



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

MINUTES
of the meeting of the
COMMISSION ON ETHICS

April 4, 2012

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. A verbatim transcript of the open sessions portion of the meeting is available for public inspection at the Commission's office in Carson City.

The Commission on Ethics held a public meeting on Wednesday, April 4, 2012, at 8:30 a.m., at the following locations:

Nevada Legislative Building
Room 3143
401 S. Carson Street
Carson City, NV 89701

and via video-conference to:

Grant Sawyer State Building
Room 4401
555 E. Washington Avenue
Las Vegas, NV 89101

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

Chairman Erik Beyer called the meeting to order and introduced the Commissioners at 8:42 a.m. on Wednesday, April 4, 2012.

Present in Carson City, Nevada were Chairman Erik Beyer, Executive Director Caren Cafferata-Jenkins, Commission Counsel Yvonne Nevarez-Goodson, Executive Assistant Valerie Carter, Senior Legal Researcher Janet Jacobsen and Contract Attorney Janette Bloom. Present in Las Vegas, Nevada were Commissioners Keith A. Weaver, Esq., Gregory J. Gale, Magdalena Groover, and Tim Cory, Esq. Also present in Las Vegas was Investigator, Michael E. Lawrence. Present via video-teleconference in Elko, Nevada was Commissioner John C. Carpenter.

The Pledge of Allegiance to the Flag was conducted.

2. Open Session for Public Comment.

No public comment.

3. Open Session for Administrative Hearings Training, presented by Teresa Froncek Rankin, Esq.

Teresa P. Froncek Rankin, Esq. provided the Commission training on how a quasi-judicial body can conduct hearings under the Administrative Procedures Act and in consideration of the principles of due process and the U.S. Constitution. The handouts provided during the training are attached hereto.

4. Open Session for Public Comment.

No public comment.

5. Adjournment.

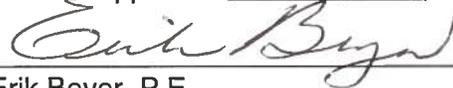
The meeting adjourned at 12:02 p.m.

Minutes prepared by:



Valerie Carter
Executive Assistant

Minutes approved June 20, 2012:



Erik Beyer, P.E.
Chairman

Teresa P. Froncek Rankin
Nevada Ethics Commission Hearings Training
April 2012

Pre-Training Session Assignment

Before we meet to discuss hearings, please take a few minutes and:

1. Review NRS and NAC chapters 233B (The Administrative Procedures Act)
281 (Public Officers and Employees - Generally)
and 281A (Public Officers and Employees - Ethics)

2. Briefly describe:

What you know about administrative hearings, hearing officers and their duties;

What you think you know about administrative hearings, hearing officers and their duties; and

What you would like to know about administrative hearings, hearing officers and their duties.

I'm looking forward to our session!

**UNDERSTANDING THE LEGAL STRUCTURE:
SOME CONSTITUTIONAL GUARANTEES**

AMENDMENT 1:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Rights:

AMENDMENT 4:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Rights:

AMENDMENT 5:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Rights:

AMENDMENT 14:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rights:

Nevada Commission on Ethics Training

Teresa P. Froncek Rankin

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INSTRUCTOR

Terry is a retired Appeals Officer formerly with the Department of Administration, Hearings Division. She was Insurance Commissioner for the State of Nevada and completed her Masters of Judicial Studies at UNR. She earned designations as a Chartered Property and Casualty Underwriter (CPCU) and Associate in Claims (AIC).

Contact her at: 775-882-5135 or jagbob@hotmail.com

OBJECTIVES

After participating in the discussions about hearings, you will:

1. Gain confidence during hearings;
2. Assure your demeanor is appropriate including handling actions by witnesses and attorneys;
3. Distinguish between procedural and substantive due process;
4. Identify techniques and resources for organizing prehearing issues, admitting evidence and organizing your notes;
5. Understand techniques for making a clear record and how judges review that record;
6. Distinguish between Findings of Fact and Conclusions of Law; and
7. Identify resources for hearings.

