



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, April 19, 2017 at 8:30 a.m.  
**PLACE OF MEETING:** This meeting will be held at the following location:

**Nevada Commission on Tourism  
Laxalt Building - Second Floor Chambers  
401 North Carson Street  
Carson City, NV 89701**

**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](mailto:NCOE@ethics.nv.gov).

	1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.
	2. 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.
<b>For Possible Action</b>	3. Approval of Minutes of the February 15, 2017 Commission Meeting.
	4. Legislative update regarding the Commission's Biennial Budget (FY18-FY19), including review of Commission staff salaries.
<b>For Possible Action</b>	5. 79 <sup>th</sup> Legislative Session (2017) update regarding proposed legislation effecting the Nevada Commission on Ethics including, without limitation, the following bills: <ul style="list-style-type: none"><li>• Senate Bill 30</li><li>• Senate Bill 36</li><li>• Senate Bill 84</li><li>• Assembly Concurrent Resolution 6/Senate Concurrent Resolution 6</li></ul>

For Possible Action	6. Discussion and consideration of Motion for Summary Judgment and Cross-Motion for Summary Judgment concerning <b>Third-Party Request for Opinion No. 16-54C regarding Gerald Antinoro, Sheriff, Storey County</b> , submitted pursuant to NRS 281A.440(2).
	7. Report by Executive Director on agency status and operations, including, without limitation: <ul style="list-style-type: none"> <li>• Education and outreach by the Commission</li> <li>• Commissioner Appointments</li> <li>• Current FY17 Budget Status</li> <li>• Request for Opinion Status</li> <li>• Upcoming Commission meetings</li> <li>• Legislative Session</li> </ul>
	8. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.
	9. 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, Nevada's 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](mailto: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 M. Nevarez-Goodson, Esq. at [ncoe@ethics.nv.gov](mailto:ncoe@ethics.nv.gov) or call 775-687-5469.
- ❖ This Agenda and supporting materials are posted and are available not later than the 3<sup>rd</sup> 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](http://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 9<sup>th</sup> Street, Reno
- Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas

AGENDA ITEM NO. 3

AGENDA ITEM NO. 3



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

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

**February 19, 2017**

The Commission on Ethics held a public meeting on  
Wednesday, February 19, 2017, at 9:00 a.m.  
at the following location:

**Gaming Control Board  
1919 College Parkway  
Carson City, NV 89706**

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 9:00 a.m. Also present in Carson City, Nevada were Vice-Chair Keith Weaver, Esq. and Commissioners Brian Duffrin, Barbara Gruenewald, Esq., Philip "P.K." O'Neill, Lynn Stewart and Amanda Yen, Esq. 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. and Executive Assistant Valerie M. Carter, CPM.

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Approval of Minutes of the December 5, 2016 Commission Meeting.

Vice-Chair Weaver moved to approve the December 5, 2016 Meeting Minutes. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously, with Commissioners O'Neill, Stewart and Yen abstaining, as they were not members of the Commission at the time of the December 5, 2016 meeting.

///  
///  
///



4. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-59C regarding Kimberlie Buffington, Member, Lander County Planning Commission, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter was Subject's attorney Anthony Walsh, Esq., of Walsh, Baker & Rosevear. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion and the process for approving the Stipulated Agreement.

Associate Counsel Prutzman provided a synopsis of the Stipulated Agreement affirming that the Subject and the Executive Director proposed a finding of a single course of conduct resulting in one willful violation of the Ethics Law, implicating the provisions of NRS 281A.020 and NRS 281A.420 (1) and (3), related to Ms. Buffington's failure to disclose and abstain from voting on certain agenda items involving her real estate client. Associate Counsel Prutzman stated that Buffington also agreed to pay a fine of \$500, with the agreement also serving to establish clear guidelines regarding conflicts affiliated with real estate clients to all similarly situated public officers.

Associate Counsel Prutzman stated that the allegations implicating NRS 281A.400(2) and (3) and NRS 281A.410(1)(b) are recommended to be dismissed through the Stipulated Agreement because the investigation did not yield a preponderance of the evidence to support a violation with regard to those specific allegations.

Commissioner O'Neill raised various questions relating to Ms. Buffington's business relationship at issue and the associated real property involved in her business dealings, as well as the property that was at issue before the Planning Commission at the time of the vote.

Specifically, Commissioner O'Neill requested clarification regarding whether Ms. Buffington had a history of listing properties for this client that appeared before the Planning Commission. Further, Commissioner O'Neill inquired as to the value of any commissions Ms. Buffington may have earned later on various listings affiliated with these properties.

Several Commissioners echoed questions related to these matters, including clarifications regarding the proposed mitigating factors. In particular, the Commission raised questions relating to the nature of legal advice sought and acquired by Ms. Buffington and whether Ms. Buffington had disclosed and abstained during prior meetings as related to agenda items that involved her private real estate clients.

Executive Director Nevarez-Goodson clarified various factual circumstances and legal questions, including that several district attorneys had represented the Planning Commission over the years of Ms. Buffington's term and had provided general advice that Ms. Buffington could vote on agenda items involving property which she did not have a specific listing or pecuniary interest. Executive Director Nevarez-Goodson stated that this legal advice was not specific and could not be corroborated to qualify for safe harbor protection from a willful violation. Nevertheless, the general legal advice was relied upon and was offered for consideration as a mitigating factor because the advice did not properly or fully address circumstances in which an agenda item might impact the interests of a client on property that was not listed by Ms. Buffington, as was the case in this RFO.

Executive Director Nevarez-Goodson clarified that Ms. Buffington voted on land use matters that reasonably and materially affected her client on various parcels of property that Ms. Buffington did not list. Because they were not her listings and she had no pecuniary interest in these properties, she believed she could vote and did. Executive Director Nevarez-Goodson stated that conflicts of interest related to relationships were commonly overlooked, even by attorneys, and this Stipulation would offer broad guidance in this area. It wasn't until after Ms. Buffington's vote that she acquired the listings of the property at issue. No evidence supported improper influence or attempt to approve the land use to later acquire the listings. Nevertheless, the Executive Director and Subject's counsel would determine the amount of commissions earned on those properties and return with that information.

Chair Lau tabled the matter until Mr. Walsh was able to speak with his client and provide the requested information to the Commission.

5. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-83C regarding Clay Hendrix, Trustee, Churchill County School District Board of Trustees, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter was Sharla Hales, attorney for Churchill County School District. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Request for Opinion which alleged a violation of the Ethics Law related to Trustee Hendrix's failure to disclose a conflict of interest at the February 5, 2015 Board of Trustees Meeting, which involved an agenda item for the School Board to pay costs for a college program that was available to all students, including Hendrix's children.

Associate Counsel Prutzman stated that the Subject and the Executive Director recommended dismissal of the Request for Opinion through the Stipulated Agreement after an investigation revealed that the allegations against Trustee Hendrix were not supported by a preponderance of evidence, in particular that Mr. Hendrix's children were never interested nor participated in the program. Associate Counsel Prutzman stated that the terms of the Stipulated Agreement encourage both parties to promote the Commission's outreach efforts, and although no violation was found, the terms do encourage Trustee Hendrix to attend an ethics training provided by the Commission's Executive Director.

A brief discussion ensued regarding the time-frame for completing the ethics training.

Commissioner Gruenewald moved to accept the terms of the Stipulated Agreement as presented by the parties and direct Commission Counsel to finalize the Stipulated Agreement in an appropriate form, provided that such form does not materially change the terms as approved by the Commission. Commissioner Stewart seconded the Motion.

Commission Counsel Chase asked the Commission if they wanted to include specific language in the Stipulated Agreement regarding a time-frame for completing the ethics training. Commissioner O'Neill requested that the Stipulation reflect the training be completed within one year from the date of the Stipulated Agreement.

Commissioner Grunewald amended her motion to include the training time frame. Commissioner Stewart seconded the amended Motion. The Motion was put to a vote and carried unanimously. (See Exhibit 1, Executed Stipulation)

Chair Lau called the meeting into recess for five minutes.

4. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-59C regarding Kimberlie Buffington, Member, Lander County Planning Commission, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order.

Chair Lau reopened this agenda item regarding the proposed Stipulated Agreement. Mr. Walsh returned to provide additional information to the Commission regarding certain commissions Ms. Buffington later earned on the sale of the properties that she ended up listing months after her vote on the matter. Ms. Buffington earned approximately \$1,400 on one of the properties and the other hasn't sold. Mr. Walsh also provided information regarding two specific instances in which Ms. Buffington disclosed her private business relationship with an individual appearing before the Planning Commission and abstained from voting on those same matters.

Chair Lau called the meeting into confidential closed session for deliberations. Executive Director Yvonne Nevarez-Goodson, Associate Counsel Judy Prutzman and counsel for the Subject, Mr. Walsh, were excused from the meeting during the closed deliberations.

Chair Lau called the meeting back into open session. Chair Lau again tabled Agenda Item 4 and opened Agenda Item 6.

6. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-84C regarding Matt Hyde, Trustee, Churchill County School District Board of Trustees, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter was Sharla Hales, attorney for Churchill County School District. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Request for Opinion which alleged violations of the Ethics Law, specifically NRS 281A.020 and NRS 281A.420(1) and (3) related to Trustee Hyde's failure to disclose a conflict of interest at the February 5, 2015 and August 13, 2015 Board of Trustees Meetings related to approving a program to provide funding for a college program available to all students, including Mr. Hyde's children and the approval of Mr. Hyde's assignment to a volunteer coaching position.

Associate Counsel Prutzman stated that the Subject and the Executive Director proposed dismissal of the Request for Opinion after an investigation revealed that the allegations against Trustee Hyde were not supported by a preponderance of evidence. In particular, the evidence confirmed that his children were not interested and did not participate in the college program and the coaching position was unpaid and did not create a significant pecuniary interest. Associate Counsel Prutzman stated that the terms of the Stipulated Agreement encourage both parties to promote the Commission's outreach efforts, and although no violation was found, the terms do encourage Trustee Hyde to attend an ethics training provided by the Commission's Executive Director.

Commissioner O'Neill requested that the Stipulated Agreement include a time frame of 12 months for the training to be completed.

Commissioner Yen moved to accept the terms of the Stipulated Agreement as presented by the parties and direct Commission Counsel to finalize the Stipulation in the appropriate form, with the addition of one-year time within which the ethics training needs to occur, provided that such form does not materially change what has been approved today. Commissioner Duffrin seconded the Motion. The Motion was put to a vote and carried unanimously. (See Exhibit 2, Executed Stipulation)

7. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-85C regarding Tricia Strasdin, Trustee, Churchill County School District Board of Trustees, submitted pursuant to NRS 281A.440(2).

Appearing before the Commission in this matter was Sharla Hales, attorney for Churchill County School District. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commission Counsel Chase provided a brief overview of the Request for Opinion.

Associate Counsel Prutzman provided a synopsis of the Request for Opinion which alleged violations of the Ethics Law, specifically NRS 281A.020 and NRS 281A.420 as they related to Trustee Strasdin's disclosure and abstention obligations at the August 6, 2016 and October 27, 2016 Board of Trustees meetings involving the Board's approval of certain employment/coaching positions, including a position for a school district employee to whom Strasdin had a commitment in a private capacity because they resided together and had a relationship that was substantially similar to a domestic partnership.

Associate Counsel Prutzman stated that the Stipulated Agreement provides that Trustee Strasdin had an obligation to disclose her relationship at the Board meetings and should have also abstained from voting on the consent agenda items related to her partner's employment with the school district. Associate Counsel Prutzman stated that the Subject and the Executive Director proposed a finding of one non-willful violation, implicating NRS 281A.020 and NRS 281A.420 (1) and (3), and Trustee Strasdin agreed to attend ethics training that will be provided by the Commission's Executive Director.

Commissioner O'Neill inquired about the hiring process for the specific employee mentioned in the RFO. Associate Counsel Prutzman stated that counsel for Trustee Strasdin, Sharla Hales, confirmed that the interviews and selection of coaches is conducted by the School Superintendent and approved by the School Board.

Commissioner Gruenewald moved to accept the terms of the Stipulation as presented by the parties and directed Commission Counsel to finalize the Stipulation in appropriate form, provided that such form does not materially change the terms as approved by the Commission, and to add Commissioner O'Neill's request that the training be held within 12 months. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously. (See Exhibit 3, Executed Stipulation)

A brief five minute recess was taken.

8. Report by Executive Director on agency status and operations.

Executive Director Yvonne M. Nevarez-Goodson, Esq. discussed the recent resignations of Commissioner Magdalena Groover and Commissioner Dan Stewart. She thanked them both for their service to the State and the Commission.

Director Nevarez-Goodson welcomed and introduced newly appointed Commission members Philip "P.K." O'Neill, Amanda Yen and Lynn Stewart.

Director Nevarez-Goodson stated that the Commission's primary mission is to provide outreach and education to Nevada's Public officers and public employees, and stated she has seen a rise in the number of requests for training since the November election and will continue to work with those entities and provide outreach as appropriate. Director Nevarez-Goodson reported that in January she presented Ethics training to the Clark County Bar Association and approximately 80 – 100 attorneys attended. She was very pleased with the questions that were asked and felt the presentation was well received.

Commissioner Grunewald asked Director Nevarez-Goodson to let her know the next time she plans a training in Northern Nevada as she would like to attend.

Commissioner Stewart inquired about whether or not any ethics presentations have been given to the Boyd School of Law. Director Nevarez-Goodson stated that she had previously been in touch with the Dean of the Law School and plans to follow-up with the law school again in the near future for outreach in the form of ethics training or the opportunity for interns to assist Commission Staff.

Commissioner O'Neill suggested that trainings be scheduled 6 months to a year in advance so that the word can get out and the agency can reach the rural communities more efficiently. Director Nevarez-Goodson stated it can be tricky to plan trainings in advance at the local levels. She stated that staff has offered trainings to state employees with several months' notice through the state's NEATS system, but have had very little interest. Director Nevarez-Goodson plans to reach out and coordinate with the State's Human Resources Department to collaborate on "advertising" the trainings. Director Nevarez-Goodson stated she will continue to work with the local governments to come up with a similar outreach strategy.

Director Nevarez-Goodson stated she will be providing an overview of the Ethics Commission before the Senate Committee on Legislative Operations. She welcomed members of the Commission to attend in person or watch online via the Legislature's website.

Director Nevarez-Goodson reported the current case status of the Commission, referring to the case log that was provided to the Commission members. She reported that Staff is up-to-date on all cases including the Third-party (complaint) cases being investigated as well as all First-Party Requests for Opinion. She reported briefly on the number of cases that have resulted in litigation and which are currently pending in various courts.

Director Nevarez-Goodson reported that she currently expects the next Commission meeting will be held April 19, 2017 and as the agenda for the meeting takes shape she will keep the Commission informed of any travel requirements.

4. Discussion and approval of a Proposed Stipulation concerning Third-Party Request for Opinion No. 16-59C regarding Kimberlie Buffington, Member, Lander County Planning Commission, submitted pursuant to NRS 281A.440(2).

This agenda item was called out of order.

Chair Lau reopened this agenda item regarding the proposed Stipulated Agreement.

Mr. Walsh returned before the Commission and stated that based on negotiations between the parties, his client Ms. Buffington had agreed to pay a fine of \$1,000. Mr. Walsh stated that his client also agreed to the Commission's proposal to direct the Executive Director to issue an educational letter to the Real Estate Division explaining the types of conflicts that confront realtors who contemporaneously serve as public officers.

Executive Director Nevarez-Goodson stated that there had been a recent increase of realtors who are also serving as public officers, with associated questions regarding conflicts of interest before the Commission, and this Stipulated Agreement may be an educational opportunity, expanding beyond this particular Request for Opinion, to inform the Real Estate Division of the heightened awareness about the type of conflicts that affect realtors in their professional lives and their public capacities. Mr. Walsh agreed to the contents of the letter as described.

Commissioner O'Neill moved to approve the Stipulated Agreement as amended and as agreed to by the parties to include a \$1000 fine and a Commission letter to the Real Estate Division offering ethics education to realtors. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously. (See Exhibit 4, Executed Stipulation)

9. Update regarding the Governor's Recommended Biennial Budget (FY18-FY19) for the Commission.

Executive Director Yvonne Nevarez-Goodson reported on the Commission's FY18-FY19 Budget Request and reported that the majority of the budget request is similar to the last biennial budget request and reminded the Commission that all of the requested enhancements were denied. She reported that in FY19 the Commission requested funding for new computers pursuant to the State's IT replacement schedule. She also stated that the Commission's travel budget may need to be increased for future biennia to accomplish the Commission's main mission of outreach and education. Director Nevarez-Goodson stated that she will be closely tracking those associated costs over the next biennium to determine if an increase in funds for outreach will be appropriate.

Director Nevarez-Goodson reported on the current status of the Commission's request to bring certain staff members' salaries in line with similar positions within the Executive Branch and also the Commission on Judicial Discipline. She provided an overview of those specific positions and the changes to salaries and titles that the Commission put before the Governor's office which were denied, and have now been brought back before the Legislature. A discussion ensued regarding testimony before the Senate Finance Committee and the Assembly Committee on Ways and Means. Commissioner Weaver offered that it was his perception that some members of the Assembly Committee do not see the value of what the Commission does, and that is an opportunity for the Commission and staff to really highlight the importance of the issues the Commission deals with and the accomplishments of the agency.

10. 2017- 79th Legislative Session update regarding proposed legislation effecting the Nevada Commission on Ethics including, without limitation, the following pre-filed bills:

Executive Director Yvonne Nevarez-Goodson provided a brief overview of the Commission's Bill, SB 84, and reported that the bill mainly focuses on the Commission's efforts to streamline the Commission's case management and investigative processes. She stated her biggest efforts have been directed at outreach to some of the local governments to ensure there was not going to be any issues about some of the Commission proposed processes. She stated so far most have been supportive of the Commission's efforts to streamline Third-Party cases.

Director Nevarez-Goodson discussed SB 36 which was sponsored by the Governor and related to the separation of powers issues related to State Legislators that was initiated in 2009 with the Supreme Court's *Hardy* decision. She reported that SB 36 would exempt State Legislators from the jurisdiction of the Ethics Commission and changes the make-up of the Commission, making all appointments solely by the Governor. Director Nevarez-Goodson recommended that the Commission's position remain neutral to the proposed legislation and she will make herself available to answer any questions that arise regarding the measure. She stated that an obvious question regarding this bill, including from members of the public, is how ethics issues would be handled in the legislative branch.

A brief discussion ensued regarding the current Ethics Law and the Commission's jurisdiction over State Legislators outside of their core legislative functions.

Director Nevarez-Goodson discussed SB 30 which was brought by the Nevada Attorney General and is intended to prohibit the Attorney General from accepting certain gifts, and defining those gifts and exemptions thereto. She reported that she has not yet met with General Laxalt or his office, but her initial concern is whether the legislation would be treating certain public officers differently with regard to gifts. She stated that the Legislature made a specific policy about not defining gifts because a gift that improperly influences a public officer or employee may be different in various contexts. Director Nevarez-Goodson stated that at this point, she will offer testimony regarding the bill's different treatment of public officers. She stated that will be her approach unless the Commission directs her otherwise.

11. Commissioner Comment on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

Vice-Chair Weaver thanked the newly appointed Commissioners for their participation in the meeting, and stated that he was encouraged by the depth of Commission debate and deliberation and new energy brought to the Commission.

Commissioner Stewart thanked his fellow Commissioners and Commission staff for the warm welcome he received and looks forward to working with everyone. Commissioner Yen echoed Commissioner Stewart's comments.

Commissioner O'Neill echoed Commissioner Stewart's sentiments and also commended staff, stating he had the privilege to sit down with them prior to the meeting to be educated on the Commission's procedures.

12. Open Session for Public Comment.

No public comment.

13. Adjournment.

Commissioner O'Neill moved to adjourn the meeting. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously. The meeting adjourned at 2:42 p.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 April 19, 2017:

/s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Chair

/s/ Keith A. Weaver  
Keith A. Weaver, Esq.  
Vice-Chair



# Exhibit 1



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**Clay Hendrix**, Member, Churchill County  
School District Board of Trustees,  
State of Nevada,

Request for Opinion No. **16-83C**

\_\_\_\_\_  
Subject. /

#### STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 16-83C before the Nevada Commission on Ethics (“Commission”) concerning Clay Hendrix (“Hendrix”), Member of the Board of Trustees (“Board”) of the Churchill County School District (“CCSD”), State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Hendrix served as a member of the CCSD Board. As such, Hendrix is a public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Hendrix in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about December 1, 2016, the Commission received RFO No. 16-83C from a member of the public (“Requester”), alleging that Hendrix:
- 1) Failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020(1)); and
  - 2) Failed to disclose a conflict of interest for which disclosure is required (NRS 281A.420(1)).

- b. On or about December 13, 2016, Staff of the Commission issued a Notice to Subject under NRS 281A.440(2), stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1) and NRS 281A.420(1). Hendrix was provided an opportunity to respond to the RFO.
- c. On or about January 18, 2017, Hendrix, through legal counsel, filed his response to the RFO.
- d. Hendrix executed a Panel Waiver and Waiver of Confidentiality to permit the Commission to consider this Stipulated Agreement.
- e. In lieu of a panel determination and a hearing, Hendrix and the Commission now enter into this Stipulated Agreement, pursuant to NAC 281A.275, finding no violation of NRS 281A.020(1) or NRS 281A.420(1).
- f. This Stipulated Agreement provides an opportunity for the Commission to promote and clarify the goals of the Ethics Law and to educate all public officers similarly situated to Hendrix.

4. **STIPULATED FACTS:** At all material times, the following events were relevant to this matter: <sup>1</sup>

- a. Hendrix was elected as a Member of the CCSD Board in November, 2010 and was reelected in 2014. He is a public officer as defined in NRS 281A.160.
- b. CCSD is a political subdivision as defined in NRS 281A.145.
- c. Hendrix has two sons who attended Churchill County High School during school year 2014-15.
- d. Sharla Hales, Esq., is a lawyer licensed in the State of Nevada and serves as legal counsel for the CCSD Board and, in such capacity, represents Hendrix in these RFO proceedings.
- e. The Jump Start College program is a dual-enrollment opportunity for students in selected Nevada high schools, including Churchill County High School. Jump Start participants enroll in college courses through Western Nevada

---

<sup>1</sup> Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

College and earn an Associates Degree while simultaneously earning high school credits.

- f. At the February 5, 2015 CCSD Board meeting, Agenda Item B, under New Business, related to the Jump Start College program and was noted on the agenda as follows:

**B. For Discussion and Possible Action:** Regarding the Jump Start Tuition Costs (BMAR-16)

- g. Hendrix did not disclose that his sons attended Churchill County High School because he knew that they were not interested in the Jump Start College program.
- h. Hendrix voted with other Board members to unanimously approve a motion to cover the cost of the Jump Start tuition in the amount of \$1,402.50 per student, the one-time application fee, lab fees, and the cost of books. The Board also voted to have the District purchase a set of books for Jump Start students to use and return at the end of the semester.
- i. Hendrix's sons did not participate in the Jump Start College program and have since left Churchill County High School.

**5. TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Hendrix and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Hendrix holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the citizens of Churchill County).
- c. Hendrix had a commitment in a private capacity to the interests of his children. See NRS 281A.065(3).
- d. Public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflict of interest provisions of the Ethics Law apply to Hendrix's conduct. Specifically, Hendrix must commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning certain private relationships and significant pecuniary

- interests which would reasonably affect his decision on matters before the CCSD Board, as provided in NRS 281A.420(1). As a public officer, Hendrix is also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in his position. NRS 281A.420(3).
- e. Hendrix understands that he must disclose his relationship with and the interests of his school-aged children whenever any matter that directly involves his children comes before the Board. However, he was not required to disclose those relationships before voting on the Jump Start College program at the February 5, 2015 Board meeting. There is no evidence that Hendrix's children were interested in or intended to participate in the program, or that Hendrix and/or his children would receive any individual benefit from the Board's decision to cover costs for the Jump Start College program. Accordingly, Hendrix's action on the matter would not reasonably be affected by his commitments to the interests of his children.
  - f. Based on the lack of evidence requiring disclosure, Hendrix had no obligation to abstain from voting on the Jump Start College program pursuant to NRS 281A.420(3).
  - g. In appreciation of the public's concerns regarding the disclosure and abstention responsibilities of public officers in the context of the CCSD matters, Hendrix and the Commission agree to promote the Commission's outreach efforts by sponsoring an Ethics in Government Law training conducted by the Executive Director of the Commission to encourage continued compliance with the Ethics Law. This training will be conducted no later than twelve months after the date this Stipulated Agreement is executed.
  - h. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.

q. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil or criminal regarding Hendrix.

**6. WAIVER:**

a. Hendrix has waived his right to an Investigatory Panel proceeding and, upon approval of this Stipulation by the Commission, Hendrix knowingly and voluntarily waives his right to any related hearing before the full Commission on the allegations in this RFO (No. 16-83C) and of any and all rights he may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.

b. Hendrix also knowingly and voluntarily waives his right to any judicial review of this matter, as provided in NRS Chapter 281A, NRS Chapter 233B, any extraordinary writs as provided in NRS Chapter 32, or any other applicable provisions of law.

**7. ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on February 15, 2017.

DATED this 27<sup>th</sup> day of Feb, 2017.   
Clay Hendrix

The above Stipulated Agreement is approved by:

FOR CLAY HENDRIX, Subject

DATED this 24<sup>th</sup> day of Feb., 2017.   
Sharla S. Hales, Esq.



FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director, Commission on Ethics

DATED this 6<sup>th</sup> day of March, 2017.

Judy A. Prutzman  
Judy A. Prutzman, Esq.  
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 6<sup>th</sup> day of March, 2017.

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

The above Stipulated Agreement is accepted by the Commission.<sup>2</sup>

DATED February 15, 2017.

By: /s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Chair

By: /s/ Phillip K. O'Neill  
Phillip K. O'Neill  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver, Esq.  
Vice-Chair

By: /s/ Lynn Stewart  
Lynn Stewart  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Commissioner

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

<sup>2</sup> Hendrix waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.

# Exhibit 2





## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**Matt Hyde**, Member, Churchill County  
School District Board of Trustees,  
State of Nevada,

Request for Opinion No. **16-84C**

\_\_\_\_\_  
Subject. /

#### STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 16-84C before the Nevada Commission on Ethics (“Commission”) concerning Matt Hyde (“Hyde”), a Member of the Board of Trustees (“Board”) for the Churchill County School District (“CCSD”), State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Hyde served as a member of the CCSD Board. As such, Hyde is a public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Hyde in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about December 1, 2016, the Commission received RFO No. 16-84C from a member of the public (“Requester”), alleging that Hyde:
- 1) Failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020(1));
  - 2) Failed to disclose a conflict of interest for which disclosure is required (NRS 281A.420(1)); and

- 3) Failed to abstain from acting on a matter in which he had a conflict of interest (NRS 281A.420(3)).
- b. On or about December 13, 2016, staff of the Commission issued a Notice to Subject under NRS 281A.440(2) stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1) and NRS 281A.420(1) and (3). Hyde was provided an opportunity to respond to the RFO.
- c. On or about January 18, 2017, Hyde, through legal counsel, provided a written Response to the RFO.
- d. Hyde executed a Panel Waiver and Waiver of Confidentiality to permit the Commission to consider this Stipulated Agreement.
- e. In lieu of a panel determination and a hearing, Hyde and the Commission now enter into this Stipulated Agreement, pursuant to NAC 281A.275, finding no violation of NRS 281A.020(1) or NRS 281A.420(1) and (3).
- f. This RFO presented a case of first impression for the Commission with respect to a public officer voting on a consent agenda item that approves his appointment to a volunteer coaching position that does not involve anything of economic value. This Stipulated Agreement provides an opportunity for the Commission to promote and clarify the goals of the Ethics Law and to educate all public officers similarly situated to Hyde.

4. **STIPULATED FACTS**: At all material times, the following facts were relevant to this matter:<sup>1</sup>

- a. Hyde was elected as a Member of the CCSD Board in November, 2015. He is a public officer as defined in NRS 281A.160.
- b. CCSD is a political subdivision as defined in NRS 281A.145.
- c. Hyde has two sons who attended Churchill County High School as sophomores during school year 2014-15.

---

<sup>1</sup> Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- d. Sharla Hales, Esq., is a lawyer licensed in the State of Nevada and serves as legal counsel for the CCSD Board and, in such capacity, represents Hyde in these RFO proceedings.
- e. The Jump Start College program is a dual-enrollment opportunity for students in selected Nevada high schools, including Churchill County High School. Jump Start participants enroll in college courses through Western Nevada College and earn an Associates Degree while simultaneously earning high school credits.
- f. The CCSD Board approves certain recommended personnel actions in the District and such actions are regularly listed in Board materials and included on consent agendas which contain items that the District staff believe to be routine and without any reasonable basis for the Board to vote against the items.

**Jump Start College Program**

- g. At the February 5, 2015 CCSD Board meeting, Agenda Item B, under New Business, related to the Jump Start College program and was noted on the agenda as follows:
  - B. For Discussion and Possible Action: Regarding the Jump Start Tuition Costs (BMAR-16)
- h. Hyde did not disclose that his sons attended Churchill County High School because, although they were academically qualified to participate, he knew that they were not interested in the Jump Start College program.
- i. Hyde voted with other Board members to unanimously approve a motion to cover the cost of the Jump Start tuition in the amount of \$1,402.50 per student, the one-time application fee, lab fees, and the cost of books. The Board also voted to have the District purchase a set of books for Jump Start students to use and return at the end of the semester.
- j. In fact, Hyde's sons did not participate in the Jump Start College program.

///

///

///

### **Volunteer JV Football Coaching Position**

- k. At the August 13, 2015 CCSD Board Meeting, there were five items placed on the Consent Agenda. Consent Agenda Item A related to a recommended personnel action that involved Hyde and was noted on the agenda as follows:
  - A. Approval of Recommended Personnel Action (Attachment A)
- l. The Board Agenda included Attachment A, which indicated that Hyde was recommended to fill the position of Assistant JV Football Coach, a part-time non-paid position.
- m. Hyde was the only applicant interested in and considered for the assistant JV coaching position. Hyde's sons played football on the varsity team and therefore would not interact with the JV Football Coach.
- n. The minutes reflect the following:
  - Trustee Hyde stated that his name is listed under Item 6, Extra Curricular Activities Assistant JV Football Coach, which is a non-paid strictly volunteer position.
- o. Hyde voted with the Board to unanimously approve the Consent Agenda.
- p. At the August 13, 2015 meeting, Hyde conferred with Sharla Hales, Esq., and was advised that he did not need to abstain from voting on his coaching position because there was no pay or benefits attached to the volunteer position.
- q. The volunteer coaching position did not provide remuneration for Hyde's services and Hyde had no expectation of receiving anything of value for his coaching assistance.
- r. Hyde did not travel with the JV football team and received no per diem reimbursements or meals. Hyde received a polo shirt and a sweatshirt from the head coach, who received these items free from a company with which the coach did business for the team.
- s. At the end of the football season, the high school boosters club gave \$500 to Hyde as a gift for his volunteer services. This gift was unexpected by Hyde and funds for this gift were acquired from private donations and did not include any public funds from the District.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Hyde and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Hyde holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the citizens of Churchill County).
- c. Hyde has a commitment in a private capacity to the interests of his children. See NRS 281A.065(3).
- d. Public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflicts of interest provisions of the Ethics Law apply to Hyde's conduct. Specifically, Hyde must commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning certain private relationships and significant pecuniary interests which would reasonably affect his decision on matters before the CCSD Board, as provided in NRS 281A.420(1). As a public officer, Hyde is also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in his position. NRS 281A.420(3).
- e. The disclosure and abstention requirements of NRS 281A.420 extend to consent agenda items. See *In re Tobler and Mayes*, Comm'n Op. Nos. 11-76C and 11-77C (2012). Each matter on a consent agenda requires action for final approval. Without a formal vote of the Board, the consent item is not approved and any staff action does not become effective. Accordingly, when considering items on a consent agenda, public officers are required to properly disclose any significant pecuniary interests or commitments in a private capacity to the interests of others and undertake the statutorily directed abstention analysis on the record to determine whether abstention is appropriate.

**Jump Start College Program**

- f. Hyde understands that he must disclose his relationship with and the interests of his school-aged children whenever any matter that directly involves his

children comes before the Board. However, he was not required to disclose those relationships before voting on the Jump Start College program at the February 5, 2015 Board meeting. There is no evidence that Hyde's children were interested in or intended to participate in the program, or that Hyde and/or his children would receive any individual benefit from the Board's decision to cover costs for the Jump Start College program. Accordingly, Hyde's action on the matter would not reasonably be affected by his commitments to the interests of his children.

- g. Based on the lack of evidence requiring disclosure, Hyde had no obligation to abstain from voting on the Jump Start College program pursuant to NRS 281A.420(3).

**Volunteer JV Football Coaching Position**

- h. A "pecuniary interest" means any beneficial or detrimental interest in a matter that consists of or is measured in money or is otherwise related to money, including anything of economic value. NRS 281A.139.
- i. Hyde's volunteer coaching position is not the type of *significant* pecuniary interest that would reasonably affect his decision on the consent agenda item involving personnel matters, because Hyde's interest in the position did not include the expectation of anything of economic value. However, it is the avoidance of conflict and appearance of impropriety, even though actual impropriety is lacking, that the Ethics Law requires. See *In re Collins*, Comm'n Op. No. 11-78A (2011). A public officer's disclosure is important even where the conflict is remote in some aspects. In *In re Weber*, Comm'n Op. No. 09-47A (2009), the Commission held:

In keeping with the public trust, a public officer's disclosure is paramount to transparency and openness in government. The public policy favoring disclosure promotes accountability and scrutiny of the conduct of government officials...Such disclosures dispel any question concerning conflicts of interest and may very well ward off complaints against the public officer based on failure to disclose.

Therefore, Hyde properly sought legal advice from the Board's legal counsel and disclosed the perceived conflict regarding his recommended appointment to the JV Assistant Football Coach position.

- j. Abstention is only required when a reasonable person's independence of judgment is "materially affected by" the public officer's significant pecuniary interest or commitment in a private capacity. See NRS 281A.420 and *In re Woodbury*, Comm'n Op. No. 99-56 (1999). The evidence does not indicate that Hyde had a significant pecuniary interest that would be materially affected by a volunteer coaching position in which there was no expectation of economic value associated with the position.
- k. In appreciation of the public's concerns regarding the disclosure and abstention responsibilities of public officers in the context of the CCSD matters, Hyde and the Commission agree to promote the Commission's outreach efforts by sponsoring an Ethics in Government Law training conducted by the Executive Director of the Commission to encourage continued compliance with the Ethics Law. This training will be conducted no later than twelve months after the date this Stipulated Agreement is executed.
- l. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- m. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil or criminal regarding Hyde.

**6. WAIVER:**


- a. Hyde has waived his right to an Investigatory Panel proceeding and, upon approval of this Stipulation by the Commission, Hyde knowingly and voluntarily waives his right to any related hearing before the full Commission on the allegations in this RFO (No. 16-84C) and of any and all rights he may be



accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.


- b. Hyde also knowingly and voluntarily waives his right to any judicial review of this matter, as provided in NRS Chapter 281A, NRS Chapter 233B, any extraordinary writs as provided in NRS Chapter 34, or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on February 15, 2017.

DATED this 29 day of Feb., 2017.   
Matt Hyde

The above Stipulated Agreement is approved by:

FOR MATT HYDE, Subject

DATED this 24<sup>th</sup> day of Feb., 2017.   
Shafia S. Hales, Esq.

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director, Commission on Ethics

DATED this 16<sup>th</sup> day of March, 2017.   
Judy A. Prutzman, Esq.  
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 6<sup>th</sup> day of March, 2017.   
Tracy L. Chase, Esq.  
Commission Counsel

///



The above Stipulated Agreement is accepted by the Commission.<sup>2</sup>

DATED February 15, 2017.

By: /s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Chair

By: /s/ Phillip K. O'Neill  
Phillip K. O'Neill  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver, Esq.  
Vice-Chair

By: /s/ Lynn Stewart  
Lynn Stewart  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Commissioner

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

---

<sup>2</sup> Hyde waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.

# Exhibit 3



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**Tricia Strasdin**, Member, Churchill  
County School District Board of Trustees,  
State of Nevada,

Request for Opinion No. **16-85C**

\_\_\_\_\_  
Subject. /

#### STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 16-85C before the Nevada Commission on Ethics (“Commission”) concerning Tricia Strasdin (“Strasdin”), a Member of the Board of Trustees (“Board”) for the Churchill County School District (“CCSD”), State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, Strasdin served as a member of the CCSD Board. As such, Strasdin is a public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Strasdin in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about December 1, 2016, the Commission received RFO No. 16-85C from a member of the public (“Requester”), alleging that Strasdin:
- 1) Failed in her commitment to avoid conflicts between her personal interests and her public duties (NRS 281A.020(1));
  - 2) Failed to disclose a conflict of interest for which disclosure is required (NRS 281A.420(1)); and

- 3) Failed to abstain from acting on a matter in which she had a conflict of interest (NRS 281A.420(3)).
- b. On or about December 13, 2016, staff of the Commission issued a Notice to Subject under NRS 281A.440(2), stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1) and NRS 281A.420(1) and (3). Strasdin was provided an opportunity to respond to the RFO.
- c. On or about January 18, 2017, Strasdin, through legal counsel, Sharla Hales, Esq., provided a written Response to the RFO.
- d. Strasdin waived her right to a panel determination pursuant to NRS 281A.440 and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.020 and 281A.420(1) and (3).
- e. In lieu of a panel determination and a hearing, Strasdin now enters into this Stipulated Agreement acknowledging her duty as a public officer to commit herself to protect the public trust and conform her conduct to Chapter 281A of the Nevada Revised Statutes.

4. **STIPULATED FACTS:** At all material times, the following facts were relevant to this matter: <sup>1</sup>

- a. Strasdin was appointed as a Member of the CCSD Board on June 23, 2016. She is a public officer as defined in NRS 281A.160.
- b. CCSD is a political subdivision as defined in NRS 281A.145.
- c. Michelle Dalager (“Dalager”) resides with and has a relationship with Strasdin that is substantially similar to a domestic partnership, and she is employed by CCSD as a teacher at Churchill County High School.
- d. Sharla Hales, Esq., is a lawyer licensed in the State of Nevada and serves as legal counsel for the CCSD Board and is representing Strasdin in these RFO proceedings.

---

<sup>1</sup> Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- e. The CCSD Board approves certain recommended personnel actions in the district and such actions are regularly listed on the Board agenda and materials and are included on consent agendas which contain items that the District staff believe to be routine and without any reasonable basis for the Board to vote against the items.
- f. As a Board member, Strasdin holds final authority over decisions that affect Ms. Dalager's terms and conditions of employment with CCSD, including her benefits and salary.

**August 11, 2016 CCSD Board Meeting**

- g. At the August 11, 2016 meeting, the Consent Agenda included seven items. Consent Agenda Item A involved Ms. Dalager and was noted on the agenda as follows:
  - A. Approval of Recommended Personnel Action (Attachment A)
- h. Attachment A to the agenda listed Ms. Dalager as the person recommended to fill the position of 8<sup>th</sup> Grade Girls Basketball Coach, a part-time paid position.
- i. The August 11, 2016 meeting was the second full Board meeting attended by Strasdin as a new Board member.
- j. Strasdin does not recall that Consent Agenda Item A involved Ms. Dalager. Consequently, she did not provide a disclosure regarding her relationship with Ms. Dalager and voted with the Board to approve the Consent Agenda unanimously.

**October 27, 2016 CCSD Board Meeting**

- k. At the October 27, 2016 meeting, the Consent Agenda included eleven items. Consent Agenda Item A involved Ms. Dalager and was noted on the agenda as follows:
  - A. Approval of Recommended Personnel Action (Attachment A)
- l. The original Board Material Packet included Attachment A, which did not list Ms. Dalager as the person recommended to fill the position of Head JV Boys Basketball Coach, a part-time paid position.

m. A revised Attachment A, which included Dalager's name, was provided to Strasdin and other Board members when they arrived at the meeting.

n. The minutes reflect the following:

Trustee Strasdin disclosed that under extra-curricular activities on the personnel sheet that her partner, Michelle Dalager, is recommended for the Head JV Boys Basketball Coaching position for which she has coached for a long time.

o. Strasdin did not have time to confer with Sharla Hales, Esq. about her abstention obligation before she voted with the Board to approve the Consent Agenda unanimously.

**5. TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Strasdin and the Commission agree as follows:

a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.

b. Strasdin holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the citizens of Churchill County).

c. Strasdin has a commitment in a private capacity to the interests of Ms. Dalager because she has a relationship with Dalager that is substantially similar to a domestic partnership. See NRS 281A.065(6).

d. Public officers have a duty to avoid conflicts of interest. See NRS 281A.020. As a public officer, the conflicts of interest provisions of the Ethics Law apply to Strasdin's conduct. Specifically, Strasdin must commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning certain private relationships and significant pecuniary interests which would reasonably affect her decision on matters before the CCSD Board. See NRS 281A.420(1). As a public officer, Strasdin is also required to abstain from voting or otherwise acting on matters in which the interests of persons with whom she shares such relationships would clearly and materially affect the independence of judgment of a reasonable person in her position. NRS 281A.420(3).

- e. The disclosure and abstention requirements of NRS 281A.420 extend to consent agenda items. *See In re Tobler and Mayes*, Comm'n Op. Nos. 11-76C and 11-77C (2012). Each matter on a consent agenda requires action for final approval. Without a formal vote of the Board, the consent item is not approved and any staff action does not become effective. Accordingly, when considering items on a consent agenda, public officers are required to properly disclose any significant pecuniary interests or commitments in a private capacity to the interests of others and undertake the statutorily directed abstention analysis on the record to determine whether abstention is appropriate.
- f. Strasdin understands that she must disclose her relationship with Ms. Dalager whenever a matter involving Dalager comes before the Board, even though the relationship is a matter of public record by virtue of Strasdin's disclosure at the October 27, 2016 meeting. Such matters include, but are not limited to, the topics of labor management, discussions about salaries, job duties, employment benefits, pension plans, disciplinary matters, litigation, general terms and conditions of employment, and personnel policy issues. *See In re Murnane*, Comm'n Op. No. 15-45A (2016).
- g. Under prior Commission precedent, public officials must vigilantly search for reasonably ascertainable potential conflicts of interest and cannot remain unaware of readily knowable facts. *In re Atkinson Gates, Williams and Malone*, Comm'n Op. Nos. 97-54, 97-59, 97-66, 97-53 and 97-52 (1997). Instead, public officials must design and implement systems to spot and respond to potential ethical conflicts. *Id.*
- h. Disclosures required by the Ethics Law must occur "at the time the matter is considered." NRS 281A.420(1). The Ethics Law does not recognize a continuing disclosure or a disclosure by reference. Silence based upon a prior disclosure at a prior meeting fails to inform the public of the nature and extent of the conflict at the meeting where no actual disclosure occurred. *See In re Buck*, Comm'n Opinion No. 11-63C (2011) (holding that incorporation by reference of her prior disclosure even though based upon the advice of counsel, did not satisfy the disclosure requirements of NRS 281A.420(1)).

- i. As a public officer, Strasdin is also prohibited from voting upon or advocating for or against the passage of a matter in which the independence of judgment of a reasonable person in her situation would be materially affected by her commitment to Ms. Dalager. NRS 281A.420(3)(c). However, it is presumed that the independence of judgment of a reasonable person is not materially affected if the resulting benefits or detriments to the public officer, or the person to whom the public officer has a commitment in a private capacity, are not more or less than those accruing to any other member of the group affected by the matter. NRS 281A.420(4)(a). Accordingly, provided Strasdin makes a proper disclosure, she need not abstain on matters where the result of Board action provides no special advantage or particular benefit or detriment to either herself or Ms. Dalager, but will impact all District employees in the same manner.
- j. Strasdin understands that she has a continuing duty to conduct an abstention analysis under NRS 281A.420(3) and must abstain from acting on matters in which the independence of judgment of a reasonable person in Strasdin's situation would be materially affected by her commitment in a private capacity to the interests of Ms. Dalager. In particular, Strasdin clearly has an obligation to abstain when the Board considers the terms and conditions of Dalager's employment. Strasdin must also take responsibility for the analysis of non-employment matters that come before the Board and make a reasonable determination as to whether her relationship with Ms. Dalager would tend to influence a reasonable person in her situation in rendering votes or other decisions, including whether there would be an appearance that her vote would be influenced by her private relationship with Ms. Dalager. *See In re Public Officer*, Comm'n Op. No. 16-14A (2016) (discussing disclosure and abstention standards applicable to spouses).
- k. Strasdin's actions constitute a single course of conduct resulting in one nonwillful violation of the Ethics Law, implicating the provisions of NRS 281A.020(1) and NRS 281A.420(1) and (3).
- l. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475, the Commission concludes that Strasdin's violation



in this case should not be deemed a “willful violation” pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:

- 1) The gravity of the violation is not substantial;
  - 2) Strasdin has not previously been the subject of any violation of the Ethics Law;
  - 3) Strasdin has not received any personal financial gain as the result of her conduct in this matter;
  - 4) Strasdin has been diligent to cooperate with and participate in the Commission’s investigation and analysis, as well as the resolution of this matter; and
  - 5) Strasdin, as a recently appointed Board member, is holding her first public office.
- m. Strasdin agrees to attend an Ethics in Government Law training session with the Commission’s Executive Director for the CCSD Board members, to ensure that the Board members understand the disclosure and abstention requirements, including responsibilities related to consent agenda items. See, e.g., *In re Woodbury*, Comm’n Op. No. 16-40C (2016). This training will be conducted no later than twelve months after the date this Stipulated Agreement is executed.
- n. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- o. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil or criminal regarding Strasdin.

///

///

6. **WAIVER:**

- a. Strasdin knowingly and voluntarily waives her right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in this RFO (No. 16-85C) and of any and all rights she may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Strasdin knowingly and voluntarily waives her right to any judicial review of this matter, as provided in NRS Chapter 281A, NRS Chapter 233B, any extraordinary writs as provided in NRS Chapter 34, or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on February 15, 2017.

DATED this 27 day of Feb, 2017. Tricia Strasdin  
Tricia Strasdin

The above Stipulated Agreement is approved by:

DATED this 24<sup>th</sup> day of Feb., 2017. Sharla Hales  
FOR TRICIA STRASDIN, Subject  
Sharla Hales, Esq.

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director, Commission on Ethics

DATED this 16<sup>th</sup> day of March, 2017. Judy A. Prutzman  
Judy A. Prutzman, Esq.  
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 6th day of March, 2017.

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

The above Stipulated Agreement is accepted by the Commission.<sup>2</sup>

DATED February 15, 2017.

By: /s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Chair

By: /s/ Phillip K. O'Neill  
Phillip K. O'Neill  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver, Esq.  
Vice-Chair

By: /s/ Lynn Stewart  
Lynn Stewart  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Commissioner

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

<sup>2</sup> Strasdin waived her right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.

