NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

REQUEST FOR OPINION NO. 04-01
SUBJECT: JARED SHAFER FORMER PUBLIC ADMINISTRATOR CLARK COUNTY

A. JURISDICTION:

See discussion under Section G, Results of Investigation.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 04-01 (Tab B)
- Reviewed subject's response dated February 12, 2004 (Tab C)
- Conducted comprehensive searches regarding subject's corporate holdings, UCC filings, civil filings, and Nevada judgments and liens
- Conducted internet research including newspaper articles and miscellaneous web sites listing subject
- Interviewed Terry Williams (requestor); Leonard Saye; Raymond Visconti, Human Resources Administrator of Clark County; and Terry Coffing, Esq., attorney for the Nursing Home Justice Center
- Reviewed Clark County court calendars listing Mr. Shafer via the internet

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hear and render an opinion in this matter relating to the provisions of:

- NRS 281.481(1);
- NRS 281.481(2);

- NRS 281.481(3);
- NRS 281.481(4);
- NRS 281.481(5);
- NRS 281.481(6);
- NRS 281.481(7);
- NRS 281.481(9);
- NRS 281.481(10);
- NRS 281.491;
- NRS 281.501(4); and
- NRS 281.505.

SPECIFIC REASON::

No allegation or credible evidence of any fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges violations of NRS 281.481 by former Clark County Public Administrator Jared Shafer. The complaint alleges Mr. Shafer violated the Ethics in Government law by using his position in government to:

1. Accept employment which would tend to improperly influence a reasonable person in Mr. Shafer's position in violation of NRS 281.481(1);
2. Gain unwarranted privileges, preferences, or exemptions for himself in violation of NRS 281.481(2);
3. Participate as an agent of government in the negotiation or execution of a contract between the government and any business in which he has a significant pecuniary interest in violation of NRS 281.481(3);
4. Accept a salary or other compensation from a private source for the performance of his duties as a public officer in violation of NRS 281.481(4);
5. Use information acquired through his public duties or relationships as a public officer, and which is not generally available, to further his own pecuniary interests in violation of NRS 281.481(5);
6. Suppress a governmental report or other document because it might tend to affect unfavorably his pecuniary interests in violation of NRS 481.481(6);
7. Use governmental time, property, equipment or other facility to benefit his own pecuniary interests in violation of NRS 281.481(7);
8. Benefit his personal financial interest through the influence of a subordinate in violation of NRS 281.481(9);
9. Seek other employment or contracts through the use of his official position in violation of NRS 281.481(10).

It is alleged that the above violations of NRS 281.481 occurred when the former Clark County Public Administrator Jared Shafer utilized his office to secure involvement in a

probate case in order to gain control over a potentially lucrative wrongful death action; attached himself to this probate matter as a Special Administrator to gain a pecuniary interest of $200.00 per hour after he left public office; concealed documents from the court that would preclude or limit his ability to involve himself in this probate matter; and commenced all of the above actions prior to his retirement from public office.

The complaint further alleges Mr. Shafer violated the Ethics in Government law by:

1. Accepting compensation to represent or counsel a private person in a matter pending before the agency in which that public officer serves in violation of NRS 281.491(1). It is alleged that this violation occurred when Mr. Shafer sought to gain control of the probate matter while in office, yet waited until January 2, 2003 to involve himself, thereby appearing as though he had no conflict.
2. Not disclosing to the commission persons whom the public officer has represented or counseled for compensation before a state agency of the Executive Branch in violation of NRS 281.491(3). It is alleged that by failing to disclose his representation of the estate of the requestor's father to the Commission not later than January 10, 2004, Mr. Shafer violated this statute.
3. Approving or otherwise voting on a matter in which he has a pecuniary interest without first disclosing that interest in violation of NRS 281.501(4)(c). It is alleged that Mr. Shafer violated this statute by accepting this probate case while in office but then waiting until January 2, 2003 to effectuate his representation.
4. Seeking a contract with the government in which Mr. Shafer had an undisclosed interest in violation of NRS 281.505(1), (2), and (4). It is alleged that this violation occurred when Mr. Shafer learned of and accepted his role in the probate matter while in office while not disclosing such interest.

E. Summary of Subject's Response:

In his response, Mr. Shafer denied all of the allegations set forth in the complaint. He further argues that the Code of Ethical Standards is not applicable to him and the Commission does not have jurisdiction in this matter because he was no longer in public office at the time of his involvement in the probate matter.

