opinion is drafted, approved and then issued and published.

In addition to overseeing the work of the Committee and the issuance of advisory opinions, the GCED also answers many telephone and email inquiries from judges and aspirants to judicial office. These inquiries are often of a somewhat urgent nature and entail research and a significant

expenditure of the GCED's time. These inquiries would also be better and more timely served by the assistance of an AGC.

Many of these inquiries touch on issues that have not been addressed by the Committee and no Committee opinion exists. Accordingly, it would be beneficial for the GCED and Committee staff to possess the time and resources to review and consider other states' opinions on such ethical issues so proper and timely guidance can be given to the judges and aspirants to judicial office who contact the GCED prior to submitting an official advisory opinion request. If given timely guidance, many judges and aspirants to judicial office often decide to forgo the official advisory opinion process altogether and wind up not requesting an advisory opinion.

The task of locating and reviewing ethical opinions in other states can be challenging and time consuming as such opinions are not always included in standard legal research databases, thereby making it difficult for judges and aspirants to judicial office to undertake their own research. Consequently, judges and aspirants to judicial office in Nevada are increasingly reliant upon the GCED and the Committee staff to provide guidance with respect to their many inquiries.

In addition to the foregoing functions, the Committee assists the Nevada Supreme Court by studying and recommending additions or amendments to the provisions of the Nevada Code of Judicial Conduct and other laws governing the conduct of judges and aspirants to judicial office.

In short, the addition of an AGC to its staff would provide the Commission and the Committee with sufficient resources to fulfill their constitutional and statutory mandates and better serve our state's judges, lawyers and citizens. Attached are two articles authored by the Chief Judge of the Second Judicial District Court and published in The Writ in April 2014 and February 2013, respectively, discussing the Commission's challenges and supporting its recent efforts to increase its funding and staffing needs.

JUDICIAL ETHICS

Hon. David Hardy, Chief Judge, Second Judicial District Court

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The old adage "you get what you pay for" applies to the Commission. During this next legislative session the Commission will be asked how much budget authority it needs to perform its services. I suspect a slightly different formulation may be better. The Commission may wish to compare its funding relative to other states' commissions and then answer the question with a question: "What type of discipline commission does Nevada want?" If Nevada wants a Commission that will 1) eliminate the backlog of pending complaints, 2) timely review all complaints and fully investigate complaints with inferential merit, and 3) pursue informally or publicly each meritorious matter, then the legislature will need to increase its funding to reach these admirable goals.

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[2] *Id.* at 1046.

[3] Nevada Commission on Judicial Discipline, Standing Committee on Judicial Ethics, [4]*Id* at 9-11 and Appendix C.

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THE RESOLUTION EXPERTS JAMS

Judicial Ethics

Hon. David Hardy, Second Judicial District Court, Department 15

"Judicial misconduct is the dirty little secret of the state judiciary, well known but rarely discussed."[1]

A Nevada judge was indicted in October for his alleged involvement in fraudulent investment schemes. The indictment is merely a statement of charges and not evidence against the judge. This essay is not about a colleague who presently enjoys a constitutional presumption of innocence. I write this essay to support the Nevada Commission on Judicial Discipline, who is again besieged by allegations of secrecy, missteps, and impermissible delays. (The Commission was recently described in a pleading as "a Commission that hasn't found a rule it couldn't break or a procedural safeguard it couldn't circumvent.")[2]

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Another editorial described the 2006 complaint as languishing in "limbo land" and suggested a legislator may want to ask about the delays when the Commission "defends its request for funding" during the next session.[4] I agree, but for different reasons. The editorial implies Commission funding should be reduced because of substandard Commission performance. In contrast, I rely upon recent research to urge the legislature to increase its funding to *improve* Commission performance.

Judges are imperfect and misbehavior is part of the human dynamic. Decisional error is corrected by appellate courts, whereas behavioral error falls under the authority of a state judicial conduct commission. Every state has some form of judicial conduct commission that is "charged with the critical function of preserving the integrity of the judiciary."[5] These commissions investigate and prosecute judges for violations of a state judicial ethics code. The commissions are administrative, each governed by specific state regulation and law. Each commission is also dependent upon state funding to accomplish its charge.

