



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

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

April 14, 2016

The Commission on Ethics held a public meeting on
Thursday, April 14, 2016, at 10:00 a.m.
at the following location:

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

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

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

Chair Cheryl A. Lau, Esq. called the meeting to order at 10:02 a.m. via telephone. Also present via telephone were Commissioners John C. Carpenter, Magdalena Groover, Barbara J. Gruenewald and James M. Shaw. Present for Commission Staff in Carson City were Executive Director, Yvonne M. Nevarez-Goodson, Esq., Commission Counsel, Tracy L. Chase, Esq., Associate Counsel, Judy A. Prutzman, Esq., Senior Legal Researcher Darci Hayden, PP and Executive Assistant Valerie M. Carter, CPM.

Vice-Chair Keith A. Weaver, Esq. and Commissioner Dan H. Stewart were excused from the meeting.

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Consideration, discussion and approval of non-budget bill draft request concepts pertaining to NRS Chapter 281A (The Ethics in Government Law) to be submitted to the Governor's Office for the 2017 Legislative Session, and direction to the Executive Director to submit the concepts to the Governor's office.

Chair Cheryl A. Lau, Esq. introduced the agenda item and invited the Executive Director to offer opening remarks concerning her recommendations regarding NRS Chapter 281A.

Executive Director Yvonne M. Nevarez-Goodson, Esq. thanked the Commission for the opportunity to revisit the recommendations that were discussed at the last Commission meeting

on April 7, 2016. Ms. Nevarez-Goodson reiterated that these recommendations were in no way intended to divest the Commission of any of its authority to make final decisions with respect to any matter or any Request for Opinion (RFO) that is before the Commission. She stated that the intention of the proposed concepts is simply to streamline processes and get information before the Commission more efficiently. Ms. Nevarez-Goodson also noted for Commissioners that some of the BDR proposals are consistent with various budget proposals that she will be offering at the Commission's next public meeting. Accordingly, Executive Director Nevarez-Goodson requested approval of the concepts as crucial for the preparation of the Agency Budget Request for the 2017 – 2019 Biennium.

Chair Lau asked that each BDR proposal be discussed and voted on separately. A summary of the concepts are attached hereto as Exhibit A. A summary of the concepts and votes of the Commission were considered and approved or denied as follows:

Recommendation No. 1: Streamline Commission's Investigatory Process.

A brief discussion ensued regarding the recommendation. Commissioner Carpenter moved to approve Recommendation No. 1. Commissioner Shaw seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 2: Authorize Commission to resolve complaints less formally through administrative action of Executive Director with consent/approval by Commission:

- Letters of Caution; Deferred Discipline with Education; Corrective Action; Censure/Reprimand.

Commissioner Gruenewald moved to approve Recommendation No. 2. Commissioner Shaw seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 3: Establish criteria regarding abuse of public authority or power.

Commissioner Carpenter requested more information on this item. Executive Director Yvonne Nevarez-Goodson, Esq. explained that the Commission continues to receive questions and even criticism that the Ethics Commission does not have authority to investigate allegations of abuse of authority where it does not otherwise implicate a pecuniary interest or a commitment to a person with whom the individual might be related or otherwise affiliated. She explained that the Ethics law does not currently address abuse of public power and public trust unless the private interests are implicated.

Commissioner Shaw moved to approve Recommendation No. 3. Chair Lau seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 4: Streamlining Advisory Opinions.

Commissioner Gruenewald discussed her concerns regarding the recommendation, and recommended that Advisory Opinions remain binding and subject to judicial review. Commissioner Carpenter and Commissioner Groover agreed with Commissioner Gruenewald's concerns and expressed their preference not to amend this statute.

Commissioner Carpenter moved that the Commission deny Recommendation No. 4. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 5: Encompass certain Independent Contractors of Government Agencies as “Public employees” under the Ethics Law.

A brief discussion ensued regarding the recommendation. Commissioner Shaw moved to approve Recommendation No. 5. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 6: Establish uniform personal interests throughout each subsection of NRS 281A.400.

Commissioner Gruenewald requested additional information regarding this recommendation. Executive Director Nevarez-Goodson explained that there have been debates from opposing counsel regarding whether or not a significant personal interest includes a commitment in a private capacity, because that specific language is not utilized in that subsection. Ms. Nevarez-Goodson explained that the goal of this recommendation is to bring uniformity to each of those subsections.

Commissioner Shaw moved to approve Recommendation No. 6. Commissioner Groover seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 7: Limit public officers and employees from holding an inconsistent public office or public employment.

Commissioner Carpenter stated that he remains unable to support the recommendation, as he believes certain circumstances may require disclosure and sometimes abstention, but he does not agree with the statutory prohibition of employment or public office. Commissioners Groover and Gruenewald agreed with Commissioner Carpenter.

Commissioner Carpenter moved to deny Recommendation No. 7. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 8: Statutorily prohibit “boss-of-boss” employment circumstances in public sector.

Executive Director Yvonne Nevarez-Goodson offered a brief explanation regarding this recommendation. She explained that the Commission often received requests, for example, from school teachers who may want to run for a school board seat, and the Commission has consistently advised the Commission cannot prohibit the teacher from running for the seat, but if elected, the teacher must choose between maintaining employment as a teacher and serving as a member of the school board. The Commission’s opinions in this area rely solely on NRS 281A.020. This recommendation would make it clear that the conduct is statutorily prohibited.

A brief discussion ensued regarding the recommendation. Several Commissioners had concerns regarding broadening the jurisdiction. Commissioner Carpenter moved to deny Recommendation No. 8. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried as follows:

Commissioner Carpenter:	Aye.
Commissioner Groover:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	No.
Commissioner Shaw:	No.

The Motion Passed.

Recommendation No. 9: Streamline and clarify contracting prohibitions.

Commissioner Shaw moved to approve Recommendation No. 9. Commissioner Carpenter seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 10: Clarify Commission's confidentiality provisions.

This recommendation was not discussed or voted on.

Recommendation No. 11: Clarify Filing Requirements for Acknowledgment Forms.

Commissioner Carpenter moved to approve Recommendation No. 11. Commissioner Shaw seconded the Motion. The Motion was put to a vote and carried unanimously.

Recommendation No. 12: Clarify scope of Cooling-Off Prohibitions.

- Inclusion of independent contracts; tighten discretion of Commission to grant waivers; clarify scope of work prohibited in business or industry; codify NRS 281A.410 into 281A.550.

Commissioner Groover requested additional information regarding this recommendation. Executive Director Yvonne Nevarez-Goodson, Esq. explained that the Commission has received scrutiny over the last year regarding the waivers that it has granted with respect to requests regarding the cooling-off requirements. She explained that the Commission currently has significant discretion to interpret the waivers on a case-by-case basis, but the factors in the statutes are broad. This recommendation involved cleaning up the statute to give the Commission better guidelines as to when and how it might grant waivers.

A brief discussion ensued regarding the recommendation.

Commissioner Carpenter moved to approve Recommendation No. 12. Commissioner Shaw seconded the Motion. The Motion was put to a vote and carried unanimously.

Executive Director Nevarez-Goodson assured the Commission that in response to their direction, she will present the approved concepts to the Governor's office. She also confirmed that there would be sufficient time for the BDR Subcommittee to develop suggestions and recommendations to the full Commission regarding the language and other details if the Governor approves the concepts.

4. Open Session for Public Comment.

No public comment.

///
///
///
///
///
///

5. Adjournment.

Commissioner Shaw moved to adjourn the meeting. Commissioner Groover seconded the motion. The motion was put to a vote and carried unanimously. The meeting adjourned at 11:06 a.m.

Minutes prepared by:

[/s/ Valerie Carter](#)

Valerie Carter, CPM
Executive Assistant

[/s/ Yvonne M. Nevarez-Goodson](#)

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved June 15, 2016:

[/s/ Cheryl A. Lau](#)

Cheryl A. Lau, Esq.
Chair

Exhibit A



STATE OF NEVADA
COMMISSION ON ETHICS

COMMISSION MEMORANDUM

DATE: April 13, 2016
TO: Commissioners
FROM: Yvonne Nevarez-Goodson, Esq., Executive Director
RE: 2017 Legislative Bill Draft Request Concepts to Governor

Dear Commissioners:

Under NRS 281A.240, the Commission's Executive Director must "recommend to the Commission any legislation that the Executive Director considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government." In consideration of this statutory mandate, please consider the enclosed recommendations for **proposed concepts** to be submitted to the Governor for consideration during the 2017 Legislative Session.

These concepts are intended to provide the Governor with the Commission's **ideas** for proposed legislation. The Commission considered various recommendations during its April 7, 2016 Commission Meeting and requested additional information before making its decision. Based on the feedback from that meeting, please review the following streamlined recommendations with the Executive Director's explanation.

Governor's Deadlines:

April 15, 2016:

Deadline to submit "Non-budget Bill Draft Request **Concepts**." The Governor's Office will review all proposed agency concepts and decide which concepts will receive gubernatorial sponsorship. If the Governor approves the concepts, the Commission will have an opportunity to develop specific language for the BDR.

May 16, 2016

The Governor's Office will issue decisions regarding sponsorship of agency proposals. At that time, we will know whether we will have the Governor's sponsorship for the Commission's proposed Legislation or if we will need to seek legislative sponsorship.

Revised Summary of Executive Director's BDR Concept Recommendations:

- 1) Streamline Commission's Investigatory Process.
- 2) Authorize **Commission** to resolve complaints less formally through administrative action of Executive Director **with consent/approval by Commission:**
 - Letters of Caution; Deferred Discipline with Education; Corrective Action; Censure/Reprimand. (Same process followed by Judicial Discipline Commission)
- 3) Establish criteria regarding abuse of public authority or power.
- 4) Streamline Advisory Opinions.
- 5) Encompass certain Independent Contractors of Government Agencies as "Public employees" under the Ethics Law.
- 6) Establish uniform personal interests throughout each subsection of NRS 281A.400.
- 7) Limit public officers and employees from holding an inconsistent public office or public employment.
- 8) Statutorily prohibit "boss-of-boss" employment circumstances in public sector.
- 9) Streamline and clarify contracting prohibitions.
- 10) Clarify Commission's confidentiality provisions.
- 11) Clarify Filing Requirements for Acknowledgment Forms.
- 12) Clarify scope of Cooling-Off Prohibitions.
 - Inclusion of independent contracts; tighten discretion of Commission to grant waivers; clarify scope of work prohibited in business or industry; codify NRS 281A.410 into 281A.550.

Please Note: The initial Commission meeting to discuss these concepts focused on concerns about relinquishing Commission authority to staff/Executive Director. However, **the intent and scope of these recommendations was completely the opposite.** These recommendations **in no way** take the final authority regarding complaint cases and other final decisions away from the Commission. The use of the word "ratification" in the prior recommendations was misleading. The better choice of words would have been "consent" and/or "approval."

In fact, these recommendations are intended to streamline processes and get cases and issues before the Commission for final decision more efficiently and without the need for a full investigation for minor issues. Eliminating Panels does not divest the Commission of its authority to determine whether cases will be dismissed or forwarded to a hearing. Instead, the Commission Staff will forward those recommendations directly to the Commission for action – rather than diverting them through a Panel.

These suggestions directly follow the process currently undertaken by our sister agency in the Judicial Branch. I have provided some background materials from the Judicial Discipline Commission as support for many of these proposals.

Intent/Rationale of Recommendations:

1) Streamlining Commission's Investigatory Process:

Currently, the Commission is statutorily mandated to investigate any complaint that is filed if the complaint relates to a public officer or employee, alleges conduct in violation of NRS 281A, and provides a minimum level of evidence to support the allegations. For every case during the last 6 years, with the exception of a few, these cases have resulted in minor violations or no violations, yet have taken years to resolve.

The Commission should be able to streamline the process significantly to resolve these minor cases, including the elimination of investigatory panels. Investigatory Panels have proven to be a perfunctory process that takes an inordinate amount of staff and Commission time and expense for the very minimal threshold determination of "credible evidence." The Panel is asked to forward a matter to the Commission for a hearing that may satisfy credible evidence, but never pass a "preponderance standard" at hearing, or to dismiss a matter that the full Commission may be interested in vetting.

Under the Commission's process, any complaint, no matter how serious, triggers significant staff evaluation and due process requirements, including:

- Jurisdictional Analysis by Executive Director, Associate Counsel and Commission Counsel
- Notice of Jurisdiction to Requester/Subject
- Appeal rights of Jurisdictional Determination – Separate Commission Hearing and Order on Jurisdiction
 - o If jurisdiction is rejected – case dismissed
 - o If jurisdiction is accepted
 - Notice to Subject – Opportunity to Respond
- Investigation commences
- Investigation concludes
 - o Staff prepares Recommendation to Investigatory Panel
 - o Panel Hearing
 - o Panel Determination
 - o Case Dismissed or Notice of Commission Hearing Issued
- Commission Hearing
 - o Notice Issued
 - o Scheduling Order Issued setting forth deadlines for Executive Director/Associate Counsel and Subject
 - o Case Resolved by Stipulation or Hearing
- **STATISTICS:**
 - o Fiscal Year 2015:
 - Received 60 Complaints
 - 43 Dismissed – No Jurisdiction
 - 14 Complaints Proceeded to Investigation
 - o 3 consolidated against same subject as one case
 - 5 Panel Dismissals
 - 4 Panels waived – No Panel/directly to Commission
 - 5 Cases Forwarded by Panel to Commission Hearing

- 9 Cases Before Commission for Resolution
- NO Hearings – all Stipulations
- **9 Stips**
 - 3 Willful violations
 - 4 Nonwillful violations – mitigating factors
 - 2 No violations

2) Authorize Commission to resolve complaints less formally through administrative action of Executive Director with consent/approval by Commission: Letters of Caution; Deferred Discipline with Education; Corrective Action; Censure/Reprimand.

- See Judicial Discipline Statutes – resolving cases short of full investigations.
- All recommendations of ED Subject to Approval by the Commission.

3) Establish criteria regarding abuse of public authority or power.

- The Commission’s current jurisdiction to investigate and render an opinion in a matter must include evidence of a pecuniary interest or commitment in a private capacity to the interests of another person that is in conflict with public duties.
- The Commission is criticized for not having the ability to evaluate inappropriate conduct of public officers and employees that does not implicate these specific private interests but nevertheless implicates conduct that does not comport with the public trust and is otherwise an abuse of official power.
- As a concept, this may be a valuable idea, but it will require the Commission to develop specific guidelines for public officers to understand the boundaries of conduct deemed as abusive.
- We may develop factors to consider in evaluating whether conduct amounts to an abuse of authority or power.

4) Streamlining Advisory Opinions.

- Currently, our advisory opinions are subject to judicial review.
- The advisory opinions have become overly tactical, formal and subject to lawyering, inhibiting the Commission’s ability to effectively advise public officers and employees about the application of the Ethics Law.
- When public officers don’t like the advice, they appeal the decision, seek to withdraw the RFO, or ignore the advice with no real consequence.
- Should advice really be subject to judicial review?
- Perhaps not all advisory opinions need to serve as Commission precedent
- Attorney General Opinions are not subject to judicial review

5) Encompass certain Independent Contractors of Government Agencies as “Public employees” subject to Ethics Law.

- The Commission has considered various cases during the last 5 years that have questioned whether certain persons serving as independent contractors are subject to the ethics law.
- These questions have arisen in the context of applicable standards of conduct and whether the cooling-off restrictions apply if the intended scope of work in the private sector will be maintained through an independent contract.
- The Commission has emphatically concluded that independent contractors are deemed “employed” in the private sector for purposes of cooling off requirements.

- In other cases, the Commission has determined that persons serving public agencies through independent contracts are not public officers or employees, but should be because their service is paid through public funds and implicates significant public trust.
- As offered by the Commission in 2013 with regard to school superintendents, college presidents and Board Trustees, the Legislature saw fit to include these public positions within the definition of public employees whether employed by contract or otherwise. The concern is that these positions are responsible for administering significant public policy and expending significant public funds that they should have Ethics accountability as public officers or employees.
- The Commission has received an increase of cases during the last 2 years questioning the ethical conduct of persons who work for various agencies through independent contractual agreements – these persons are paid through public funds and are asked to exercise significant control regarding the respective State and Local government agencies, yet they are not accountable to the public under the Ethics Law.
- The Commission could carve out those independent contractors who by virtue of their duties and responsibilities set forth in the contracts, are exercising a public power, trust or duty – as is currently required under the definition of a public officer in NRS 281A.160.

6) Establish uniform personal interests throughout each subsection of NRS 281A.400 to include pecuniary interests and commitments in a private capacity.

- A review of the 10 separate subsections of NRS 281A.400 which define the standards of conduct of public officers and employees are inconsistent with respect to the types of personal interests triggered by the provision.
- The overall goal of the Ethics Law is to prohibit conflicts of interest, yet these provisions cause disparities in the Commission’s ability to enforce certain prohibitions/statutes depending on the nature of the private interest. These should be consistent.
- See the attached handout regarding NRS 281A.400 to provide consistency and ensure that prohibited conduct of public officers and employees captures each of the defined conflicts under the Ethics Law – in particular, pecuniary interests and commitments in a private capacity.
- Example: If we have evidence that a public officer has used government resources to benefit the interests of a person to whom he has a private commitment, we cannot cite NRS 281A.400(7) because that provision leaves out “commitments in a private capacity”
 - o A public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee
- Example: If we have evidence that a public officer used his position to negotiate a government contract on behalf of himself or a relative, we cannot cite NRS 281A.400(3) because (3) is specific to business entities.
 - o 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 business entity in which the public officer or employee has a significant pecuniary interest.

7) Limit public officers and employees from holding an inconsistent public offices or employment.

- This recommended proposal does NOT prohibit two separate individuals, even if related, from holding inconsistent positions.
 - o I.e., spouses, siblings, etc., may hold inconsistent positions which may otherwise trigger disclosure/abstention requirements.
- Instead, this proposal provides statutory criteria for the Commission to apply to a circumstance in which an elected or appointed public officer or employee seeks to hold another public position in government that is inconsistent with the duties and responsibilities of his original position.
 - o For example:
 - It may be inconsistent for the Director of the Ethics Commission to also serve any other public office, volunteer or paid, over which the Ethics Commission has jurisdiction.
 - It may be inconsistent for a member of the State Board of Education to also be appointed to serve on a County School District Board.
- The Attorney General has already offered an opinion indicating such inconsistent public positions are not permitted and several jurisdictions prevent the same.
- Many statutes and local government charters and ordinances already prohibit certain positions from holding other employment or other positions.
- This proposed recommendation would cover those positions that are not specifically addressed in statute.

8) Statutorily prohibit “boss-of-boss” employment circumstances.

- The Commission **already** has several opinions **prohibiting** public officers and employees from serving in public positions of authority over their current employment. These opinions cite 281A.020 alone as the basis for the prohibition.
- I.e., a member of the school board may also not be employed by a school within the district; trustee of a hospital board may not also be employed by the hospital
- This proposal would codify the Commission’s existing opinions to make it clear to public employees where the law prohibits such service – and not rely solely upon 281A.020, which is otherwise a statement of legislative policy.

9) Streamline/Clarifying Contracting prohibitions.

- Under current law, any public officer or employee is prohibited from entering into a contract with ANY governmental entity, unless the contract is subject to open competitive bidding or otherwise receives relief from the Commission.
- However, State law establishes criminal consequences for public officers and employees who enter into certain contracts with government, even if the Commission grants relief from an ethical violation.
- This proposal mirrors the suggestion of SB 391 from 2011 which clarifies that the ethical concern relates to contracts in which the public officer or employee has some influence or other conflict as a result of his public position.
- Is it an ethical conflict for a public employee who works for the State Welfare Division to enter into a contract with Lyon County for services unrelated to his/her work for Welfare?

10 Clarify Filing Requirements for Acknowledgment Forms.

- The Commission received several requests for advisory opinions during the last fiscal year seeking clarity about the filing requirements for a public officer who holds multiple appointed positions and whether separate forms are required to be filed – and when.
- For example, a City Council member may serve on 15 various boards or committees for the City and those appointments may come at varying times throughout his/her tenure as a City Council member. Does the member need to file a new form for each appointment, or is one form sufficient. When is the form required?
- Is there a difference whether the other board or committee appointment exists only by virtue and qualification of serving as a public officer in the original position.
- This recommendation mirrors the language developed by the Nevada Secretary of State (SOS) in its requirements for Financial Disclosure Forms under similar circumstances.
- Also, instead of encouraging a full-scale investigation for untimely filings, can we impose a simple fine like the SOS does for Financial Disclosures?

11 Clarify scope of Cooling-Off Prohibitions: inclusion of independent contracts; tighten discretion of Commission to grant waivers; clarify scope of work prohibited in business or industry; codify NRS 281A.410 into 281A.550.

- How these provisions may be clarified is not necessarily the decision of the Commission
- Nevertheless, the Commission has been scrutinized for the lack of consistency in granting waivers under the cooling-off requirements and it may behoove the Commission to provide a conceptual amendment to clarify the scope and discretion of these requirements to being some uniformity to the waivers or otherwise provide more direct policy guidance to the Commission.
- The current waiver standards are very broad:
 - o Not contrary to ethics laws or State’s best interests

Possible Motions:

I move to **approve/reject** the following recommendations of the Executive Director for proposed concepts to be submitted to the Governor for consideration during the 2017 Legislative Session:

Recommendation Nos.: _____

Conclusion

The Executive Director will notify the Governor’s Office regarding any approved concepts to be considered for the 2017 Legislative Session.

Sincerely,

Yvonne M. Nevarez-Goodson, Esq.
Executive Director