- Mr. Shafer states that he was first contacted about this probate matter by Elyse M. Tyrell, Esq. on January 2, 2003.
- Mr. Shafer also asserts that he left his position as Clark County Public Administrator on December 31, 2002, and therefore accepting his role in this case was not a violation of any statutes.
- Mr. Shafer stated that he had no knowledge of the decedent's will or of the requestor's pending action attempting to secure her role as executor in a Maryland court.
- Mr. Shafer denies conspiring and devising a scheme to controvert the provisions of the Ethics in Government law by waiting until after the end of his office to attach himself to the probate matter.
- Mr. Shafer claims that he did not receive any pecuniary interest as Special Administrator of the decedent's estate other than the customary $200.00 per hour rate.

- Mr. Shafer claims that he was unaware of any potential wrongful death action regarding the circumstances of decedent's death.
- Mr. Shafer claims that he did not premeditate his actions to coincide with his departure from office.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481
General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept 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.

2. A public officer or employee shall not use 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. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

4. A public officer or employee shall not accept 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.

5. If a public officer or employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

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

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

(2) The use does not interfere with the performance of his public duties;

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

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

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

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

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

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9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

NRS 281.491

Additional standards: Representation and counseling of private person before public agency; disclosure required. In addition to the requirements of the code of ethical standards:

1. A member of the executive branch or public employee of the executive branch shall not accept compensation from any private person to represent or counsel him on any issue pending before the agency in which that officer or employee serves, if the agency makes decisions. Any such officer or employee who leaves the service of the agency shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during his service. As used in this subsection, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. A member of the legislative branch, or a member of the executive branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve. Any other member of the executive branch or public employee shall not represent a client for compensation before any state agency of the Executive or Legislative Branch of government.

3. Not later than January 10 of each year, any Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Branch shall disclose for each such representation or counseling during the previous calendar year:

(a) The name of the client;

(b) The nature of the representation; and

(c) The name of the state agency.

The disclosure must be made in writing and filed with the Commission, on a form prescribed by the Commission. The Commission shall retain a disclosure filed pursuant to this subsection for 6 years after the date on which the disclosure was filed.

NRS 281.501
Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

NRS 281.505
Contracts in which public officer or employee has interest prohibited; exceptions.

1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the

public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

G. Results of Investigation:

Jurisdictional Issue:
Jurisdiction regarding this request for opinion was based on information which was supplied within the complaint, which claimed Mr. Shafer was a public officer until January 4, 2003. The allegations of misconduct in the complaint were alleged to have become public on January 2, 2003 when Mr. Shafer executed documents to become a Special Administrator in a probate case. Based on this information, the Commission would have jurisdiction to accept and investigate the complaint pursuant to NRS 281.465 which provides:

> **"NRS 281.465 Jurisdiction.**
> 1. The Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of:
> (a) This chapter by a public officer or employee or former public officer or employee in any proceeding commenced by:
> (1) The filing of a request for an opinion with the Commission; or
> (2) The Commission on its own motion.
> (b) NRS 294A.345 or 294A.346 in any proceeding commenced by the filing of a request for an opinion pursuant thereto.
> 2. The provisions of paragraph (a) of subsection 1 apply to a public officer or employee who:
> (a) Currently holds public office or is publicly employed at the commencement of proceedings against him.
> (b) Resigns or otherwise leaves his public office or employment:
> (1) After the commencement of proceedings against him; or
> (2) Within 1 year after the alleged violation or reasonable discovery of the alleged violation."

Information uncovered during the investigation revealed different facts regarding Mr. Shafer's term as a public officer. In his response, Mr. Shafer stated his term in public office ended December 31, 2002. However, Raymond Visconti, Administrator of Clark County Human Resources, provided payroll documents to the Commission indicating that although the pay period for Clark County ended on January 4, 2003, the last day Mr. Shafer was paid as Clark County Public Administrator was December 20, 2002. Though the complaint alleges Mr. Shafer learned of the probate case which he entered into January 2, 2003 while in public office, no evidence was provided in the complaint or discovered in the course of the investigation to support this allegation.

Therefore, the panel may want to consider the issue of whether the Commission has jurisdiction to investigate Mr. Shafer in the context of this complaint.