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The Nevada Constitution was amended in 1976 to create the Nevada Commission on Judicial Discipline. In 2006, the Nevada Supreme Court formed a blue ribbon commission to study all aspects of the Nevada judiciary. Then Chief Justice Robert Rose suggested an important issue for consideration was the accountability and discipline of Nevada judges. A subcommittee examined the Commission on Judicial Discipline's average annual workload and concluded:

> Judges are imperfect and misbehavior is part of the human dynamic.

Prompt resolution of complaints of judicial misconduct benefits both the public and judges. However, gathering clear and convincing evidence of misconduct and providing a meaningful opportunity for a judge to respond can be a lengthy process, longer than the public may understand.

The primary reason for the delay in proceedings for which the Judicial Discipline Commission has been criticized is the lack of staffing and funding, which requires the Judicial Discipline Commission to place holds on investigations, particularly for less serious allegations. *Speeding up the process will require a substantial additional commitment of public funds.*[7]

The subcommittee then recommended, with the assumption "*the Legislature makes the commitment to fund the Judicial Discipline Commission to effective levels,*" the adoption of procedural time guidelines to ensure prompt resolution of discipline complaints. The subcommittee also recommended annual and biennial reports to increase the Commission's accountability to the public it serves. The 2009 legislature codified the reports recommendations at NRS 1.464(1). The Commission must now prepare an annual report summarizing its activities during the preceding year and provide information about complaint dispositions, length of pending proceedings, and a statement of its budget and expenses.

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statistically correlated to judicial discipline success. Although intuitive, this concept had not previously been proven by empirical data. A student researcher at Stanford Law School discovered there is a large disparity in the adjusted number of judicial discipline actions by state, even though every state has a judicial conduct commission. He developed the following three hypotheses to explain the disparity.[8]

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3. Commissions with higher budgets issue more disciplinary actions.[11] This hypothesis is intuitive because commissions with adequate money complete more investigations and conduct more proceedings. If proven, the relationship implicates the balance of power among the branches of government. The legislature may control, through funding, the efficacy of the judiciary.

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The final hypothesis to test is whether states that spend more money on their commissions see higher levels of disciplinary activity. That is the commonsense intuition in judicial conduct circles, and the data appear to bear it out. Looking at the average level of discipline per year against the average annual budgets for 2000 through 2010, we see that states that consistently spend more on their commissions wind up disciplining more judges, even adjusting for population and caseload. [The figure] shows that discipline per capita and discipline per case are strongly correlated with budget per capita and budget per case. Better-funded commissions rack up more discipline.[12]

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2 Petition for Writ of Mandamus at 6, *Jones v. Nevada, Comm'n on Judicial Discipline*, No. 61902 (Nev. Oct. 16, 2012).

3 Editorial, *Kept in the dark: End secrecy in judicial discipline inquiries*, LAS VEGAS REVIEW-JOURNAL, Nov. 13, 2012, available at http://www.lvrj.com/opinion/kept-in-the-dark-end-secrecy-in-judicial-discipline-inquiries-179071921.html.

4 Jane Ann Morrison, *Complaint stalled, and panel won't say why*, LAS VEGAS REVIEW-JOURNAL, Dec. 27, 2012, available at http://www.lvrj.com/news/complaint-stalled-and-panel-won-t-say-why-184907111.html

5 Abel, *supra* note 1, at 1025.

6 *Id.* at 1027.

7 Supreme Court of Nevada Article 6 Commission, Judicial Discipline Proceedings Report and Recommendations (Feb. 2009), http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/708/ (emphasis added.)

8 Abel, *supra* note 1.

9 *Id.* at 1034–39.

10 *Id.* at 1040–46.

11 *Id.* at 1046–48.