DISCUSSION MATERIALS

INVESTIGATION AND NOTICE OF HEARING

- Control of investigation and exhibits
- Decisions about regulatory action
- Contested case resolutions –NRS 233B.121 (informal disposition)

ASSIGNMENT TO PANEL OR COMMISSION AS HEARING OFFICER

- Delegation to hearing officer
- Isolation/Chinese Wall
- Exparte Contacts

PREHEARINGS

- Notices, Orders, Forms for Motions
- Order for Submission of Exhibits & Prehearing Statements
- Order for any prehearings or conference calls, etc.
 1. Consider Record
 2. Deadlines

SUBMISSION OF MOTIONS AND EVIDENCE

- Investigators' Reports, Summaries, Records
 1. Public Records Issues
 2. Evidence Issues
- Marking/Identifying Evidence
- Handling Objections
- Determining Admission
- Sandbagging
- Expert Witness Issues

HEARING

- Demeanor
- Atmosphere
- Record
- Exparte Contact/Perception
- Evidence Issues
 1. Relevance
 2. Materiality
 3. Offers of Proof
 4. Hearsay
- Substantive and Procedural Due Process
- Record!

POST-HEARING ISSUES

- Late Submitted Evidence
- Request for Rehearing
- Other Deadlines or Consideration
- Settlements, Consent Orders, etc.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

- Invest yourself in decision
- Organize notes, review record & exhibits, allow quiet time
- Practice Tip: Writing Findings of Fact, Conclusions of Law and Orders. See: July 2011 *Nevada Lawyer*, Administrative Law Issue at <http://www.nvbar.org/articles/content/practice-tip-writing-findings-fact-conclusions-law-and-orders#.TuAL81370Io.email>

JUDICIAL REVIEW AND APPEALS

- How and what judges review
- First Judicial District Court and Nevada Supreme Court

RESOURCES

- National Association of Administrative Law Judges
- National Judicial College
- Commission's History, Opinions, Regulatory policies and atmosphere
- Deputy Attorneys' General Procedures and Manuals
- Other Nevada Hearing Officers
- State Bar of Nevada Administrative Law Section

QUICK REFERENCE GUIDE: CITATIONS

FEDERAL

United States Constitution
Amendments 1, 4, 5, 14

Federal Administrative Procedure Act
5 U.S.C. Sections 551-559
5 U.S.C. Sections 552-553 for Regulations
5 U.S.C. Section 554 for Hearings
5 U.S.C. Sections 561 -570(a) Negotiated Rulemaking
5 U.S.C. Sections 571-584 Alternative Dispute Resolution

Freedom of Information and Privacy Act
5 U.S.C. Section 552 and 552A

Open Meeting/Sunshine
5 U.S.C. Section 552B

NEVADA

Nevada Constitution: See various sections for particular agency or taxes

Administrative Procedures: Definitions, Regulations and Contested Cases
Chapter 233 B of NRS and NAC
Review your agency's particular statutes and regulations!

Statute of Limitations
Chapter 11 of NRS

Public Records
Chapters 239 and 281 of NRS and NAC

Open Meeting Laws
Chapter 241 of NRS and NAC

Ethics
Chapter 281A of NRS and NAC
Review commission's opinions also!

CASES ON ADMINISTRATIVE LAW

Administrative Procedure Act (APA)

State, Dept. of Taxation v. Daimler Chrysler, 121 Nev. 541 (2005)

Mineral County v. State, Bd. Equalization, 121 Nev. 533 (2005)

Malecon Tobacco v. State, Dept't of Taxation, 118 Nev. 837 (2002)

Citizens for Honest Gov't v. Sec'y of State, 116 Nev. 939 (2000)

Private Inv. Licensing Board v. Atherley, 98 Nev. 514 (1982)

Constitutional Review by Hearing Officer

Reinkemeyer v. Safeco Ins. Co., 117 Nev. 44 (2001)

State Engineer v. Truckee-Carson Irrig, 116 Nev. 1024 (2000)

NIC v. Reese, 93 Nev. 115 (1977)

For declaratory relief, see: NRS 30.130

Double Jeopardy

Hudson v. U.S., 522 U.S. 93 (1997), overruling U.S. v. Halper, 490 U.S. 435 (1989)

Desimone v. State of Nevada, 116 Nev. 195 (2000)

Due Process: Fines

State, Dep't. Commerce v. Interocean Risk, 109 Nev. 710 (1993)

Ethics

Mosley v. Comm'n. on Judicial Discipline, 117 Nev. 371 (2001)

Matter of Fine, 116 Nev. 1001 (2000)

Mishler v. State, 109 Nev. 287 (1993)

Evidence Standards

Nellis Motors v. State, DMV, 197 P. 3d 1061 (Nevada 2008)

Weaver v. State, Dep't. of Motor Vehicles, 121 Nev. 494 (2005)

Seader v. Clark Co. Risk Management, 111 Nev. 1399 (1995)

Ranieri v. Catholic Community Services, 111 Nev. 1057 (1995)

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Experts: Chapter 50 of NRS

Cramer v. State, DMV, 240 P. 3d 8 (Nevada 2010)

McClanahan v. Raley's Inc., 117 Nev. 921 (2001)

Hansen v. UHS, 115 Nev. 24 (1999)

Hearsay: Felix v. State, 109 Nev. 151 (1993)

Substantial evidence; clear and convincing: Sengel v. IGT, 116 Nev. 565 (2000)

Unemployment orders excluded: NRS 612.533

Financial Disclosure Forms

Nev. Comm'n on Ethics v. Ballard, 120 Nev. 862 (2004)

Findings of Fact and Conclusions of Law

Fitzgeralds Casino/Hotel v. Mogg, No. 55818, Unpublished Opinion, Filed Nov.18, 2011

Howell v. State Engineer, 197 P 3d 1044 (Nevada 2008), citing Dickinson v. American Medical Response, 186 P. 3d 878 (Nevada 2008)

Hearing Officer – Agency Director

City Plan Dev. v. State, Labor Comm'r, 121 Nev. 419 (2005)

Interpreters

Oath: NRS 50.054

Caballero v. Dist. Ct., 123 Nev. 316 (2007)

Intervention

Estate of LoMastro v. American Family Insurance, 195 P.3d 339 (Nevada 2008)

Capitol Indemnity Corp. v. State, Dep't Bus. & Indus., 122 Nev. 815 (2006)

Jurisdiction

University & Cmty.Coll.Sys.v. Sutton, 120 Nev. 972 (2004)

Nev. Power Co. v. Dist. Court, 120 Nev. 948 (2004)

Liggett v. SIIS, 99 Nev. 262 (1983)

Non-Lawyer Representation

AGO 2002-21

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Open Meetings

Chapter 241 of NRS; Attorney General Opinions & Manual
Federal: 5 U.S.C. 552B

Atty. Gen. v. Nevada Tax Comm'n, 181 P.3d 675 (Nevada 2008)

Schmidt v. Washoe County, 159 P.3d 1099 (Nevada 2007)

Dewey v. Redevelop't Agency of Reno, 119 Nev. 87 (2003)

University System v. DR Partners, 117 Nev. 195 (2001)

Police Power

SIIS v. Surman, 103 Nev. 366 (1987)

Professional Licensing

Dutchess Bus. Servs. v. State Bd. of Pharm., 184 P.3d 397 (Nevada 2008)

Gilman v. State, Board of Vet. Med. Examiners, 120 Nev. 263 (2004)

Public Records

Chapters 239 and 241 of NRS

Freedom of Information (FOIA), 5 U.S.C. 552 and 552A

City of Ontario, Calif., et.al. v. Quon, et. al., 560 U. S. ____ (June 17, 2010)

Reno Newspapers v. Sheriff, 234 P.3d 922 (Nevada 2010)

City of Reno v. Reno Gazette-Journal, 119 Nev. 55 (2002)

DR Partners v. Bd of Cty. Comm'rs, 116 Nev. 616 (2000)

Whitehead v. Comm'n on Judicial Discipline, 111 Nev. 70 (1995)

Neal v. Gripentrog, 108 Nev. 660 (1992)

Knudsen Corp. v. Nevada State Dairy Comm'n, 676 F.2nd 374 (9th Cir. 1982)

AGOs: *Balancing Test*: AGO 89-1

Free Copy of Meeting Notice: OLMO 99-07

Copy Costs; Ordinances: AGO 2002-32

Recusals

Las Vegas Downtown Redev. v. Dist. Ct., 116 Nev. 640 (2000)

State Engineer v. Truckee-Carson Irrig., 116 Nev. 1024 (2000)

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Regulations

Massachusetts, et al v. Environmental Protection Agency, et al, 549 U.S. 497 (2007) with companion case, Environmental Defense v. Duke Energy Corp., 549 U.S. 561 (2007)

But see: Cuomo v. Clearing House Ass'n LLC, 557 U.S. ____ (2009)

Compare:

Coury v. Whittlesea-Bell Luxury Limousine, 102 Nev. 302 (1986)

State, Dept. of Insurance v. Humana Health Ins., 112 Nev. 356 (1996)

State Farm Mutual v. Comm'r of Ins., 114 Nev. 535 (1998) (*State Farm I*)

St., Div. Of Ins. v. State Farm, 116 Nev. 290 (2000) (*State Farm II*)

Southern Nevada Op. Engineers v. Labor Commissioner, 121 Nev. 523 (2005)