Allegations regarding NRS 281.481 (1-7, 9,and 10): Based on Mr. Shafer's response and information gathered through the investigation, it appears Mr. Shafer had left his position as Public Administrator before he was either made aware of or acted on the requestor's probate issue. Mr. Shafer's counsel, Elyse Tyrell, Esq., asserts she was first made aware of the probate matter on January 2, 2003. She said she was contacted by the Nursing Home Justice Center on behalf of their client Charles Williams, Jr., decedent's son, regarding the need for a Special Administrator to investigate the wrongful death action. Ms. Tyrell claims Mr. Shafer was contacted as a private citizen of the state of Nevada to serve as Co-Administrator of the estate because Mr. Williams was a non-resident of Nevada. Nothing in the exhibits provided with the complaint or information gathered through the investigation contradicted this assertion. According to documents provided with the complaint, the earliest documented involvement by Mr. Shafer in the probate matter was executed by Mr. Shafer and notarized on January 2, 2003, two days after he left office. The fax header on this document indicates that it was faxed on that day as well, suggesting that it was likely not sent on an earlier date.

Since Mr. Shafer was not the Clark County Public Administrator when he accepted this matter, the Commission would not have jurisdiction over his conduct at the time and thus there could be no violation of the Ethics in Government law. The complaint suggests that it is not possible for Mr. Shafer to have heard about, accepted, and signed drafted documents all in one day (January 2, 2003), and that Mr. Shafer must have been made aware of this action while in office. Although it does appear a hasty operation by Mr. Shafer and his counsel, no credible evidence exists to support the allegation that Mr. Shafer had prior knowledge of the matter while serving in public office. In a telephone interview with Terry Coffing, Esq., an attorney with the Nursing Home Justice Center handling the wrongful death action, Coffing indicated that it is possible for Special Administrator matters to be commenced in one day. In this telephone interview Coffing said, "with a hundred percent certainty, neither Tyrell nor I contacted Shafer about this matter until after he was out of office." Mr. Shafer and Ms. Tyrell also deny the allegation that Mr. Shafer had knowledge of the probate case while serving in public office. Further, Ms. Tyrell claims that Mr. Shafer did not sign onto the matter until January 2, 2003 at the earliest, which is substantiated by documents provided with the complaint.

The complaint also claims that Mr. Shafer's payroll period ended on January 4, 2003. The complaint suggested that this shows that Mr. Shafer was still being paid as Public Administrator when he learned of and accepted this opportunity on January 2, 2003. However, Raymond Visconti, Administrator of Clark County Human Resources, indicates that although the pay period for Clark County ended on January 4, 2003, the last day Mr. Shafer was paid as Public Administrator was December 20, 2002. This was substantiated by the provision of Mr. Shafer's last payroll record from Clark County.

Allegations of violations of NRS 281.501(4)(c) and NRS 281.505: Since there are no facts to indicate Mr. Shafer's involvement in the probate matter while Mr. Shafer was in office, there could subsequently be no violations of either NRS 281.501(4)(c) or NRS 281.505. With regard to potential violations of NRS 281.501(4)(c), the complaint

suggests that this statute was violated because Mr. Shafer signed the Co-letters of Special Administration on January 2, 2003, while the court didn't actually approve the Co-Special Administrators until January 6, 2003. As previously established, Mr. Shafer was not acting in an official capacity on either January 2, 2003, or January 6, 2003 and the complaint did not to provide any information or documents evidencing Mr. Shafer's involvement in this matter at a date earlier than January 2, 2003.

With regard to potential violations of NRS 281.505, the complaint suggests that Mr. Shafer signed retainer and fee agreements with Nursing Home Justice Center on January 2, 2003, which was prior to him petitioning the court for authority to act as Special Administrator on the probate matter. As these actions by Mr. Shafer and his counsel took place subsequent to Mr. Shafer's leaving office, the would not implicate the provisions of NRS 281.505.

H. CONCLUSION:

Should the panel determine the Commission has jurisdiction regarding the request for opinion, the Executive Director hereby recommends that the panel find no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(1), NRS 281.481(2), NRS 281.481(3), NRS 281.481(4), NRS 281.481(5), NRS 281.481(6), NRS 281.481(7), NRS 281.481(8), NRS 281.481(9), NRS 281.481(10), NRS 281.491, NRS 281.501(4), or NRS 281.505, and further that the allegations be dismissed.

DATED: ___December 1, 2004_____ ____Stacy M. Jennings_____

STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR