



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

MINUTES
of the meeting of the
COMMISSION ON ETHICS
January 18, 2012

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

The Commission on Ethics held a public meeting on Wednesday, January 18, 2012, at 9:00 a.m., at the following location:

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

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 9:03 a.m. on Wednesday, January 18, 2012.

Present in Carson City, Nevada were Chairman Erik Beyer, Vice Chairman Paul H. Lamboley, Esq. and Commissioners Keith A. Weaver, Esq., Gregory J. Gale, Magdalena Groover, Tim Cory, Esq. and James Shaw. Also present in Carson City were Executive Director Caren Jenkins, Esq., Commission Counsel Yvonne Nevarez-Goodson, Esq., Senior Legal Researcher Janet Jacobsen and Executive Assistant Valerie Carter.

Commissioner Marvel was excused from the meeting.

The Pledge of Allegiance to the Flag was conducted.

2. Open Session for Public Comment.

No public comment.

3. Open Session for consideration and approval of Minutes of prior Commission Meeting.

A discussion ensued regarding the wording on page 2 of 3, paragraph number 4, regarding the Executive Director's authority related to the contract attorney. Commissioner Lamboley suggested the removal of the words "direct and supervise" and proposed the sentence read "The Executive Director will engage by contract an attorney as an independent contractor to provide the assistance." Commissioner Cory moved to adopt the language Mr. Lamboley suggested. Commissioner Gale seconded the motion. The motion carried unanimously.

6. Closed Session pursuant to NRS 281A.440(8) (pre-panel) to consider and deliberate on a motion regarding consolidated Third-Party Requests for Opinion Nos. 11-19C, 11-21C, 11-22C and 11-24C, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order. This portion of the meeting was confidential and thus was closed to the public.

7. Closed Session pursuant to NRS 281A.440 (15) to consider a proposed stipulation concerning Third-Party Request for Opinion No. 10-81C, regarding the conduct of Jo Ann Malone, former White Pine County Clerk, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order. This portion of the meeting was confidential and thus was closed to the public.

8. Open session pursuant to NRS 281A.440(8) (post-panel) to consider and take action on a proposed stipulation concerning Third-Party Request for Opinion No. 10-81C, regarding the conduct of Jo Ann Malone, former White Pine County Clerk, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order.

Rebecca Bruch, attorney with Erikson Thorpe & Swainston appeared as counsel for Jo Ann Malone. A full reading of the proposed stipulation was waived and a discussion ensued regarding the terms of the stipulation. Commissioner Shaw moved that the Commission accept the proposed stipulation with the terms specified by legal counsel to resolve Third-Party Request for Opinion No. 10-81C before the Nevada Commission on Ethics concerning Jo Ann Malone, former County Clerk of White Pine County. Commissioner Gale seconded the motion. The motion carried unanimously.

4. Open Session for status update by Executive Director and Commission Counsel, including, without limitation, a report on agency operations, procedural issues and pending matters.

This agenda item was called out of order.

Executive Director Caren Jenkins discussed her outreach and education efforts, and announced that a video of the training to the Reno City Council is available online.

Ms. Jenkins also presented an updated Commissioner and Staff Contact sheet which was provided to all Commissioners as well as the approved dates for upcoming meetings.

Ms. Jenkins discussed the informal codification of NRS 281A which was prepared by the Senior Legal Researcher Janet Jacobsen under the direction of Commission Counsel Yvonne Nevarez-Goodson. Ms. Jenkins cautioned the Commission that this document is more for substantive understanding than for precise citation to subsections. The Commission should receive formal codification from LCB soon.

Also discussed was Ms. Jenkins' ongoing list of items and concerns that have come up at various Commission meetings containing issues that the regulatory and statutory changes subcommittee might want to address.

Ms. Jenkins was also happy to announce that she, Chairman Beyer, Commissioner Lamboley, Commissioner Weaver and Commission Counsel met with four candidates for the contract attorney position approved by IFC and BOE, and after deliberations selected Janette Bloom to assist with the back-log. The Board of Examiners meets on February 15, 2012 to approve the final contract.

9. Open Session pursuant to NRS 281A.440(8) (post-panel) to consider and deliberate on a motion concerning Third-Party Request for Opinion No. 11-63C, regarding the conduct of Shari Buck, Mayor, City of North Las Vegas, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order. Commissioner Shaw was excused from this agenda item as he served on the panel for this matter.

Present in Carson City was attorney Mark Hutchison and his client Mayor Shari Buck. Commission Counsel Yvonne Nevarez-Goodson gave a brief overview of the Request for Opinion and the Motion for Summary Resolution. Mr. Hutchison then presented his Motion in detail to the Commissioners.

Chairman Beyer opened the discussion for Commissioner questions and comments. A discussion ensued regarding the background and facts of the Request for Opinion, the Motion for Summary Resolution and Mayor Buck's alleged behavior.

Commissioner Weaver made a Motion that there could be no willful violation of the disclosure requirement or of the advocacy allegation because of the safe harbor provisions. Chairman Beyer asked for a second; there was none. Thus, the Motion failed for lack of a second.

A discussion ensued between the Commissioners regarding the allegations.

Commissioner Weaver made another Motion that the Commission find no violation of disclosure, but instead find a non-willful violation of the advocacy prohibition in light of the safe harbor provision of NRS.

Commissioner Gale seconded the Motion.

Executive Director, Caren Jenkins, interjected to suggest changing the language from the “Safe Harbor,” which is an ambiguously understood term, to “because of advice of counsel and the provisions of NRS 281A.480(5)”, which is more precise.

Commissioner Weaver agreed to the change.

Commissioner Gale seconded the new motion with the change.

Commissioner Groover asked for clarification of the Motion. A brief discussion is ensued.

Commission Counsel, Yvonne Nevarez-Goodson, advised the Commission to focus its Motion on the Motion for Summary Resolution before the Commission and granting or denying it in part.

Commissioner Weaver withdrew the Motion with a concurrence from Commissioner Gale, and presented another Motion to grant the Motion for Summary Resolution in part, that part being the request that the allegation regarding violation for disclosure be dismissed based on the discussion that the Commission has had, and also granted in part with respect to willfulness on the question of advocacy, and denied in part on the question about whether the advocacy constitutes a violation of NRS 281A.

Commissioner Gale seconded the Motion.

Commission Cory stated that he will not be able to support the Motion as is.

The motion was put to a vote and failed as follows:

Commissioner Weaver: Aye.
Commissioner Groover: Aye.
Commissioner Lamboley: No.
Commissioner Gale: Aye.
Commissioner Cory: No.
Commissioner Beyer: No.

Commissioner Lamboley made a new Motion that with respect to the Motion that has been presented by the Subject in RFO No. 11-63C, that the Motion be granted with respect to its request for dismissal of the alleged willfulness of violations of the Ethics in Government Law. The request for dismissal of the allegations regarding disclosure under NRS 281A.420(1) and advocacy under NRS 281A.420(3) should be denied as requested on the basis that there has not been sufficient and adequate evidence considered in this particular circumstance, and secondly, the spoken statements by the speaker, Mayor Buck, may be advocacy but cannot be found to be willful due to the totality of the unusual circumstances in this matter, including application of the safe harbor provision in NRS 281A.480.

A brief discussion ensued regarding the motion.

Commissioner Cory seconded the Motion.

Another brief discussion ensued regarding the motion.

The Motion was put to a vote and carried as follows:

Commissioner Weaver: Aye.
Commissioner Groover: No.
Commissioner Lamboley: Aye.
Commissioner Gale: No.
Commissioner Cory: Aye.
Commissioner Beyer: Aye.

Mr. Hutchison then restated the Motion for clarity, and obtained the agreement of his understanding from Chairman Beyer and Commission Counsel Yvonne Nevarez-Goodson.

A recess was taken at 2:52 p.m.

The meeting reconvened at 3:02 p.m.

10. Closed Session pursuant to NRS 281A.440(7) to hear testimony, receive evidence, deliberate and render an advisory opinion regarding Confidential First-Party Request for Advisory Opinion No. 11-99A, submitted pursuant to NRS 281A.440(1).

This agenda item was called out of order. This portion of the meeting was confidential and thus was closed to the public.

11. Closed Session pursuant to NRS 281A.440(7) to hear testimony, receive evidence, deliberate and render an advisory opinion regarding Confidential First-Party Request for Advisory Opinion No. 11-100A, submitted pursuant to NRS 281A.440(1).

This agenda item was called out of order. This portion of the meeting was confidential and thus was closed to the public.

5. Open Session for Commissioner comments on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

This agenda item was called out of order.

Commissioner Lamboley and Commission Counsel Yvonne Nevarez-Goodson discussed the opinion letters which had previously been sent out, and whether those letters will be sufficient to be considered as the final "opinion."

Commissioner Lamboley presented a motion to authorize the Commission Counsel to utilize the letters as Opinions in an effort to reduce the backlog and have those adopted as presented in her discretion.

Commissioner Gale seconded the Motion.

The Motion was put to a vote and passed unanimously.

Commissioner Gale discussed the list of future meeting dates, and noted that November 22, 2012 is Thanksgiving and the December dates are very close to Christmas. Commissioner Gale proposed that the November meeting be held on the 14th and 15th, and the December meeting be held on the 12th and 13th.

There were no objections to the changes.

12. Closed Session to discuss potential or pending litigation. This portion of the meeting will not be available to the public.

This agenda item was called out of order. This portion of the meeting was confidential and thus was closed to the public.

13. Open Session for Public Comment. Comment and/or testimony by the public will be limited to three (3) minutes. No action may be taken on any matter referred to in remarks made under this agenda item.

No public comment.

14. Adjournment

The meeting adjourned at 4:53 p.m.

Minutes prepared by:



Valerie Carter
Executive Assistant

Minutes approved February 18, 2012:



Erik Beyer, P.E.
Chairman