Labor Comm'r v. Littlefield, 153 P.3d 26 (Nevada 2007)

NAIW v. Nevada Self-Insurers Association, 225 P.3d 1265 (Nevada 2010)

Res Judicata

Britton v. City of North LV, 106 Nev. 690 (1990)

Retroactivity of Statutes

Madera v. SIIS, 114 Nev. 253 (1998)

RICO and Private Causes of Action

Humana, Inc. v. Forsyth, 525 U.S. 299 (1999)

Service of Process (Mail Rule)

Mikohn Gaming v. Espinosa, 122 Nev. 593 (2006)

Custom Cabinet Factory of N.Y. v. District Ct., 119 Nev. 51 (2003)

Matter of Application of Duong, 118 Nev. 920 (2002)

Statutory Review

Public Agency Compensation Trust v. Blake, 127 Nev. Adv. Op. No. 77 (November 23, 2011)

Public Employees' Benefits Prog. v. LVMPD, 124 Nev. 138 (2008)

Gallagher v. City of Las Vegas, 114 Nev. 595 (1998)

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Stipulated Settlements: Effect

GM v. Jackson, 111 Nev. 1026 (1995)

Taylor v. SIIS, 107 Nev. 595 (1991)

Substantial Deference

City Plan Dev. v. State, Labor Comm'r, 121 Nev. 419 (2005)

Ruffner v SIIS, 113 Nev. 881 (1997)

SIIS v. Miller, 112 Nev. 112 (1996)

Jerry's Nugget v. Keith, 111 Nev. 49 (1995)

Maxwell v. State, 109 Nev. 327 (1993). *But see*: Bush v. Gore, 531 U.S. 98 (2000);
Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)

Compare: SEC v. Chenery Corp., 318 U.S. 80 (1943); relied upon in Gonzales v. Oregon,
546 U.S. 243 (2006)

Writs

Howell v. State Engineer, 197 P 3d 1044 (Nevada 2008)

Sec'y of State v. Nev. State Legislature, 120 Nev. 456 (2004)

SNEA v. Lau, 110 Nev. 75 (1994)

See also: Chapter 41 of NRS; cases on Medical Legal Screening Panel

GENERAL REFERENCES

From the Nevada Attorney General, publications on the Open Meeting Law and Boards and Commissions, at <http://ag.state.nv.us/>

Manual for Administrative Law Judges, 23 J. Nat'l Ass'n Admin. L. Judges, Pepperdine University, School of Law, 2004.

Fox, William F. *Understanding Administrative Law*; Matthew Bender, 2000.

Frost, Michael H. and Paul A. Bateman, *Writing Deskbook for Administrative Law Judges, An Introduction*, Carolina Academic Press, 2010.

Funk, William F. and Richard H. Seamon. *Administrative Law*, 3rd Edition; Aspen Publisher, 2009.

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Gellhorn, Ernest and Barry B. Boyer. *Administrative Law and Process in a Nutshell*, West Publishing Co., 5th Edition, Thompson West.

Goode, S. and O. G. Wellborn III. *Courtroom Evidence Handbook: Student Guide*, 2011-2012, Thomson West.

McNeil, Christopher B., General Editor. *NJC Deskbook on Evidence for Administrative Law Judges* (2005); Out of Print but available in PDF format on author's website or from Clegg.

Posner, Richard A. *Economic Analysis of Law 7th Edition*; Aspen Press 2007.

Posner, Richard A. *How Judges Think*; Harvard University Press 2008.

Scalia, Antonin and Bryan A. Garner. *Making Your Case: The Art of Persuading Judges*; Thomson & West, 2008.

Schuck, Peter H. (Ed.). *Foundations of Administrative Law 2nd Edition*; Foundation Press 2004.

Schwartz, Bernard. *Administrative Law: A Casebook*; Little, Brown and Co.

Strass, Peter (Ed.). *Administrative Law Stories*; Foundation Press 2006.

INTERNET RESOURCES

Go to any of the public or research websites for libraries or local, state or federal governments; many law libraries also have materials on CD-ROMS for research.

The American Bar Association Administrative Law Section is:

<http://www.abanet.org/adminlaw/home.html>

The Nevada Legislature is:

<http://www.leg.state.nv.us/>

A free law library is:

<http://www.lawcornell.edu/>

LEGAL TERMS

Black's Law Dictionary, 8th Edition (or 2nd Pocket Edition), 2004.

Gifis, Steven H., *Barron's Dictionary of Legal Terms*, 3rd Edition, 1998.