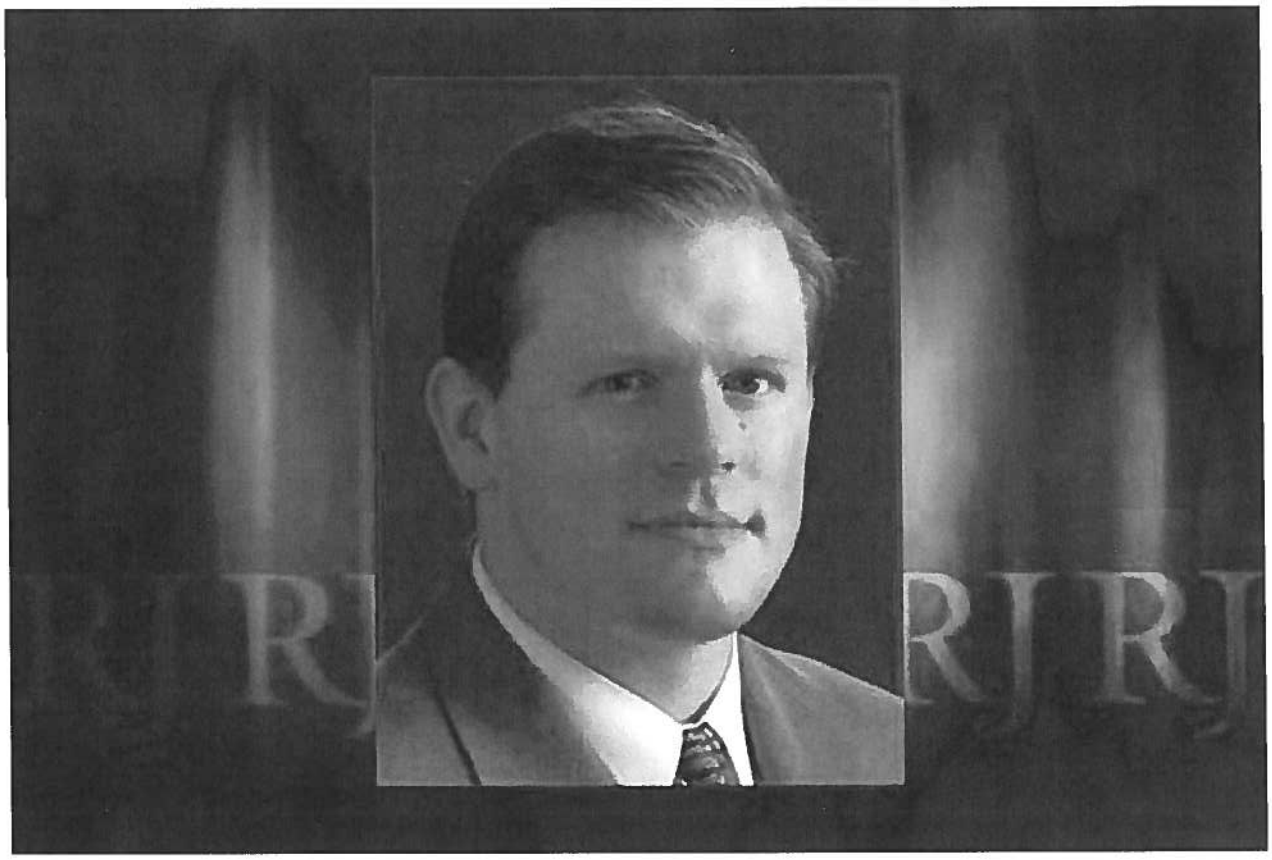
12 *Id.* at 1066.

This is number 63 in a series of essays on judicial ethics authored by Chief Judge David Hardy, Second Judicial District Court, Dept. 15.

Judicial discipline commission hopes to add staff as caseload grows

By JEFF GERMAN LAS VEGAS REVIEW-JOURNAL

Posted December 28, 2014 - 10:08pm



Nevada Commission on Judicial Discipline Executive Director Paul Deyhle. (File/Las Vegas Review-Journal)

image

Complaints against judges across the state are rising, but the Nevada Commission on Judicial Discipline is having a tough time keeping up.

Executive Director Paul Deyhle said the commission lacks modern-day resources, manpower and in some instances authority to handle the growing caseload.

The backlog is the result of years of being underfunded and ignored within state government, he said.

This past year, the seven-member commission spent $183,300 — more than three-quarters of its budget — pursuing a single disciplinary action against former Family Court Judge Steven Jones, who fought the panel every step of the way.

For its efforts, the commission ended up giving Jones a three-month suspension without pay over his mishandling of a romantic relationship with a prosecutor who appeared before him.

It took the federal government to get Jones off the bench. He resigned in September as part of a deal with federal prosecutors to plead guilty to a felony in a decade-long $2.6 million investment scheme.

Deyhle has big plans to get the struggling commission what it needs to go after errant judges like Jones in the future.

"We're trying to bring the office back into the 21st century," said Deyhle, who has been at its helm since November 2013. "Not much has been done for the commission in many, many years. It's time."

During a time of fiscal restraint, Deyhle has requested a 40-percent increase in his new two-year budget, bringing it up to $902,971. He wants to add an associate general counsel and a management analyst and take other long-overdue measures to improve the commission's daily operations.

The commission, which received roughly 225 complaints against judges this year, has had only three full-time staffers, including Deyhle, to process those cases. Deyhle has doubled as general counsel.

The new hires would eliminate the frequent need to pay expensive private lawyers to handle disciplinary cases and move the cases along quicker, Deyhle said.

His budget request also includes money to replace outdated computers and software and a telephone system installed in 1987 that can't be updated.

It allows for the purchase of a new Internet server to store and protect commission documents, along with a new electronic case management system that should have been installed years ago. The current system isn't supported by the manufacturer, which is no longer in business.

Deyhle said he also hopes to use the additional funds to provide more ethics training to judges around the state.

One of his bigger priorities is finding a new and larger office in Carson City. The current office is in a building with no other state agencies and sits next to a fitness center. At times during the day, the walls shake from the impact of the fitness classes and their blaring music, Deyhle said.

The office is so cramped that case files have to be stacked in boxes along the walls in public view. Supplies are stored in the bathroom, and there is no conference room or place for visitors to sit, he said.

Commissioners also are forced to conduct confidential conference calls from a common office area at a staffer's desk with the help of a plastic folding table, he added.

Deyhle's push to beef up the office also includes seeking financial help from the Nevada Legislature in the case of an emergency.

He has submitted a bill draft that would give the judicial commission an opportunity to draw money from a state contingency fund if it finds itself short of operating cash because of another high-profile case like the one involving Jones.

Another bill draft would more clearly define the commission's ability to take certain action against judges and expand its authority to remove a judge without pay.

Over the past several months, Deyhle has been working hard behind the scenes lobbying for the changes.

"We're trying to improve the operational efficiency of the office," he said. "We're trying to effect a positive change, so the commission can better carry out its constitutional and statutory mandates. It's not unreasonable."

Contact Jeff German at jgerman@reviewjournal.com or 702-380-8135. Follow @JGermanRJ on Twitter.

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PAUL C. DEYHLE
General Counsel and
Executive Director

MEMORANDUM

DATE: August 25, 2014

TO: Colleen Murphy, Budget Analyst

FROM: Paul C. Deyhle, General Counsel and Executive Director
Nevada Commission on Judicial Discipline

SUBJECT: Reclassification of Management Analyst position

The Commission on Judicial Discipline ("Commission") is administered by the General Counsel and Executive Director ("GCED") and two full-time Management Analysts. The Standing Committee on Judicial Ethics (sometimes referred to herein as the "Committee") is administered by the Executive Director and a one-half time Management Analyst. All members of the Commission and the Committee are appointees who serve as full-time judges, lawyers (private and governmental), and business or retired persons who are neither lawyers nor judges.

The Commission and the Committee are operated from a consolidated General Fund budget account. Staffing has increased only once since the functions were combined in 1998. The proposed budget for FY 16 and FY 17 includes a request for reclassification of one of its Management Analyst II ("MAII") positions to that of Paralegal/Management Analyst IV ("PMAIV") in the non-classified service. The proposal includes costs for revision of the salary for this position.

The number of complaints against judges filed with the Commission rose from 147 in 2012 to 175 in 2013. Projections for 2014 are expected to exceed 225. From 2007 to 2012, the average number of complaints received by the Commission was 140. The actual number of complaints received in 2013 and the number received in the first half of 2014 indicate that the Commission may expect a 61% increase in the number of complaints it receives over the next biennium.

Further, in the last several years the number of complex cases has increased as well. This trend was reflected both in the Commission's increased workload and in the media this last fiscal year. Additionally, the trend toward increased complexity and litigation of its cases, combined with print, television and social media attention, has significantly increased the Commission's workload. Contract attorneys and an outside investigation firm have been utilized in the past to analyze and investigate the Commission's complaints. Administrative duties and overflow office work has been completed by temporary office help in the form of retired Management Analysts. With the addition of new staff, these duties will be performed by current staff members, allowing for use of contract staff for less urgent needs such as archiving of the Commission's files dating back to 1998 which are currently stored in the office. The Commission proposes to reclassify one of the existing MAII positions to make the job description and duties commensurate with the actual activities and responsibilities of the position.

The current MAII is a paralegal and performs more advanced technical work relating to case management, legal research, fiscal analysis, personnel matters, policy and procedure development and long-range planning. Additionally, the incumbent's activities include supervising the remaining office staff, coordinating the Commission's very limited resources to solve unprecedented issues while maintaining confidentiality, updating the office structure and procedures and fulfilling the Commission's constitutional and statutory mandates, all the while endeavoring to manage the Commission's cases effectively. These duties are performed under the general administrative direction of the GCED.

The Commission staff is very small, which requires the recruitment and maintenance of a versatile and resourceful staff. Additionally, the current MAII is also called upon to step into other administrative rolls in the office as needed, including the duties associated with the Committee.

The Commission is required to dispose of all cases within 18 months of receipt and has historically operated on a very bare-bones approach to staffing with one or two Management Analyst positions at any one time. While this approach may seem frugal it has lead to a long-running and significant backlog of complaints, little or no analysis and planning, and less than desirable attention to administrative matters. Further, because of staff limitations, the Commission has never embarked upon any type of case management, leading to an inability to accurately track the workload and its associated costs.

With a more attentive media and the trend toward complex litigation of its cases, the Commission's caseload has continued to rise and become more complex over the years, while the office staffing and procedures have remained at 1998 levels. The reclassification of the MAII position to that of PMAIV is a vital component in keeping pace with the Commission's increasingly complex cases and workload.

It is imperative that the Commission bring its current staffing, administrative and substantive procedures and its long-range planning to current standards in order to provide the Commission and Committee sufficient resources to properly serve Nevada's citizens and judges and carry out its constitutional and statutory mandates, now and into the future. Attached are two articles authored by the Chief Judge of the Second Judicial District Court and published in The Writ in April 2014 and February 2013, respectively, discussing the Commission's challenges and supporting its recent efforts to increase its funding and staffing needs.

JUDICIAL ETHICS

Hon. David Hardy, Chief Judge, Second Judicial District Court

"Well-funded commissions discipline judges more often than underfunded commissions. This finding demonstrates the importance of adequately funding these commissions and suggests the dangers to the integrity of the judiciary that could occur from cutting the commissions' funding"[1]

A Nevada judge was recently the subject of intense media attention and public scrutiny. High-profile judicial discipline proceedings reveal the public's interest in punishing unethical judges. But because much of the Nevada Commission on Judicial Discipline's work is not public, these high-profile proceedings also reveal the substantial investigative and legal work underlying a discipline action. If the first purpose of judicial discipline is to protect the public, and if the public thirsts for accountability from judges who violate the Nevada Code of Judicial Conduct, the Commission must be given the resources to invigorate its constitutional and statutory mandates.

When I was a lawyer, prospective clients would often ask me to quote a price and predict how long they would need my services. I always answered that I needed to know who the adverse litigant and opposing attorney were. Fees and duration are incurred bi-laterally and unsusceptible to single control. Similarly, the Commission cannot control the number of complaints it receives, and because each complaint is different, the scope of its work is difficult to predict. It is therefore problematic to mandate procedural and timing requirements upon the Commission but expect the Commission to operate with a static budget. As complex and high-profile cases arise, resources are unexpectedly depleted and less serious but important complaints languish. Sometimes all Commission work is suspended toward the end of a fiscal year when budget authority is exhausted.

A survey of discipline commissions from 35 states recently published in the *Stanford Law Review* statistically supports what is intuitive: the number of disciplinary actions a state judicial discipline commission takes is strongly correlated with the size of the commission's budget.[2] I further suggest the numeric quantity and substantive quality of discipline proceedings is determined by the funding resources available to the discipline commission. For these reasons, Nevada should decide if policing the judiciary is a worthwhile policy. If it is, the 2015 legislature could consider if the Commission on Judicial Discipline is adequately staffed and funded to be effective.

Nevada has 82 district judges, 67 justices of the peace, and 21 municipal court judges. The Commission oversees each of these judges and additional senior judges, masters, commissioners, and pro-tem masters as "a court of judicial performance."[3] The Commission staff is comprised of an executive director, a management analyst, a paralegal, and a panel of assigned judges and citizen volunteers. The staff also oversees the Standing Committee on Judicial Ethics, which will issue more than 25 advisory opinions this biennium. This fiscal year the Commission's budget was $589,787.

The Commission has authority to censure, retire, remove, or otherwise discipline judges. The range of subordinate discipline includes suspension, probation, remedial education and training, fines, and public or private reprimands. The Commission may also issue non-disciplinary "letters of caution." The imposition of discipline often requires some form of "after care" supervision to ensure judges comply with the discipline. In 2010, the Nevada Legislature imposed procedural phases and timing requirements to govern the Commission's work. Not every judicial misstep is worthy of public condemnation. The Commission's response should be commensurate with the judicial action under scrutiny, and it should have resources to respond to complaints alleging low- and mid-grade misconduct.

Every complaint must be reviewed to determine if an investigation is warranted. A majority of complaints are dismissed without investigation because the complainants seek relief beyond the Commission's jurisdiction or allege non-specific and unverifiable judicial bias. If the complaint sets forth a "reasonable inference of misconduct or incapacity, the Commission initiates an investigation using a private investigative agency. The Commission reviews all investigative reports to determine if it could find "a reasonable probability that the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action." If so, the judge is directed to respond to the complaint. The Commission considers the judge's response to determine if the allegations will still sustain discipline by clear and convincing evidence. Only then does the complaint become public.

The Commission recently filed its biennial report, which reveals some troubling statistics. The number of complaints is increasing and the number of complaints pending review remains too high. In the past two years, the Commission received 302 complaints. More than 50% were dismissed without an investigation. 41 complaints were investigated and 23 of those complaints were dismissed after the investigation results were reviewed. The Commission informally resolved several complaints, but at the time the biennial report was filed in October, 2013, there were 141 complaints pending investigation and more than 100 complaints pending initial Commission consideration.[4]

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NOTES

1 Jonathan Abel, *Testing Three Commonsense Intuitions About Judicial Conduct Commissions*, 64 STAN. L. REV. 1021, 1023 (2012).

2 Petition for Writ of Mandamus at 6, *Jones v. Nevada. Comm'n on Judicial Discipline*, No. 61902 (Nev. Oct. 16, 2012).

3 Editorial, *Kept in the dark: End secrecy in judicial discipline inquiries*, LAS VEGAS REVIEW-JOURNAL, Nov. 13, 2012, available at http://www.lvrj.com/opinion/kept-in-the-dark-end-secrecy-in-judicial-discipline-inquiries-179071921.html.

4 Jane Ann Morrison, *Complaint stalled, and panel won't say why*, LAS VEGAS REVIEW-JOURNAL, Dec. 27, 2012, available at http://www.lvrj.com/news/complaint-stalled-and-panel-won-t-say-why-184907111.html

5 Abel, *supra* note 1, at 1025.

6 *Id.* at 1027.

7 Supreme Court of Nevada Article 6 Commission, Judicial Discipline Proceedings Report and Recommendations (Feb. 2009), http://www.nevadajudiciary.us/index.php/viewdocumentsandforms/func-startdown/708/ (emphasis added.)

8 Abel, *supra* note 1.

9 *Id.* at 1034–39.

10 *Id.* at 1040–46.

11 *Id.* at 1046–48.

12 *Id.* at 1066.

This is number 63 in a series of essays on judicial ethics authored by Chief Judge David Hardy, Second Judicial District Court, Dept. 15.

Judicial discipline commission hopes to add staff as caseload grows

By JEFF GERMAN LAS VEGAS REVIEW-JOURNAL

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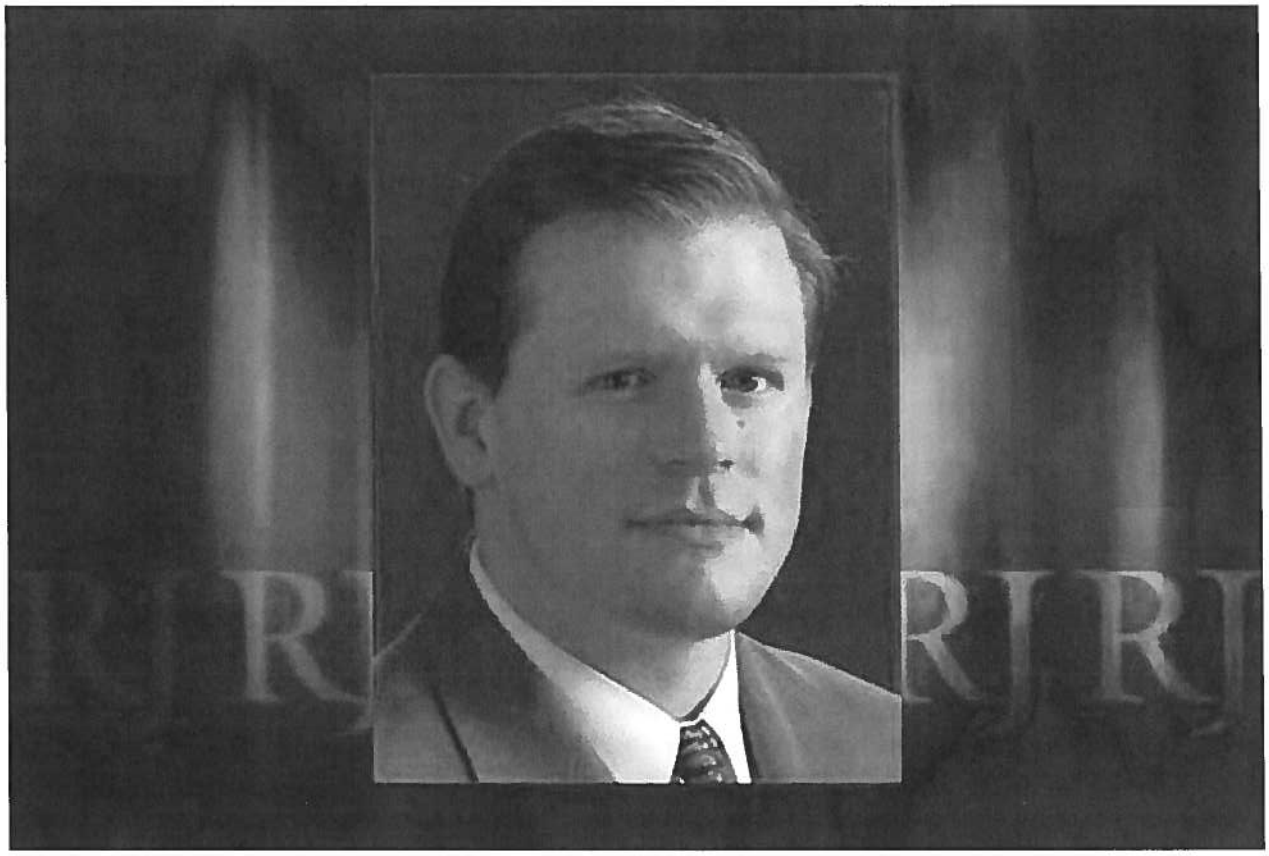

Nevada Commission on Judicial Discipline Executive Director Paul Deyhle. (File/Las Vegas Review-Journal)

image

Complaints against judges across the state are rising, but the Nevada Commission on Judicial Discipline is having a tough time keeping up.

Executive Director Paul Deyhle said the commission lacks modern-day resources, manpower and in some instances authority to handle the growing caseload.

The backlog is the result of years of being underfunded and ignored within state government, he said.

This past year, the seven-member commission spent $183,300 — more than three-quarters of its budget — pursuing a single disciplinary action against former Family Court Judge Steven Jones, who fought the panel every step of the way.

For its efforts, the commission ended up giving Jones a three-month suspension without pay over his mishandling of a romantic relationship with a prosecutor who appeared before him.

It took the federal government to get Jones off the bench. He resigned in September as part of a deal with federal prosecutors to plead guilty to a felony in a decade-long $2.6 million investment scheme.

Deyhle has big plans to get the struggling commission what it needs to go after errant judges like Jones in the future.

"We're trying to bring the office back into the 21st century," said Deyhle, who has been at its helm since November 2013. "Not much has been done for the commission in many, many years. It's time."

During a time of fiscal restraint, Deyhle has requested a 40-percent increase in his new two-year budget, bringing it up to $902,971. He wants to add an associate general counsel and a management analyst and take other long-overdue measures to improve the commission's daily operations.

The commission, which received roughly 225 complaints against judges this year, has had only three full-time staffers, including Deyhle, to process those cases. Deyhle has doubled as general counsel.

The new hires would eliminate the frequent need to pay expensive private lawyers to handle disciplinary cases and move the cases along quicker, Deyhle said.

His budget request also includes money to replace outdated computers and software and a telephone system installed in 1987 that can't be updated.

It allows for the purchase of a new Internet server to store and protect commission documents, along with a new electronic case management system that should have been installed years ago. The current system isn't supported by the manufacturer, which is no longer in business.

Deyhle said he also hopes to use the additional funds to provide more ethics training to judges around the state.

One of his bigger priorities is finding a new and larger office in Carson City. The current office is in a building with no other state agencies and sits next to a fitness center. At times during the day, the walls shake from the impact of the fitness classes and their blaring music, Deyhle said.

The office is so cramped that case files have to be stacked in boxes along the walls in public view. Supplies are stored in the bathroom, and there is no conference room or place for visitors to sit, he said.

Commissioners also are forced to conduct confidential conference calls from a common office area at a staffer's desk with the help of a plastic folding table, he added.

Deyhle's push to beef up the office also includes seeking financial help from the Nevada Legislature in the case of an emergency.

He has submitted a bill draft that would give the judicial commission an opportunity to draw money from a state contingency fund if it finds itself short of operating cash because of another high-profile case like the one involving Jones.

Another bill draft would more clearly define the commission's ability to take certain action against judges and expand its authority to remove a judge without pay.

Over the past several months, Deyhle has been working hard behind the scenes lobbying for the changes.

"We're trying to improve the operational efficiency of the office," he said. "We're trying to effect a positive change, so the commission can better carry out its constitutional and statutory mandates. It's not unreasonable."

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