# Exhibit 4



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**Kimberlie Buffington**, Former Member,  
Lander County Planning Commission,  
State of Nevada,

Request for Opinion No. **16-59C**

\_\_\_\_\_  
Subject. /

### STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 16-59C before the Nevada Commission on Ethics (“Commission”) concerning Kimberlie Buffington (“Buffington”), a former member of the Lander County Planning Commission (“Planning Commission”), State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION**: At all material times, Buffington served as a member of the Planning Commission. As such, Buffington was a public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Buffington in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about August 1, 2016, the Commission received RFO No. 16-59C from a member of the public (“Requester”), alleging that Buffington:
- 1) Failed in her commitment to avoid conflicts between her personal interests and her public duties (NRS 281A.020(1));
  - 2) Accepted favors or economic opportunities which would tend to improperly influence a reasonable person in Buffington’s position as a public officer to

- depart from the faithful and impartial discharge of her duties (NRS 281A.400(1));
- 3) Used her position to secure unwarranted privileges, preferences or advantages for herself or any business entity in which there is a significant pecuniary interest (NRS 281A.400(2));
  - 4) Represented or counseled for compensation a private person on an issue which was under consideration by the Planning Commission during Buffington's public service with the Planning Commission (NRS 281A.410(1)(b));
  - 5) Failed to disclose a conflict of interest for which disclosure was required (NRS 281A.420(1)); and
  - 6) Acted on a matter in which abstention was required (NRS 281A.420(3)).
- b. On or about December 13, 2016, staff of the Commission issued a *Notice to Subject* under NRS 281A.440(2), stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.020(1), NRS 281A.400(1) and (2), NRS 281A.420(1) and (3) and NRS 281A.410(1)(b). Buffington was provided an opportunity to respond to the RFO.
  - c. On or about August 23, 2016, Buffington, through her legal counsel, Anthony J. Walsh, Esq. of Walsh, Baker & Rosevear, filed an *Appeal and Objection to Jurisdiction of Nevada Commission on Ethics. A Supplemental Brief Regarding the Jurisdiction of the Nevada Commission on Ethics* was filed on or about September 21, 2016. Accordingly, the Commission issued a *Notice of Jurisdictional Appeal* on or about September 22, 2016, to both Buffington and the Requester, setting the matter to be heard at the October 3, 2016 Commission Meeting and providing an opportunity for the Requester to submit a response to Buffington's request to review the jurisdictional determination.<sup>1</sup>
  - d. On or about October 31, 2016, the Commission issued its *Order on Jurisdiction* denying the request to overturn the Executive Director's jurisdictional determination, initiating the investigation and setting the date to respond to the

---

<sup>1</sup> NAC 281A.405 has since been amended by temporary regulations T03-16A, which became effective September 21, 2016, subsequent to Buffington requesting a review of the jurisdictional determination.



RFO. On or about December 3, 2016, Buffington, through her legal counsel, submitted a *Response* to the RFO.

- e. Buffington waived her rights to a panel determination pursuant to NRS 281A.440, and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.020(1) and NRS 281A.420(1) and (3).

4. **STIPULATED FACTS:** At all material times, the following facts were relevant to this matter:<sup>2</sup>

- a. Buffington was an appointed member of the Lander County Planning Commission (“Planning Commission”). She first served on the Planning Commission between 2010 and 2011, was re-appointed in 2012, and then resigned in January 2016. At all times relevant to this matter, Buffington was a “public officer,” as defined by NRS 281A.160.
- b. In her private capacity, Buffington is a licensed real estate agent in Nevada. She is the managing broker for Nolan Realty in Battle Mountain, Nevada.
- c. Theodore C. Herrera, Esq., is a lawyer licensed in the State of Nevada and serves as the elected District Attorney for Lander County.
- d. The Planning Commission is a political subdivision as defined in NRS 281A.145.
- e. The Planning Commission has decision-making authority over certain land use matters, including special use permits and variances.
- f. Jay Wintle lives in Lander County and has listed various parcels of undeveloped real estate with Buffington and Nolan Realty since approximately 2009.
- g. During 2015, Buffington was the listing real estate agent for two of Wintle’s parcels located at Chukkar Lane and 350 SR 305 and listed for \$376,000 and \$1,016,720, respectively.

///

///

---

<sup>2</sup> Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- h. In July 2012, Wintle and Buffington jointly purchased a 39-acre parcel of undeveloped real estate located at 735 Bogey Drive in Lander County (“Bogey Drive Property”). This property was later separated into four separate parcels in 2013.
- i. On or about January 27, 2015, Wintle and Buffington executed quitclaim deeds that divided the Bogey Drive Property between them, with Wintle retaining one parcel and Buffington retaining three parcels.

**April 8, 2015 Planning Commission Meeting**

- j. At the April 8, 2015 meeting, agenda item 5 related to a zone change request submitted by Wintle and related to other property owned by Wintle (unrelated to the Bogey Drive Property). This item was noted on the agenda as follows:

(5) Discussion for possible action recommending to the Lander County Board Commissioners to approve/disapprove the following Zone Change request, and other matters properly related thereto.

Applicant: Jay Wintle  
Location: Lots 14, 18, and 22 of Ashcroft map #183519 within the SE4 Of 14/32/44, generally located north of the W. Humboldt Rd. and west of 28<sup>th</sup> street alignments.  
APN: 010 280 17, 010 280 21, 010 280 25  
Type: To request a zone change from Farm and Ranch District (A-3) to One-Acre Agriculture District (A-1)

- k. The minutes reflect that Buffington made no disclosure regarding her relationship with Wintle and voted with the Planning Commission to approve the agenda item unanimously.

**July 8, 2015 Planning Commission Meeting**

- l. At the July 8, 2015 meeting, agenda items 1 and 2 related to parcel changes requested by Wintle regarding other property he owned (unrelated to the Bogey Drive Property). These items were noted on the agenda as follows:

///

///



(1) Information and discussion only on a Parcel Map, and other matters properly related

Applicant: Jay Wintle  
Location: Lot 18 – Ashcraft Map #183519  
Generally located west of 28<sup>th</sup> Street along the Yellow Brick Road alignment, Battle Mountain  
APN: 010 280 21  
Type: Splitting one (1) parcel into four (4) parcels.

(2) Information and discussion only on a Parcel Map, and other matters properly related thereto.

Applicant: Jay Wintle  
Location: Lot 22 – Ashcraft Map #183519  
Generally located west of 28<sup>th</sup> Street along the Yellow Brick Road alignment, Battle Mountain  
APN: 010 280 25  
Type: Splitting one (1) parcel into four (4) parcels.

m. The minutes reflect that Buffington made no disclosure regarding her relationship with Wintle and did not participate in the discussion on these agenda items. No action was taken by the Planning Commission on either item.

**September 9, 2015 Planning Commission Meeting**

n. At the September 9, 2015 meeting, agenda item 6 related to a street name request submitted by Wintle regarding other property he owned (unrelated to the Bogey Drive Property). These items were noted on the agenda as follows:

(6) Discussion for possible action to approve/disapprove the following Street Name request, and other matters properly related thereto.

Applicant: Jay Wintle  
Project: Parcel Maps  
APN: 002-280-21 & 010-280-25  
Type: To reserve a new street name: Faded Sage Drive

o. The minutes reflect that Buffington made no disclosure regarding her relationship with Wintle and made the motion to approve the name conditioned upon the parcel maps approval. The motion was voted and carried unanimously.

p. At the September 9, 2015, agenda items 7 and 8 related to parcel changes requested by Wintle regarding other property he owned (unrelated to the Bogey Drive Property). These items were noted on the agenda as follows:

(7) Discussion for possible action regarding approval/disapproval of the following Parcel Map, and other matters properly related thereto.

Applicant: Jay Wintle  
Location: Lot 18 – Ashcraft Map #183519  
Generally located west of 28<sup>th</sup> Street along the Yellow Brick Road alignment, Battle Mountain  
APN: 010 280 21  
Type: Splitting one (1) parcel into four (4) parcels.

(8) Discussion for possible action regarding approval/disapproval of the following Parcel Map, and other matters properly related thereto.

Applicant: Jay Wintle  
Location: Lot 22 – Ashcraft Map #183519  
Generally located west of 28<sup>th</sup> Street along the Yellow Brick Road alignment, Battle Mountain  
APN: 010 280 25  
Type: Splitting one (1) parcel into four (4) parcels.

- q. The minutes reflect that Buffington made no disclosure regarding her relationship with Wintle and voted with the Planning Commission to approve both agenda items unanimously.
- r. District Attorney Herrera was not present at the Planning Commission's meetings on April 8, 2015, July 8, 2015 and September 9, 2015 and did not provide any legal advice to Buffington regarding her disclosure/abstention obligations with regard to matters that were agendized for these meetings.
- s. On December 10, 2015, Buffington and Wintle entered into a listing agreement for two of the parcels that resulted from the rezoning and parcel subdivision requests presented by Wintle and approved by the Planning Commission at the April 8, 2015 and September 9, 2015 meetings.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Buffington and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. Buffington held a public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the citizens of Lander County).
- c. Buffington had a commitment in a private capacity to the interests of Wintle because they have a substantial and continuous business relationship based on their realtor/client relationship. NRS 281A.065(5).
- d. As a public officer, Buffington had a duty to avoid conflicts of interest. See NRS 281A.020. Specifically, Buffington was required to commit to avoid actual and perceived conflicts of interest, including publicly disclosing sufficient information concerning any private relationships and pecuniary interests which would reasonably affect her decision on matters before the Planning Commission. See NRS 281A.420(1). As a public officer, Buffington was also required to abstain from voting or otherwise acting on matters in which such relationships would clearly and materially affect the independence of judgment of a reasonable person in her position. See NRS 281A.420(3).
- e. Buffington did not adequately avoid the conflict of interest between her public duties and private interests by not disclosing her relationship with Wintle during Planning Commission meetings on April 8, 2015 and September 9, 2015 before voting on agenda items that involved Wintle.
- f. Buffington now understands that she should have disclosed sufficient information regarding her relationship with Wintle, a person to whom she had a commitment in a private capacity, to inform the public of the nature and extent of the relationship. The disclosure should have occurred at every meeting and for every agenda item which the Planning Commission considered that affected Wintle's interests.
- g. The disclosure should have also included information regarding the potential effect of Buffington's action or abstention on the agenda items and the effect it may have had on her and Wintle, as the person to whom she had a commitment

- to in a private capacity. See *In re Woodbury*, Comm'n Op. No. 99-56 (1999) and *In re Derbidge*, Comm'n Op. No. 13-05C (2013).
- h. Abstention is required when a reasonable person's independence of judgment is materially affected by the public officer's significant pecuniary interest or commitment in a private capacity. NRS 281A.420 and *Woodbury*. In cases involving substantial and continuous business relationships, the interests of a business partner or client are statutorily attributed to the public officer based on the presumption that a person lacks independent judgment toward the interests of a person with whom the public officer shares an important business relationship. *In re Public Officer*, Comm'n Op. No. 13-71A (2014). Thus, a public officer must abstain on all matters before the public body which materially affect the interests of his business partner or client, including interests unrelated to the business shared with the public officer. *In re Derbidge*, Comm'n Op. No. 13-05C (2013).
  - i. Although Buffington lacked any pecuniary interest in the zoning and parcel subdivision matters that Wintle brought before the Planning Commission at the meetings on April 8, 2015 and September 9, 2015, Buffington had a commitment in a private capacity to Wintle as his real estate agent. Under the circumstances presented, the nature of the realtor-client relationship necessitated abstention because the interests of Wintle were statutorily attributed to Buffington and could be materially affected by her official actions. Therefore, Buffington should have abstained from voting on the agenda items related to Wintle's property at the April 8, 2015 and September 9, 2015 Planning Commission meetings.
  - j. The provisions of NRS 281A.420 contemplate formal actions (or decisions) by public officers which affect the public trust and the Commission has not interpreted the provisions to extend to meetings at which no action is taken. See *In re Stark*, Comm'n Op. No. 10-48C (2012). While the law does not require disclosure during discussions of a matter placed on an agenda for information only, to avoid an appearance of impropriety regarding potential influence or improper use of her public position, the better course of action would have been

- for Buffington to disclose her relationship with Wintle when agenda items related to Wintle's property were discussed at the July 8, 2015 Planning Commission meeting.
- k. Buffington's actions are deemed to constitute a single course of conduct resulting in one violation of the Ethics Law, implicating the provisions of NRS 281A.020(1) and NRS 281A.420(1) and (3).
  - l. However, the allegations pertaining to NRS 281A.400(1) and (2) and NRS 281A.410(1)(b) are not supported by a preponderance of the evidence under NRS 281A.480(9) and are therefore dismissed through this Stipulated Agreement.
  - m. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Buffington's violation in this case should be deemed "willful" pursuant to NRS 281A.170. The Commission took into consideration the following mitigating factors:
    - 1) Buffington has not previously been the subject of any violation of the Ethics Law. This is Buffington's first violation. She has resigned from public office and does not foresee holding public office in the future.
    - 2) Buffington has been diligent to cooperate with and participate in the Commission's investigation and resolution of this matter.
    - 3) Buffington maintains that she relied upon the advice of prior District Attorneys when she decided whether to vote or abstain. This legal advice was not, however, specific to the circumstances related to this RFO and therefore does not satisfy the criteria of NRS 281A.480.
  - n. Despite these mitigating factors and although Buffington did not intend to violate the Ethics Law, her violation of NRS Chapter 281A was willful because she acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.
  - o. For an act to be intentional, NRS 281A.105 requires that Buffington acted voluntarily or deliberately. The definition further states that proof of bad faith, ill

will, evil or malice is not required. Buffington's conduct was not accidental or inadvertent. Nevertheless, Buffington did not act in bad faith or with malicious intent to benefit her private interests.

- p. NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission." NRS Chapter 281A does not require that Buffington had actual knowledge that her conduct violated the Ethics Law, but it does impose constructive knowledge when other facts are present that should put an ordinarily prudent person upon inquiry. See *In re Stark*, Comm'n Op. No. 10-48C (2010).
- q. For the willful violation, Buffington will pay a civil penalty of \$1,000.00, pursuant to NRS 281A.480, not later than 90 days after her receipt of the fully executed Stipulated Agreement in this matter. Buffington may pay the penalty in one lump sum payment or in monthly installment payments as negotiated with the Commission's Executive Director.
- r. Buffington and the Commission agree that the Commission's Executive Director will send a letter to the Nevada Real Estate Division that provides general information about RFOs recently issued by the Commission regarding the disclosure and abstention responsibilities of public officers who are real estate licensees.
- s. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- t. This agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Buffington.

///

///

///



**6. WAIVER AND FINAL OPINION:**

- a. Buffington knowingly and voluntarily waives her right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in this RFO (No. 16-59C) and of any and all rights she may be accorded with regard to this matter pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Buffington knowingly and voluntarily waives her right to any judicial review of this matter, as provided in NRS Chapter 281A, NRS Chapter 233B, any extraordinary writs, as provided in NRS Chapter 34, and any other applicable provisions of law.
- c. Upon approval of this Stipulated Agreement, the Stipulated Agreement will be published as the final opinion. This RFO will then be closed and no further action will be taken on the RFO, including under NRS 281A.480(7).

**7. ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on February 15, 2017.

DATED this 2 day of March, 2017,   
Kimberlie Buffington

The above Stipulated Agreement is approved by:

FOR KIMBERLIE BUFFINGTON, Subject

DATED this 7 day of March, 2017,   
Anthony J. Walsh, Esq.  
Counsel for Buffington

///  
///  
///

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director, Commission on Ethics

DATED this 14<sup>th</sup> day of March, 2017.

Judy A. Prutzman  
Judy A. Prutzman, Esq.  
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 14<sup>th</sup> day of March, 2017.

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

The above Stipulated Agreement is accepted by the Commission.<sup>3</sup>

DATED February 15, 2017.

By: /s/ Cheryl A. Lau  
Cheryl A. Lau, Esq.  
Chair

By: /s/ Phillip K. O'Neill  
Phillip K. O'Neill  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver, Esq.  
Vice-Chair

By: /s/ Lynn Stewart  
Lynn Stewart  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Commissioner

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

<sup>3</sup> Buffington waived her right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.



AGENDA ITEM NO. 4

AGENDA ITEM NO. 4

**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>

**MEMORANDUM**

\*\*\*\*\*

DATE: March 3, 2017  
TO: Senate Finance & Assembly Ways & Means  
FROM: Yvonne M. Nevarez-Goodson, Esq., Executive Director  
SUBJECT: **New Decision Unit to Change Methodology for Determining State/Local Funding**

The Nevada Commission on Ethics is responsible for advising and educating all State and local government public officers and employees regarding the provisions of the Nevada Ethics in Government Law (NRS 281A). The Commission also serves as a quasi-judicial body responsible for interpreting and enforcing the Ethics Law in both advisory and complaint-driven matters (“Requests for Opinion” or “RFOs”) and defending its administrative decisions in various judicial forums.

Pursuant to NRS 281A.270, the Commission’s overall budget is funded through a proportionate split between the State General Fund and Counties and Cities with certain threshold populations (currently 21% State, 79% Local Government). The statute expressly states which local governments are responsible for contributing to the Commission’s budget based on population and how their respective assessments should be calculated. However, the statute is silent regarding the underlying methodology under which the overall split is established between the State General Fund and the local governments, and it states only that the Commission’s Executive Director (in consultation with the Budget Division and LCB Fiscal Division) shall determine the local government assessments.

Specifically, NRS 281A.270 provides, in relevant part:

**NRS 281A.270 Assessment for administrative costs: Determination; payment by certain cities and counties; use of proceeds; collection.**

1. Each county whose population is 10,000 or more and each city whose population is 15,000 or more and that is located within such a county shall pay an assessment for the costs incurred by the Commission each biennium in carrying out its functions pursuant to this chapter. The total amount of money to be derived from assessments paid pursuant to this subsection for a biennium must be determined by the Legislature in the legislatively approved budget of the Commission for that biennium. The assessments must be apportioned among each such city and county based on the proportion that the total population of the city or the total population of the unincorporated area of the county bears to the total population of all such cities and the unincorporated areas of all such counties in this State.

2. On or before July 1 of each odd-numbered year, the Executive Director shall, in consultation with the Budget Division of the Office of Finance and the Fiscal Analysis Division of the Legislative Counsel Bureau, determine for the next ensuing biennium the amount of the assessments due for each city and county that is required to pay an assessment pursuant to subsection 1. The assessments must be paid to the Commission in semiannual installments that are due on or before August 1 and February 1 of each year of the biennium. The Executive Director shall send out a billing statement to each such city or county which states the amount of the semiannual installment payment due from the city or county.

...

5. As used in this section, "population" means the current population estimate for that city or county as determined and published by the Department of Taxation and the demographer employed pursuant to [NRS 360.283](#).

The Commission presently calculates the State/local funding split based on the number of requests for opinion received by the Commission during the prior 2 fiscal years regarding the conduct of public officers or employees, including requests for advisory opinions and complaints (hereafter referred to as "RFOs").

**Purpose of Decision Unit**

This decision unit would change the methodology used to calculate the biennial State/Local Government split under NRS 281A.270 to be based on the Commission's overall jurisdiction of State public officers and employees versus Local Government public officer and employees.

The proposed new methodology will more accurately reflect the performance of the Commission and will establish consistency in the split for budget planning purposes for both State and local governments.

**Reason for Changing Methodology**

Historically, the breakdown between State and local governments has been calculated (by informal agreement of the Commission's Executive Director, Budget Division and LCB Fiscal Division) based on the number of Requests for Opinion ("RFOs"), both advisory and complaint, received by the Commission during the prior 2 fiscal years (before the biennium) regarding the conduct of State public officers and employees versus Local Government public officers and employees. Based on that percentage, the Cities/Counties with the required populations are assessed for their proportionate share of the Local Government's overall percentage.

During the past 3 biennia, the percentage breakdown of RFOs has been as follows:

	<b>FY11-FY12</b>	<b>FY13-FY14</b>	<b>FY15-FY16</b>
<b>STATE</b>	31%	21%	40%
<b>LOCALS</b>	69%	79%	60%

**Averages:** State – 30.6%  
Local – 69.3%

The number of RFOs received by the Commission is not a true indication of the Commission's resources attributable to its costs in support of State and local governments. The RFOs constitute only a portion of the work undertaken by the Commission, which otherwise includes, as its primary mission, outreach and education throughout the State and local governments, and litigation of certain matters. First, advisory and complaint cases are distinct; advisory cases require less staff and Commission investment whereas complaint cases demand significant administrative, investigatory and hearing-related resources of the Commission. Second, the majority of complaint cases (70/100 in FY15) are dismissed at the outset for lack of jurisdiction, yet they are counted in the overall total. Third, the number of RFOs received does not account for the few cases each year that become subject to judicial review and usurp significant Commission resources. Finally, the RFO breakdown does not address the Commission's primary mission which includes outreach and education in the form of trainings and public outreach to State and local jurisdictions.

The more prudent State/local assessment would be based on the Commission's overall jurisdictional split between State public officers and employees versus Local Government. Under the current methodology, the Commission will have inconsistent reliance between State/Local Government funding for budgeting purposes and the split will not accurately reflect the activities of the Commission which are outlined in the Commission's performance measures. The Commission cannot control which public officers or employees will file requests for advisory opinions or have complaints filed against them. If we base the budget split on this factor alone, it may have the effect of preempting filings due to criticism over budgetary impact on specific jurisdictions.

As mentioned herein, the Commission cannot adequately predict or control who will file or become the subject of RFOs before the Commission. In fact, the largest number of RFOs that come from local government derive from rural Counties/Cities and their political subdivisions (such as General Improvement Districts), yet the majority of the assessments against local governments are against the largest Counties and Cities (Clark/Washoe), for which we see relatively few RFOs each year.

Nevertheless, the current practice presents the opportunity for significant shifts which operate as potential disadvantages to State or local government, as applicable. For example, the Commission may not receive a single RFO from any local government and the entire budget would become attributable to the State General Fund, or vice-versa such that the State could receive a windfall.

Finally, the breakdown of RFOs is subject to manipulation to create unjust splits. This is not to suggest that has ever occurred or will in the future, but such an accounting standard seems problematic. For example, last fiscal year the Commission received 16 identical

RFOs regarding 2 subjects (State Public Officers) from different requesters. These RFOs were logged in and processed as 16 separate RFOs, but ultimately involved identical complaints against 2 public officers. The Commission does not maintain data to confirm how those breakdowns have been configured in the past. Finally, the number of RFOs also includes non-jurisdictional cases, i.e., RFOs received by the Commission but ultimately denied for investigation/opinion for lack of jurisdiction. The Commission utilizes resources to determine jurisdiction, but if denied, those cases shouldn't be weighed the same against those which go forward to hearing/resolution.

### **Proposed New Methodology**

Given this data, this decision unit proposes a change in the manner in which the State/Local Split is determined based on the total number of public officers and employees in the State versus the Local Governments (all of whom are subject to the Commission's jurisdiction).

The Nevada Department of Employment, Training and Rehabilitation (DETR) is the State agency responsible for determining and publishing monthly statistics related to the Nevada labor market. DETR analyzes labor market data in the State and calculates various employment statistics, including the number of employees in State and local government employment sectors (see example below).

Super Sector	Employment(p)	Last Month	Last Year	Net Change Mnth	% Chg Mnth	Net Change Year	% Chg Year
Government	156,500	156,900	154,500	-400	-0.25%	2,000	1.29%
Federal	18,600	18,400	18,300	200	1.09%	300	1.64%
State government	39,700	39,800	38,600	-100	-0.25%	1,100	2.85%
Local government	98,200	98,700	97,600	-500	-0.51%	600	0.61%

Navigation: -- Previous 3 / 3 Next -- Page 12

The Commission analyzes the average number of State and local employees/officers in FY15 based on DETR's Data Search (see attached averages). DETR's statistics include State and local judges within the breakdown of public employees. However, judges are not subject to the Commission's jurisdiction and therefore the Commission has subtracted the total number of State and local judges from DETR's statistics based on the number of judges reported in the Annual Report of the Nevada Judiciary FY15 (see attached Count). Based on the revised data, the State employs approximately 38,258 employees/officers and the local governments employ approximately 96,969 employees/officers for a total of 135,227 employees/officers within the Commission's jurisdiction. This establishes an average split of 28% State employees versus 72% local government employees. Accordingly, the Commission's budget should be split consistent with these statistics. Notably, a 3-year biennial average of the Commission's RFOs results in the same approximate split of 30% State and 70% Local Government, as mentioned above.

In conclusion, the Commission recommends approval of this alternative accounting methodology to reflect a more appropriate and consistent State/Local Government split for the Commission's budget based on the overall jurisdiction/customers of the Commission.

## NCOE Local vs State Jurisdiction based on Number of Public Officers and Employees

Source: NV DETR Research & Analysis Current Employment Statistics FY15  
and FY15 Annual Report of the Nevada Judiciary

Area	Year	Period	Period Value	Industry	Employed Number
Nevada	2014	July	201407	Local government	96700
Nevada	2014	August	201408	Local government	97200
Nevada	2014	September	201409	Local government	96800
Nevada	2014	October	201410	Local government	96700
Nevada	2014	November	201411	Local government	96700
Nevada	2014	December	201412	Local government	96900
Nevada	2015	January	201501	Local government	96900
Nevada	2015	February	201502	Local government	97000
Nevada	2015	March	201503	Local government	97100
Nevada	2015	April	201504	Local government	97400
Nevada	2015	May	201505	Local government	97600
Nevada	2015	June	201506	Local government	97700
FY15 AVG.=					97058.33
Minus Local Judges=					89
Total Local Gov. Officers/Employees Under NCOE Jurisdiction					<b>96,969</b>
					<b>72%</b>
Nevada	2014	July	201407	State government	37800
Nevada	2014	August	201408	State government	37800
Nevada	2014	September	201409	State government	38200
Nevada	2014	October	201410	State government	38200
Nevada	2014	November	201411	State government	38300
Nevada	2014	December	201412	State government	38200
Nevada	2015	January	201501	State government	38600
Nevada	2015	February	201502	State government	38500
Nevada	2015	March	201503	State government	38600
Nevada	2015	April	201504	State government	38700
Nevada	2015	May	201505	State government	38600
Nevada	2015	June	201506	State government	38700
FY15 AVG.=					38350
Minus State Judges=					92
Total State Officers/Employees Under NCOE Jurisdiction					<b>38,258.00</b>
					<b>28%</b>
Total Officers/Employees Under NCOE Jurisdiction					<b>135,227</b>
					<b>100%</b>

<b>Type of Court:</b>	<b>Funding Source:</b>	<b>Number of Judges:</b>	
Municipal Courts	City	30	
Justice Courts	County	59	(+8 who are also Municipal Court Judges)
District Courts	State (Judges Pay Only)	82	
Supreme Court	State/Admin. Assessments	7	
Appellate Court	State/Admin. Assessments	3	
		<b>Total Judges in NV=</b>	<b>181</b>
		Total Local Judges	89
		Total State Judges	92

SENATE CONCURRENT RESOLUTION NO. 6—  
COMMITTEE ON FINANCE

MARCH 27, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Directs the Legislative Commission to conduct an interim study concerning salaries for certain positions in the unclassified and nonclassified service of the State. (BDR R-998)

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

SENATE CONCURRENT RESOLUTION—Directing the Legislative Commission to appoint a committee to conduct an interim study concerning salaries for certain positions in the unclassified and nonclassified service of the State.

1 WHEREAS, The Commission to Review the Compensation of  
2 Constitutional Officers, Legislators, Supreme Court Justices, Judges  
3 of the Court of Appeals, District Judges and Elected County  
4 Officers created by NRS 281.1571 makes its recommendations  
5 concerning the appropriate salaries to be paid to elected officers  
6 after comparing the current salaries of persons with similar  
7 qualifications who are employed by the State of Nevada and in the  
8 public sector and determining the minimum salary required to attract  
9 and retain experienced and competent persons; and

10 WHEREAS, The Administrator of the Division of Human  
11 Resource Management of the Department of Administration is  
12 authorized pursuant to NRS 284.175 to make recommendations to  
13 the Legislature concerning the appropriate salaries to be paid to  
14 employees in the classified service of the State after considering  
15 factors such as surveys of salaries of comparable jobs in government  
16 and private industry within the State of Nevada and western states,  
17 where appropriate, changes in the cost of living, the rate of turnover  
18 and difficulty of recruitment for particular positions and maintaining  
19 an equitable relationship among classifications; and





1 WHEREAS, There is no comparable mechanism for considering  
2 the appropriate salaries to be paid to state officers and employees  
3 who occupy positions in the unclassified and nonclassified service  
4 of the State; now, therefore, be it

5 RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE  
6 ASSEMBLY CONCURRING, That the Legislative Commission is  
7 hereby directed to appoint a committee to conduct an interim study,  
8 as described herein, which is composed of:

9 1. Three members of the Senate, two of whom are appointed  
10 by the Majority Leader of the Senate and one of whom is appointed  
11 by the Minority Leader of the Senate;

12 2. Three members of the Assembly, two of whom are  
13 appointed by the Speaker of the Assembly and one of whom is  
14 appointed by the Minority Leader of the Assembly; and

15 3. The Administrator of the Division of Human Resource  
16 Management of the Department of Administration, who shall serve  
17 as a nonvoting member of the committee; and be it further

18 RESOLVED, That the Legislative Commission shall designate  
19 one of the members appointed to the committee to serve as the Chair  
20 of the committee; and be it further

21 RESOLVED, That, the committee shall conduct an interim study  
22 concerning the appropriate salaries for certain positions in the  
23 unclassified and nonclassified service of the State, which must,  
24 without limitation:

25 1. Include a review of any position within the Judicial  
26 Department of the State Government, the Commission on Ethics, the  
27 Nevada Gaming Control Board, the Public Utilities Commission of  
28 Nevada and any other department, commission or agency of the  
29 State of Nevada as determined by the committee;

30 2. Include selection of the positions in the unclassified and  
31 nonclassified service of the State in each department, commission or  
32 agency of the State of Nevada which are to be included in the  
33 interim study;

34 3. Include a review of the salary paid to the state officer or  
35 employee in each position selected for review by the committee; and

36 4. Provide for a market salary analysis for each position  
37 selected for review by the committee to be performed in a manner  
38 determined by the committee; and be it further,

39 RESOLVED, That, in conducting the interim study, the committee  
40 may consider whether any position that is currently designated as  
41 within the classified, unclassified or nonclassified service of the  
42 State should be redesignated; and be it further

43 RESOLVED, That any recommended legislation proposed by the  
44 committee must be approved by a majority of the members of the



1 Senate and a majority of the members of the Assembly appointed to  
2 the committee; and be it further

3 RESOLVED, That the Legislative Commission shall submit a  
4 report of the results of the study and any recommendations for  
5 legislation to the Director of the Legislative Counsel Bureau for  
6 transmittal to the 80th Session of the Nevada Legislature; and be it  
7 further

8 RESOLVED, That the Secretary of the Senate prepare and  
9 transmit a copy of this resolution to the Governor, the Administrator  
10 of the Division of Human Resource Management of the Department  
11 of Administration and the Director of the Administrative Office of  
12 the Courts.

③



\* S C R 6 \*

ASSEMBLY CONCURRENT RESOLUTION NO. 6–  
ASSEMBLYMEN ELLISON AND OSCARSON

MARCH 20, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Directs the Legislative Commission to conduct an interim study concerning increases in salary and benefits of state employees. (BDR R-44)

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to appoint a committee to conduct an interim study concerning increases in the salary and benefits of state employees.

1 WHEREAS, The delivery of essential governmental services to  
2 the people of this State is dependent on the men and women  
3 employed by the State; and

4 WHEREAS, During the Great Recession, state employees were  
5 required to take furloughs, reductions in pay, loss of merit and  
6 longevity pay and other reductions in benefits; and

7 WHEREAS, State employees who first entered state service  
8 during and after the Great Recession receive certain benefits on less  
9 favorable terms than state employees who were hired during earlier,  
10 more favorable times for this State; and

11 WHEREAS, This State makes a significant investment in the  
12 recruitment and training of state employees; and

13 WHEREAS, The departure from state service of experienced and  
14 trained state employees not only interrupts the delivery of essential  
15 governmental services to the people of this State, but also imposes  
16 costs to recruit and train their successors; and

17 WHEREAS, The payment of adequate salaries and benefits is  
18 necessary to attract, recruit and retain an effective workforce; now,  
19 therefore, be it

20 RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE  
21 SENATE CONCURRING, That the Legislative Commission is hereby  
22 directed to appoint a committee composed of three members of the



1 Assembly and three members of the Senate, one of whom must be  
2 appointed by the Legislative Commission as Chair of the committee,  
3 to conduct an interim study of the desirability and feasibility of  
4 increasing the salary and benefits of state employees; and be it  
5 further

6 RESOLVED, That in performing the study, the committee shall,  
7 without limitation:

8 1. Compare the current salaries and benefits of persons with  
9 similar qualifications who are employed by the State of Nevada with  
10 other public employers and in the private sector;

11 2. Determine the minimum salary and benefits required to  
12 attract and retain experienced and competent persons; and

13 3. Consider the elimination or reduction of the disparity  
14 between certain benefits received by state employees who first  
15 entered state service during and after the Great Recession and the  
16 benefits received by state employees who entered state service  
17 earlier; and be it further

18 RESOLVED, That any recommended legislation proposed by the  
19 committee must be approved by a majority of the members of the  
20 Assembly and a majority of the members of the Senate appointed to  
21 the committee; and be it further

22 RESOLVED, That the Legislative Commission submit a report of  
23 the results of the study and any recommended legislation to the  
24 Director of the Legislative Counsel Bureau for transmittal to the  
25 80th Session of the Nevada Legislature; and be it further

26 RESOLVED, That the Chief Clerk of the Assembly prepare and  
27 transmit a copy of this resolution to the Governor, the Administrator  
28 of the Division of Human Resource Management of the Department  
29 of Administration, the Chair of the Public Employees' Retirement  
30 Board and the Chair of the Board of the Public Employees' Benefits  
31 Program.



**(For Commission Approval)**

<u>Department</u>	<u>Peers of Ethics Executive Director</u>	<u>2015 Unclassified Pay Bill</u>
Ethics Commission	Executive Director	97,901
Comm. on Judicial Discipline	Executive Dir. & General Counsel	140,662
High Level Nuclear Waste	Executive Director	115,285
Department of Admin.	Deputy Director	117,030
Silver State Health Exchange	Executive Director	117,030
Public Utilities Commission	Executive Director	117,030
Department of Admin.	Senior Appeals Officer	118,156
Business and Industry	Division Administrator, Attorney for Injured Workers	118,156
Colorado River Commission	Administrative Services Officer	119,445
PEBP	Executive Officer	123,783
Colorado River Commission	Deputy Director	125,340
Attorney General	Bureau Chief	127,721
Colorado River Commission	Director	131,826

**Recommend: \$118,156 - \$125,340  
+ \$20,255 - \$27,439**

<u>Department</u>	<u>Peers of Ethics Commission Counsel</u>	<u>2015 Biennial Unclassified Pay Bill</u>
Ethics Commission	Commission Counsel	95,650
Commission on Judicial Discipline	Executive Director/General Counsel	140,662
Attorney General	Chief Deputy Attorney General	118,156
Supreme Court	Reporter of Judicial Decisions	118,156
Public Utilities Commission	Chief Attorney	118,156
Department of Taxation	Chief Administrative Law Judge (attorney)	118,156
Attorney General	General Counsel	132,600

**Recommend \$118,156 - \$125,340  
+ \$19,506 - \$36,690**

**(For Executive Director Approval)**

<u>Department</u>	<u>Peers of Ethics Associate Counsel</u>	<u>2015 Biennial Unclassified Pay Bill</u>
Ethics Commission	Commission Counsel	95,650
Commission on Judicial Discipline	Associate General Counsel	108,179
DETR	Senior Attorney	106,904
Attorney General	Senior Dep. Attorney General	106,904
Business & Industry	Senior Attorney	106,904
DMV	Senior Attorney	106,904
Public Utilities Commission	Senior Attorney	106,904
Attorney General	Counsel for Prosecuting Attorneys	107,465
Attorney General	Special Assistant Attorney General	107,465

**Recommend \$106,904 - \$108,179  
+ \$11,254 - \$12,529**

<u>Department</u>	<u>Peers Of Ethics Management Analyst III</u>	<u>2015 Biennial Unclassified Pay Bill</u>
Ethics Commission	Executive Assistant	56,265
Commission on Judicial Discipline	Management Analyst IV	81,954
Attorney General	Admin. Services Officer	74,091
Attorney General – Bureau of Consumer Protection	Administrative Services Officer	74,091
Classified Service	Management Analyst III	74,813
Gaming Control Board	Senior Program Analyst	79,220
Attorney General	Financial Analyst	81,584
Gaming Control Board	Administrative Coordinator	84,089
Public Utilities Commission	Assistant Commission Secretary	87,773

**Recommend \$74,813**

**+ \$18,548**

<u>Department</u>	<u>Peers of Ethics Senior Legal Analyst</u>	<u>2015 Biennial Unclassified Pay Bill</u>
Ethics Commission	Senior Legal Researcher	54,332
Commission on Judicial Discipline	Paralegal (Management Analyst II)	68,361
Attorney General	Legal Researcher	56,265
Public Utilities Commission	Legal Case Manager	57,124
Attorney General	Supervising Legal Researcher	59,078
Dept. of Tourism and Cultural Affairs	Project Analyst II	65,172
Supreme Court	Chief Deputy Clerk	72,581
Public Utilities Commission	Senior Analyst	73,194
Gaming Control Board	Senior Program Analyst	79,220

**Recommend: \$74,813**

**+ \$20,481**

**Total Enhancement: \$90,044 - \$108,687 + Associated costs (PERS etc.)**

**1343 - Ethics Commission  
FY18 (72%) Governmental Cost Share Assessment  
SALARY ENHANCMENTS**

County	TOTAL	Cities	Counties >	% of TOTAL	Annual Commission	FY17 Billing Percentage
	Counties & Cities NRS 281A.270	>15,000 Total	10,000, less Cities > 15,000	2014 EST POPULATION	Budget allocated to Local Governments 2012-13	
<i>Boulder City</i>		15,627		0.5554%	\$ 343.78	0.56%
Carson City	53,969		53,969	1.9181%	\$ 1,178.66	1.92%
Churchill County	25,103		25,103	0.8922%	\$ 546.36	0.89%
<i>City of Elko</i>		20,865		0.7416%	\$ 454.28	0.74%
Clark County	2,069,450	1,155,945	913,505	32.4673%	\$ 19,932.89	32.47%
Douglas County	48,553		48,553	1.7256%	\$ 1,062.02	1.73%
Elko County	53,358	20,865	32,493	1.1548%	\$ 705.97	1.15%
<i>Fernley</i>		19,077		0.6780%	\$ 417.44	0.68%
<i>Henderson</i>		280,928		9.9846%	\$ 6,126.59	9.98%
Humboldt County	17,388		17,388	0.6180%	\$ 380.61	0.62%
<i>Las Vegas</i>		610,637		21.7029%	\$ 13,321.33	21.70%
Lyon County	53,344	19,077	34,267	1.2179%	\$ 748.94	1.22%
<i>Mesquite</i>		18,262		0.6491%	\$ 399.03	0.65%
<i>N. Las Vegas</i>		230,491		8.1920%	\$ 5,027.73	8.19%
Nye County	45,456		45,456	1.6156%	\$ 994.50	1.62%
<i>Reno</i>		235,371		8.3654%	\$ 5,138.23	8.37%
<i>Sparks</i>		92,396		3.2839%	\$ 2,013.55	3.28%
Washoe County	436,797	327,767	109,030	3.8751%	\$ 2,375.74	3.87%
White Pine County	10,218		10,218	0.3632%	\$ 221.00	0.36%
<b>TOTALS</b>	<b>2,813,636</b>	<b>1,523,654</b>	<b>1,289,982</b>	<b>1.0000</b>	<b>\$ 61,388.64</b>	<b>100.00%</b>

**Population Reconciliation: 2014**

Total Population	2,843,301
Assessed Population	2,813,636
Unassessed Population	29,665

**Counties Not Meeting Assessment Criteria**

Esmerelda	926
Eureka	1,903
Lander	6,560
Lincoln	5,004
Mineral	4,584
Pershing	6,714
Storey	3,974
	<u>29,665</u>

Check Figure 0

**FY18 Summary**

Total Salary Enhancement:	\$85,262
Local Governments (72%):	\$61,389
State (28%):	\$23,873



**1343 - Ethics Commission  
FY19 (72%) Governmental Cost Share Assessment  
SALARY ENHANCEMENTS**

County	TOTAL	Cities	Counties >	% of TOTAL	Annual Commission	FY17 Billing Percentage
	Counties & Cities NRS 281A.270	>15,000 Total	10,000, less Cities > 15,000	2014 EST POPULATION	Budget allocated to Local Governments 2012-13	
<i>Boulder City</i>		15,627		0.5554%	\$ 343.55	0.56%
<i>Carson City</i>	53,969		53,969	1.9181%	\$ 1,177.90	1.92%
<i>Churchill County</i>	25,103		25,103	0.8922%	\$ 546.01	0.89%
<i>City of Elko</i>		20,865		0.7416%	\$ 453.98	0.74%
<i>Clark County</i>	2,069,450	1,155,945	913,505	32.4673%	\$ 19,920.03	32.47%
<i>Douglas County</i>	48,553		48,553	1.7256%	\$ 1,061.34	1.73%
<i>Elko County</i>	53,358	20,865	32,493	1.1548%	\$ 705.51	1.15%
<i>Fernley</i>		19,077		0.6780%	\$ 417.17	0.68%
<i>Henderson</i>		280,928		9.9846%	\$ 6,122.63	9.98%
<i>Humboldt County</i>	17,388		17,388	0.6180%	\$ 380.36	0.62%
<i>Las Vegas</i>		610,637		21.7029%	\$ 13,312.74	21.70%
<i>Lyon County</i>	53,344	19,077	34,267	1.2179%	\$ 748.46	1.22%
<i>Mesquite</i>		18,262		0.6491%	\$ 398.77	0.65%
<i>N. Las Vegas</i>		230,491		8.1920%	\$ 5,024.49	8.19%
<i>Nye County</i>	45,456		45,456	1.6156%	\$ 993.85	1.62%
<i>Reno</i>		235,371		8.3654%	\$ 5,134.91	8.37%
<i>Sparks</i>		92,396		3.2839%	\$ 2,012.25	3.28%
<i>Washoe County</i>	436,797	327,767	109,030	3.8751%	\$ 2,374.21	3.87%
<i>White Pine County</i>	10,218		10,218	0.3632%	\$ 220.86	0.36%
<b>TOTALS</b>	<b>2,813,636</b>	<b>1,523,654</b>	<b>1,289,982</b>	<b>1.0000</b>	<b>\$ 61,349.04</b>	<b>100.00%</b>

**Population Reconciliation: 2014**

Total Population	2,843,301
Assessed Population	2,813,636
Unassessed Population	29,665

**Counties Not Meeting Assessment Criteria**

Esmerelda	926
Eureka	1,903
Lander	6,560
Lincoln	5,004
Mineral	4,584
Pershing	6,714
Storey	3,974
	<u>29,665</u>

Check Figure 0

**FY19 Summary**

**Total Salary Enhancement: \$85,207**  
**Local Governments (72%): \$61,349**  
**State (28%): \$23,858**



# State of Nevada Work Program

**WP Number: C38571**

**FY 2017**

Add Original Work Program

**XXX** Modify Work Program

BUDGET DIVISION USE ONLY
DATE _____
APPROVED ON BEHALF OF THE GOVERNOR BY _____

DATE	FUND	AGENCY	BUDGET	DEPT/DIV/BUDGET NAME
11/23/16	101	150	1343	COMMISSION ON ETHICS

### Funds Available

Budgetary GLs (2501 - 2599)	Description	WP Amount	Revenue GLs (3000 - 4999)	Description	WP Amount	Current Authority	Revised Authority
<b>Subtotal Budgetary General Ledgers</b>		<b>0</b>	<b>Subtotal Revenue General Ledgers(RB)</b>		<b>0</b>		<b>0</b>
<b>Total Budgetary &amp; Revenue GLs</b>					<b>0</b>		

### Expenditures

CAT	Amount	CAT	Amount
03	(3,000)		
11	(14,850)		
26	17,850		
Sub Total Category Expenditures		<u>0</u>	

**Remarks**

The purpose of this work program is to transfer \$3,000 in authority out of the In-State Travel category and \$14,850 out of the Court Reporting Services category and into the Information Services category in order to fund an electronic case management/database system.

**Total Budgetary General Ledgers and Category Expenditures (AP)** 0

dbaughn  
Authorized Signature

02/13/17  
Date

\_\_\_\_\_  
Controller's Office Approval

Does not require Interim Finance approval since WP is \$30,000 or less cumulative for category

## State of Nevada Work Program Packet Checklist

- ✓ Work program form
- ✓ Work program packet checklist
- ✓ Cumulative modification worksheet
- ✓ Cover Page detailing the reasons for the revision, benefits to the division, department and state and consequences if not approved
- ✓ Financial/Budget Status Reports (current)
- ✓ Budget projections with corresponding detail
- ✓ Fund map reflecting amounts before and after the revision
- NPD 19 (If requesting new position) **include copy of current organizational chart w/proposed change**
- ✓ Quotes for the purchase of unbudgeted items (i.e., equipment, computers, etc.)
- Spreadsheets/detailed calculations supporting request

### WORK PROGRAM REVISIONS INVOLVING GRANTS MUST ALSO INCLUDE

- Grant history/reconciliation form for grants
- Copies of all grant awards for the current year listed on the grant reconciliation form
- Copy of grant budget - if applicable
- Summary of the grant program and purpose if not included in the grant award document

### IFC determination evaluation (reason work program does or does not require IFC approval indicated with an X)

#### Requires IFC approval because

- |   |  |
|---|--|
| <input type="checkbox"/> \$75,000 or more cumulative for an expenditure category  | <input type="checkbox"/> Exceeds \$30,000 cumulative and is 10% or more cumulative for an expenditure category |
| <input type="checkbox"/> Involves the allocation of block grant funds and the agency is choosing to use the IFC meeting for the required public hearing per NRS 353.337 | <input type="checkbox"/> Non-governmental grant or gift in excess of \$20,000                                  |
| <input type="checkbox"/> Includes new positions   | <input type="checkbox"/> Other:  |

#### Does not require IFC approval because

- |  |  |
|--|--|
| ✓ \$30,000 or less cumulative for each expenditure category  | <input type="checkbox"/> Places funds in Reserves, Reserve for Reversion, or Retained Earnings categories only |
| <input type="checkbox"/> Less than \$75,000 cumulative and 10% cumulative for each expenditure category  | <input type="checkbox"/> Non-executive budget  |
| <input type="checkbox"/> \$5,000 or less for expenditure categories 02, 03, 05, & 30 and \$10,000 or less for any other expenditure categories | <input type="checkbox"/> Other:  |
| <input type="checkbox"/> Implements general/highway fund salary adjustments approved by the BOE  | Approved by:<br>Date:  |

**STATE OF NEVADA  
COMMISSION ON ETHICS**

**Budget Account 1343 - COMMISSION ON ETHICS  
Work Program C38571  
Fiscal Year 2017**

Submitted February 13, 2017

**Budget Account's Primary Purpose, Function and Statutory Authority**

The Nevada Commission on Ethics' mission is to enhance the faith and confidence of Nevadans in the integrity and impartiality of government, specifically state and local public officers and employees. The eight-member commission is tasked with numerous responsibilities, but its six-person staff focuses on four main functions: 1) interpreting and applying NRS Chapter 281A - the Ethics in Government Laws - and guiding public officers and employees on its provisions; 2) investigating and adjudicating public complaints alleging ethics violations by public officers and employees; 3) outreach and education to public officers and employees to enhance their awareness of ethics requirements and prohibitions under Nevada law; and 4) accepting and monitoring various filings required of certain public officers.

**Purpose of Work Program**

The purpose of this work program is to transfer \$3,000 in authority out of the In-State Travel category and \$14,850 out of the Court Reporting Services category and into the Information Services category in order to fund an electronic case management/database system.

**Justification**

An electronic case management/database system will ensure compliance with State law as established in Assembly Bill 60 (2015) and 236 (2013), including efficiencies in Requests for Opinion (RFO) management, providing an online searchable database of published Commission opinions that is accessible through the Commission on Ethics' website, and providing an online application for electronic forms and submissions via the Commission on Ethics' website. The one time project costs for professional services for fiscal year 2017 will be \$12,000 for building the system and customization and \$3,750 for the system rollout and training, plus an additional \$1,500 for a one time set-up fee. The monthly cost of \$600 includes the opinion and forms database hosting which includes 500GB of storage, as well as unlimited technical support. In fiscal year 2017, only one month of hosting is anticipated, which brings the total costs in fiscal year 2017 to \$17,850. The ongoing costs for fiscal year 2018 and 2019 consist of the monthly \$600 for the database hosting and technical support, which brings the total cost for each fiscal year to \$7,200. These ongoing costs have not been submitted in the Governor's Recommended budget request and will need to be considered with the approval of this work program.

**Expected Benefits to be Realized**

The benefits to be realized from an electronic case management/database system are to bring the Commission on Ethics in compliance with State law, specifically the provisions in NRS 281A and NRS 233B, as well to stay current with increasing technology demands.

**Explanation of Projections and Documentation**

The attached documentation includes Budget Status Reports, budget projections, quotes from Precision Document Imaging, WingSwept and Michael Matters, a justification memo, and a fund map.

**New Positions:** No

**Summary of Alternatives and Why Current Proposal is Preferred**

The alternative to this work program is to not approve this transfer in authority. This alternative is not preferred as it would force the Commission on Ethics to put the electronic case management/database system on hold, which would further the non-compliance with State law.

**STATE OF NEVADA WORK PROGRAM  
COMMISSION ON ETHICS  
COMMISSION ON ETHICS  
B/A 1343 SFY17**

G.L.#	REVENUES Description	Original or Legislatively Approved Work Program	APPROVED	PENDING	-----CUMULATIVE-----		Total Amount
			FIRST	SECOND	Dollar Change	Percent Change	
			Work Program Change	Work Program Change			
			WP # C37518	WP # C38571			
2501	APPROPRIATION CONTROL	173,701			0	0 0%	173,701
2511	BALANCE FORWARD FROM PREVIOUS YEAR	52,840	14,785		14,785	28 0%	67,625
4103	COUNTY REIMBURSEMENTS	600,605			0	0 0%	600,605
<b>Total Revenues</b>		<b>827,146</b>	<b>14,785</b>	<b>0.00</b>	<b>14,785</b>	<b>1.8%</b>	<b>841,931</b>
EXPENDITURES							
Cat	Description						
01	PERSONNEL	615,273			0	0 0%	615,273
03	IN-STATE TRAVEL	23,712		-3,000	-3,000	-12 7%	20,712
04	OPERATING EXPENSES	53,157			0	0 0%	53,157
11	COURT REPORTING SERVICES	31,255		-14,850	-14,850	-47 5%	16,405
15	INVESTIGATIONS/PARALEGAL COSTS	2,947			0	0 0%	2,947
26	INFORMATION SERVICES	11,497		17,850	17,850	155 3%	29,347
30	TRAINING	7,724			0	0 0%	7,724
82	DEPT COST ALLOCATION	28,258			0	0 0%	28,258
86	RESERVE	52,840	14,785		14,785	28 0%	67,625
87	PURCHASING ASSESSMENT	483			0	0 0%	483
<b>Total Expenditures</b>		<b>827,146</b>	<b>14,785</b>	<b>0.00</b>	<b>14,785</b>	<b>1.8%</b>	<b>841,931</b>

[Main Menu](#) > [Budget Status Report Input](#) > [Budget Account List](#) > [Summary Budget Status Report](#) > Receipts/Funding

REPORT DATE AS OF: 01/24/2017  
PROC ID: BSR\_REC\_FUND\_SUM

**STATE OF NEVADA**  
**Office of the State Controller**

**Budget Status Report - Receipts/Funding**

**Fiscal Year:** 2017

**Fund:** 101 GENERAL FUND

**Agency:** 150 ETHICS COMMISSION

**Budget Account:** 1343 ETHICS COMMISSION    **Organization:** 0000 ETHICS COMMISSION

	YTD Actual	Work Program	Difference
<b>Total Receipts/Funding</b>	551,893.92	841,931.00	-290,037.08

Code	Description	YTD Actual	Work Program	Difference
<a href="#">42</a>	APPROPRIATIONS	173,701.00	173,701.00	.00
<a href="#">47</a>	BEGINNING CASH	67,625.00	67,625.00	.00
<a href="#">4103</a>	COUNTY REIMBURSEMENTS	310,567.92	600,605.00	-290,037.08

[Return to Selection Screen](#)    [Download the Report](#)

[Main Menu](#) > [Budget Status Report Input](#) > [Budget Account List](#) > [Summary Budget Status Report](#) > Obligations  
 REPORT DATE AS OF: 01/24/2017  
 PROC ID: BSR\_GEN\_BCLS\_REPORT

**STATE OF NEVADA**  
**Office of the State Controller**

**Budget Status Report - Obligations**

**Fiscal Year:** 2017

**Fund:** 101 GENERAL FUND

**Agency:** 150 ETHICS COMMISSION

**Budget Account:** 1343 ETHICS COMMISSION **Organization:** 0000 ETHICS COMMISSION

	YTD Actual	Work Program	Difference
<b>Total Expenditures</b>	369,597.02		
<b>Total Encumbrances</b>	.00		
<b>Total Pre-encumbrances</b>	.00		
<b>Total Obligations</b>	369,597.02	841,931.00	472,333.98

Category	Description	Expended	Encumbered	Pre-encumbered	Obligated	Work Program	Difference
<a href="#">01</a>	PERSONNEL SERVICES	304,887.43	.00	.00	304,887.43	615,273.00	310,385.57
<a href="#">03</a>	IN STATE TRAVEL	2,019.86	.00	.00	2,019.86	23,712.00	21,692.14
<a href="#">04</a>	OPERATING	34,000.79	.00	.00	34,000.79	53,157.00	19,156.21
<a href="#">11</a>	COURT REPORTING SVCS	2,514.00	.00	.00	2,514.00	31,255.00	28,741.00
<a href="#">15</a>	INVESTIGATIONS/PARALEGAL COSTS	1,469.56	.00	.00	1,469.56	2,947.00	1,477.44
<a href="#">26</a>	INFORMATION SERVICES	5,129.49	.00	.00	5,129.49	11,497.00	6,367.51
<a href="#">30</a>	TRAINING	5,456.07	.00	.00	5,456.07	7,724.00	2,267.93
<a href="#">82</a>	DEPARTMENT COST ALLOCATION	13,878.32	.00	.00	13,878.32	28,258.00	14,379.68
<a href="#">86</a>	RESERVE	.00	.00	.00	.00	67,625.00	67,625.00
<a href="#">87</a>	PURCHASING ASSESSMENT	241.50	.00	.00	241.50	483.00	241.50

[Return to Selection Screen](#)   [Download the Report](#)

[Main Menu](#) > [Budget Status Report Input](#) > Summary Budget Status Report

REPORT DATE AS OF: 01/24/2017

PROC ID: BSR\_GEN\_BBLS\_REPORT

**STATE OF NEVADA**  
**Office of the State Controller**

**Summary Budget Status Report**

**Fiscal Year:** 2017

**Fund:** 101 GENERAL FUND

**Agency:** 150 ETHICS COMMISSION

**Budget Account:** 1343 ETHICS COMMISSION    **Organization:** 0000 ETHICS COMMISSION

	<b>YTD Actual</b>	<b>Work Program</b>	<b>Difference</b>
<b>Total Receipts/Funding</b>	551,893.92	841,931.00	-290,037.08
<b>Total Expenditures</b>	369,597.02		
<b>Total Encumbrances</b>	.00		
<b>Total Pre-encumbrances</b>	.00		
<b>Total Obligations</b>	369,597.02	841,931.00	472,333.98
<b>Realized Funding Available</b>	182,296.90		

[Get Information About Receipts/Funding](#)

[Get Information About Obligations](#)

Category	Desc	L01	WorkPrg	Actual	BudgetBalance	Projection	ActPlusProj	ProjBudgetBalance	WP C38571	Proj Bud Bal
00	0042 Appropriation	173,701	173,701	173,701	0	0	173,701	0.00		0.00
00	4103 COUNTY REIMBURSEMENTS	600,605	600,605	310,568	290,037	179,108	489,676	110,929.00		110,929.00
<b>Total Rev</b>		<b>774,306</b>	<b>774,306</b>	<b>484,269</b>	<b>290,037</b>	<b>179,108</b>	<b>663,377</b>	<b>110,929.00</b>	<b>0.00</b>	<b>110,929.00</b>
01	PERS SERVICE	615,273	615,273	304,887	310,386	303,380	608,267	7,005.66		7,005.66
03	IN ST TRAV	23,712	23,712	2,020	21,692	14,816	16,836	6,876.19	(3,000.00)	3,876.19
04	OPERATING	53,157	53,157	34,001	19,156	13,687	47,687	5,469.64		5,469.64
11	CRT REP SVCS	31,255	31,255	2,514	28,741	6,766	9,280	21,975.00	(14,850.00)	7,125.00
15	INV/PARALEGL	2,947	2,947	1,470	1,477	1,470	2,939	7.88		7.88
26	INFO SERV	11,497	11,497	5,129	6,368	5,210	10,340	1,157.31	17,850.00	19,007.31
30	TRAINING	7,724	7,724	5,456	2,268	2,245	7,701	22.93		22.93
82	DPT CST ALLO	28,258	28,258	13,878	14,380	13,878	27,757	501.37		501.37
87	PURCH ASMNT	483	483	242	242	242	483	0.00		0.00
<b>Total Exp</b>		<b>774,306</b>	<b>774,306</b>	<b>369,597</b>	<b>404,709</b>	<b>361,693</b>	<b>731,290</b>	<b>43,015.98</b>	<b>0.00</b>	<b>43,015.98</b>
Operating Income		0	0	114,672	-114,672	-182,585	-67,913	67,913		
Beg Net Assets		52,840	67,625	67,625	0	0	67,625	0		
End Net Assets		52,840	67,625	182,297	-114,672	-182,585	-288	67,913		
Days Exp in Ending Rsv		0	31	0	0	0	0	0		



Cat 03 IN ST TRAV, Exported 1/26/2017 10:22:25 AM

GL	Desc	WorkPrg	Actual	BudgetBalance	Projection	ActPlusProj	ProjBudgetBalance
6005	TVL ADV CLR	0	0	0	0	0	0.00
6200	PER DIEM IN-STATE	8,655	144	8,511	4,543	4,687	3,968.05
6210	FS DAILY RENTAL IN-STATE	1,102	121	981	700	821	281.16
6215	NON-FS VEHICLE RENTAL IN-STATE	223	49	174	0	49	173.99
6230	PB TRNS IS	0	0	0	0	0	0.00
6240	PERSONAL VEHICLE IN-STATE	3,856	119	3,737	662	781	3,074.70
6250	COMM AIR TRANS IN-STATE	9,876	1,587	8,289	8,911	10,498	(621.71)
<b>Total</b>		<b>23,712</b>	<b>2,020</b>	<b>21,692</b>	<b>14,816</b>	<b>16,836</b>	<b>6,876.19</b>
							<b>(3,000.00)</b>
							<b>3,876.19</b>

WP C38571



Cat 26 INFO SERV, Exported 1/26/2017 10:22:25 AM

GL	Desc	WorkPrg	Actual	BudgetBalance	Projection	ActPlusProj	ProjBudgetBalance
7020	OPERATING SUPPLIES	310	7	303	0	7	303.19
7023	OPERATING SUPPLIES-C	25	0	25	0	0	25.00
7026	OPERATING SUPPLIES - F	0	0	0	0	0	0.00
7060	CONTRACTS	1,430	110	1,320	0	110	1,320.00
7290	PHONE, FAX, COMMUNICATION LINE	1,392	692	700	700	1,392	0.00
7291	CELL PH/PAGE	0	0	0	0	0	0.00
7460	EQUIPMENT PURCHASES < \$1,000	280	0	280	0	0	280.00
7532	EITS WEB HOSTING	2,889	1,445	1,445	1,445	2,889	0.00
7533	EITS EMAIL SERVICE	275	222	53	329	550	(275.08)
7542	EITS SILVERNET ACCESS	3,328	1,664	1,664	1,664	3,328	(0.44)
7545	EITS VPN SECURE LINK	0	206	-206	289	495	(495.36)
7554	EITS INFRASTRUCTURE ASSESSMENT	928	464	464	464	928	0.00
7556	EITS SECURITY ASSESSMENT	640	320	320	320	640	0.00
<b>Total</b>		<b>11,497</b>	<b>5,129</b>	<b>6,368</b>	<b>5,210</b>	<b>10,340</b>	<b>1,157.31</b>

17,850.00 WP C38571

19,007.31

**Fund Mapping - Category Summary Report**

Budget Year: 2017  
Budget Account: 1343

**Revised Authority**

	County			
	Appropriations	Begin Balance	Reimbursements	Totals
	GL2501	GL 2511	GL4103	Totals
<b>Total Revenues</b>	173,701	67,625	600,605	841,931
<b>Expenditures</b>				
01 Personnel	138,025	0	477,248	615,273
02 Out of State Travel	0	0	0	0
03 In State Travel	5,319	0	18,393	23,712
04 Operating	11,925	0	41,232	53,157
05 Equipment	0	0	0	0
11 Court Reporting	7,011	0	24,244	31,255
15 Investigation/Paralegal Costs	661	0	2,286	2,947
26 Information Services	2,579	0	8,918	11,497
30 Training	1,733	0	5,991	7,724
82 Department Cost Allocation	6,339	0	21,919	28,258
86 Reserve	0	67,625	0	67,625
87 Purchasing Assessment	108	0	375	483
88 Statewide Cost Allocation	0	0	0	0
<b>Total Expenditures</b>	173,701	67,625	600,605	841,931

**Pending WP C38571**

	County			
	Appropriations	Begin Balance	Reimbursements	Totals
	GL2501	GL 2511	GL4103	Totals
<b>Total Revenues</b>	-	-	-	-
<b>Expenditures</b>				
01 Personnel	-	-	-	-
02 Out of State Travel	-	-	-	-
03 In State Travel	(630)	-	(2,370)	(3,000)
04 Operating	-	-	-	-
05 Equipment	-	-	-	-
11 Court Reporting	(3,119)	-	(11,731)	(14,850)
15 Investigation/Paralegal Costs	-	-	-	-
26 Information Services	3,749	-	14,101	17,850
30 Training	-	-	-	-
82 Department Cost Allocation	-	-	-	-
86 Reserve	-	-	-	-
87 Purchasing Assessment	-	-	-	-
88 Statewide Cost Allocation	-	-	-	-
<b>Total Expenditures</b>	-	-	-	-

**Revised Authority**

	County			
	Appropriations	Begin Balance	Reimbursements	Totals
	GL2501	GL 2511	GL4103	Totals
<b>Total Revenues</b>	173,701	67,625	600,605	841,931
<b>Expenditures</b>				
01 Personnel	138,025	0	477,248	615,273
02 Out of State Travel	0	0	0	0
03 In State Travel	4,689	0	16,023	20,712
04 Operating	11,925	0	41,232	53,157
05 Equipment	0	0	0	0
11 Court Reporting	3,892	0	12,513	16,405
15 Investigation/Paralegal Costs	661	0	2,286	2,947
26 Information Services	6,328	0	23,019	29,347
30 Training	1,733	0	5,991	7,724
82 Department Cost Allocation	6,339	0	21,919	28,258
86 Reserve	0	67,625	0	67,625
87 Purchasing Assessment	108	0	375	483
88 Statewide Cost Allocation	0	0	0	0
<b>Total Expenditures</b>	173,701	67,625	600,605	841,931

**MICHAEL MATTERS, INC.**  
**SERVICE CONTRACT**

The Nevada Commission on Ethics, with its principal place of business at 704 W. Nye Lane, Suite 204 Carson City, NV 89703 (“Commission on Ethics”) and Michael Matters Inc., a North Carolina corporation with its principal place of business in Wilmington, NC (“Michael Matters, Inc.”), hereby enter into this Service Contract (the “Contract”) on the following terms and conditions:

**Services**

Michael Matters, Inc. will install and customize the most current version of the Time Matters client, case and document management software (the “Software”) and shall train Nevada Commission on Ethics staff on the use of Software. The initial customization will allow for tracking of Ethics matters, for coordinating hearings, linking documents and emails and for creating the statistics needed for quarterly and annual reporting, as well as for reporting the requests for Ethics Opinions and such other customization as Michael Matters, Inc. has typically performed for other Ethics bodies in the United States.

The installation of the Software and the training shall take place at the Commission on Ethics office in Carson City, Nevada. Michael Matters, Inc. represents that the installation and initial customization of the Software and the training shall be completed within 5 business days.

**Deliverables**

**DELIVERABLE 1:** The initial deliverables are outlined in Exhibit A under “Software Expense.” Upon execution of the Contract, Michael Matters, Inc. will take the necessary steps to obtain for the Commission on Ethics the Time Matters New User Licenses, including the First Year Maintenance Plan (Legal Series), and shall prepare the Feature Package for Ethics Tracking. When the Commission on Ethics informs Michael Matters, Inc. that it is available for the installation of the Software and training, Michael Matters, Inc. will use its best efforts to accommodate the Commission on Ethics’s schedule.

Following the execution of this Contract, the Commission on Ethics will authorize payment for \$13,610 representing payment for the Software Expense for this phase of the project.

**DELIVERABLE 2:** The second deliverable is outlined in Exhibit A under “Consulting Expense.” Following the installation of the Software and the on-site training, the Commission on Ethics will authorize payment of the balance of the contract in the amount of \$13,250, less any discount earned. The Commission on Ethics will be billed monthly and will pay \$175 per hour for all services beyond the hours pre-paid in this deliverable.

**DELIVERABLE 3:** For the second year following the installation of the Software, Michael Matters, Inc. will offer its consultants’ services to the Commission on Ethics at a rate of \$175 per hour. Commission on Ethics agrees to purchase 10 hours of remote support, and will pay this rate for all services beyond the 10 hours pre-paid, and purchase the LexisNexis Annual Maintenance Plan according to the attached Exhibit A. Payment for subsequent year services are due on the anniversary of the Contract signed herein.

### **Contingencies**

If a scheduled start date is met with an unplanned interruption, Michael Matters, Inc. will use its best efforts to make alternative plans to accommodate the Commission on Ethics.

### **Governing Law**

This Contract shall be governed in all respects by the laws of Nevada, without regard to conflicts of law principles. The parties acknowledge that the Software, exclusive of any customization provided by Michael Matters, Inc., is provided by LexisNexis and that claims concerning the Software are governed by the LexisNexis end user agreements.

### **Force Majeure**

Neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing.

### **Exceptions**

The Commission on Ethics and Michael Matters, Inc. acknowledge that the installation and training for the Software is a collaborative process and that computer systems and software integrations are subject to unanticipated difficulties. Each party will act in good faith to achieve the successful implementation of the Software. The Software is subject to license, warranty and end user licensing agreements with LexisNexis and those agreements are not included in this Contract. Notwithstanding the foregoing, Michael Matters, Inc. shall ensure that the Commission on Ethics is able to procure the necessary licenses from LexisNexis at the price quoted.

### **Confidentiality of Information**

Michael Matters, Inc. understands that the Commission on Ethics's records are confidential. Michael Matters, Inc. agrees that any information gathered, based upon or disclosed to it for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior consent of the Commission on Ethics. The Commission on Ethics agrees to recognize the intellectual property of Michael Matters, Inc and will not sell or distribute any features designed by Michael Matters, Inc.

### **Compliance with Law**

Michael Matters, Inc. warrants and represents that: (1) It shall comply with all applicable federal, state and local laws, rules, regulations and ordinances; (2) neither it nor its principals are presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Nevada; (3) It has no current, pending or outstanding criminal, civil or

enforcement actions initiated by the State of Nevada; (4) that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Nevada; and (5) Michael Matters, Inc. shall be responsible for providing all necessary unemployment and workers' compensation insurance for its employees.

**HAVE READ, UNDERSTOOD AND AGREED:**

**NEVADA COMMISSION ON ETHICS**

by

\_\_\_\_\_  
Yvonne Nevarez-Goodson  
Commission on Ethics

\_\_\_\_\_  
Date

**MICHAEL MATTERS, INC.**

by

\_\_\_\_\_  
David A. Michael  
President

\_\_\_\_\_  
Date



## EXHIBIT A

### Software Expense

Items	Amount
Time Matters 15 - 6 User Licenses - Includes the First Year Maintenance Plan (Legal Series)	\$4,610
PREP - Feature Package for Commission on Ethics	\$4,500
PREP – Statistical Reporting for Commission on Ethics	\$4,500
Software Total	<b>\$13,610</b>

### Consulting Expense

Items	Price	Amount
5 Days On-Site Training & Support	\$1,550	\$7,750
Day 1 Installation, Customization Review		
Day 2 Training Cases/Contacts/Powerviews		
Day 3 Training Calendars/Emails/Attachments		
Day 4 Training Notes/Documents/Merges		
Day 5 Admin Training/ Outlook Sync		
10 Hours Pre-Implementation Planning	\$175	\$1,750
10 Hours Post Implementation User Support	\$175	\$1,750
Air Fare / Transportation Expense per Week	\$2,000	\$2,000
Services Total		<b>\$13,250</b>
Grand Total		<b>\$26,860</b>
EARLY BIRD DISCOUNT = contract signed by the end of the Fiscal Year:		<b>\$25,000</b>

### Subsequent Year Expense

Time Matters 15 - 6 User Licenses - Annual Maintenance Plan (Estimate)	\$1,320
10 Hours Remote User Support	\$1,750
Second Year Total	<b>\$3,070</b>

**Project Definition and Pricing Document**

Nevada Commission on Ethics (hereinafter referred to as NCE)

Hosted Opinion/Electronic Forms Database

Prepared by: Justin Long

Date of Publication: 01/19/2016

---

**Project Goals**

- Provide NCE with a hosted Opinion/Electronic Forms Database
- Public Access (provide a solution that will allow the public to search and view published opinions online)
- Ability to accept complaint forms from the NCE website

**System Functionality**

- Opinion Database Management
  - Internal User Interface
  - Public Interface for linking to your website for searching and document viewing
- Electronic Forms Database
  - Allow users to fill out and submit forms and attach supporting documentation electronically
    - Third-Party Request for Opinion (Ethics Complaint)
    - First-Party Request for Opinion (Advisory)
    - Acknowledgement of Ethical Standards
    - Public Records Request
    - Agency Representation Disclosure
  - E-mail notifications for specific forms as directed by the Ethics Commission

**Precision Document Imaging**  
*Power for your processes*

**Option 1: Hosted Opinion/Forms Database**

The initial contract for 12 months. After the initial contract term, you can cancel at any time with 60 day's written notice. This approach give you complete control over the system functionality. You can add additional functionality at any time. The professional service cost associated with all system changes will be bill at \$150.00 hr.

Product Name	Product Code	Monthly Cost	Qty.	Extended Monthly Cost	Total
*Opinion/Forms Database Hosting	Host	600.00	1	600.00	600.00
<b>Professional Services</b>					
**System Build/Customization	PRO-SVC	12,000.00	1	N/A	12,000.00
***System Rollout & Training	PRO-SVC	150.00	25		3,750.00
<b>Solution Total Cost</b>					
<b>Ongoing Monthly Cost</b>					
Opinion/Forms Database Hosting included 500GB of Storage					\$600.00
Total Monthly Cost					\$600.00
<b>One-Time Project Cost</b>					
One Time Set-Up Cost					\$1,500.00
Professional Services					\$15,750.00

\* The monthly hosting fee includes Technical Support

\*\*The System Build/Customization includes 80 hrs. of professional services time.

\*\*\*System Rollout and Training (You will only be billed for the actual time used)

**From:** [Kevin Doepp](#)  
**To:** [Valerie M. Carter](#)  
**Subject:** RE: Tomorrow's live demo  
**Date:** Wednesday, June 29, 2016 5:13:33 AM  
**Attachments:** [Current Pricing - GSA Effective Sept 2015.pdf](#)

---

Good morning, Valerie,

As per our correspondence from yesterday, I wanted to give you an approximate cost for our case management system. There are two sets of costs. The first one will not include hosting (assuming you all would host on premise) and the second is if we host for you in the cloud. Also, we usually see our pricing go up end of August/beginning of September so keep that in mind. I've attached the current pricing sheet as a reference. The base license, quick start implementation and on-site training are one-time costs. There could be additional training costs if you all choose to have remote, web training or have us come on site any additional times.

Base license (1-15 users)	\$17,491.22
QuickStart Implementation (1-15 users)	\$ 5,582.62
Training Support (on-site) people, approximately \$2,500.00)	\$ 2,915.20 (doesn't include travel costs—one day, two
<u>Annual Maintenance Support</u>	<u>\$ 4,317.95</u> (10 incidents—1-15 users--this is outside of
normal updates or patches to system—you can substitute the 20 or 30 incident cost if you want to have more built in)	
	\$30,306.99

Base license (1-15 users)	\$17,491.22
QuickStart Implementation (1-15 users)	\$ 5,582.62
Training Support (on-site) people, approximately \$2,500.00)	\$ 2,915.20 (doesn't include travel costs—one day, two
Annual Maintenance Support	\$ 4,317.95 (10 incidents—1-15 users--this is outside of
normal updates or patches to system—you can substitute the 20 or 30 incident cost if you want to have more built in)	
One time hosting setup fee	\$ 3,000.00
<u>Monthly hosting fee (\$900x12)</u>	<u>\$10,800.00</u>
	\$44,106.99

Hope this information is helpful for you all. Please let me know if you have any questions or need anything further.

Have a great day, Valerie!

*Best regards,*

*Kevin Doepp*

Government Account Executive

[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)

919.600.5102

<http://oigcasemanagement.com>

“Success usually comes to those who are too busy to be looking for it.”

---

**From:** Valerie M. Carter [mailto:[vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)]

**Sent:** Tuesday, June 28, 2016 3:58 PM

**To:** Kevin Doepp <[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)>

**Subject:** RE: Tomorrow's live demo

Hi Kevin,

Yes, that count is correct. We have a small, 6 person, staff. If you can send me the approximate cost, that will be helpful in our discussions as well. Thank you so much!

You have a happy and safe 4<sup>th</sup> of July holiday as well!

*Valerie M. Carter, CPM*

Executive Assistant

Nevada Commission on Ethics



704 West Nye Lane, Suite 204

Carson City, NV 89703

(775) 687-5469, ext. 226

Fax: (775) 687-1279

Email: [vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)

<http://www.ethics.nv.gov>

**CONFIDENTIALITY:** The contents of this message and any attachments hereto may be subject to the confidentiality provisions contained in NRS 281A.440 and should not be disclosed to other parties, distributed, or copied in any way.



Please consider the environment before printing this e-mail.

---

**From:** Kevin Doepp [mailto:[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)]

**Sent:** Tuesday, June 28, 2016 12:56 PM

**To:** Valerie M. Carter <[vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)>

**Subject:** RE: Tomorrow's live demo

Valerie,

We will set that up and look forward to speaking with you all then. I know I e-mailed you a pricing sheet earlier on in this process. I wanted to make sure I knew what your user count would be if you went with our system. You are looking at the 1-15 user band. Is that correct?

I can send you an approximate cost so you have an idea what that'll look like.

Thanks and we look forward to connecting with you on the 6<sup>th</sup>. Have a happy and safe 4<sup>th</sup> of July Holiday!

*Best regards,*

*Kevin Doepp*

Government Account Executive

[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)

919.600.5102

<http://oigcasemanagement.com>

“Success usually comes to those who are too busy to be looking for it.”

---

**From:** Valerie M. Carter [<mailto:vcarter@ethics.nv.gov>]

**Sent:** Tuesday, June 28, 2016 3:48 PM

**To:** Kevin Doepp <[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)>

**Cc:** Yvonne M. Nevarez <[ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov)>

**Subject:** RE: Tomorrow's live demo

Kevin,

Let's plan for 1:00 p.m. EST, 10:00 a.m. our time. Thank you again for being flexible. We look forward to the presentation.

Have a great afternoon!

*Valerie M. Carter, CPM*

Executive Assistant

Nevada Commission on Ethics



704 West Nye Lane, Suite 204  
Carson City, NV 89703

(775) 687-5469, ext. 226  
Fax: (775) 687-1279  
Email: [vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)  
<http://www.ethics.nv.gov>

**CONFIDENTIALITY:** The contents of this message and any attachments hereto may be subject to the confidentiality provisions contained in NRS 281A.440 and should not be disclosed to other parties, distributed, or copied in any way.



Please consider the environment before printing this e-mail.

---

**From:** Kevin Doepp [<mailto:kevin.doepp@wingswept.com>]  
**Sent:** Tuesday, June 28, 2016 11:25 AM  
**To:** Valerie M. Carter <[vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)>  
**Subject:** RE: Tomorrow's live demo

Hey Valerie,

Thanks for your understanding. Yes, the 6<sup>th</sup> will work. How about 1 or 2 EST which would be 10 or 11 your time?

Let me know if that works and if it does we'll send an updated calendar e-mail.

*Best regards,*

*Kevin Doepp*

Government Account Executive

[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)

919.600.5102

<http://oigcasemanagement.com>

“Success usually comes to those who are too busy to be looking for it.”

---

**From:** Valerie M. Carter [<mailto:vcarter@ethics.nv.gov>]  
**Sent:** Tuesday, June 28, 2016 1:54 PM  
**To:** Kevin Doepp <[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)>  
**Subject:** RE: Tomorrow's live demo

No problem, I completely understand. This week is crazy for us too as it is the end of our Fiscal Year. Would July 6<sup>th</sup> work for you? Morning or afternoon is available for us.

*Valerie M. Carter, CPM*  
Executive Assistant

Nevada Commission on Ethics



704 West Nye Lane, Suite 204  
Carson City, NV 89703  
(775) 687-5469, ext. 226  
Fax: (775) 687-1279  
Email: [vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)  
<http://www.ethics.nv.gov>

**CONFIDENTIALITY:** The contents of this message and any attachments hereto may be subject to the confidentiality provisions contained in NRS 281A.440 and should not be disclosed to other parties, distributed, or copied in any way.



Please consider the environment before printing this e-mail.

---

**From:** Kevin Doepp [<mailto:kevin.doepp@wingswept.com>]  
**Sent:** Tuesday, June 28, 2016 9:39 AM  
**To:** Valerie M. Carter <[vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)>  
**Subject:** RE: Tomorrow's live demo

Hey Valerie,

We actually have back to back demos tomorrow with one before yours. Unfortunately, we can't push yours earlier as a result. Is there any availability of doing one at a different time tomorrow (early afternoon) or perhaps Thursday or Friday of this week? Sorry we can't make that change. If we didn't have a demo already scheduled before yours it wouldn't be a problem.

Let me know what you think.

Thanks!

*Best regards,*

*Kevin Doepp*

Government Account Executive

[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)

919.600.5102

<http://oigcasemanagement.com>

“Success usually comes to those who are too busy to be looking for it.”

---



**From:** Valerie M. Carter [<mailto:vcarter@ethics.nv.gov>]  
**Sent:** Tuesday, June 28, 2016 12:27 PM  
**To:** Kevin Doepp <[kevin.doepp@wingswept.com](mailto:kevin.doepp@wingswept.com)>  
**Subject:** Tomorrow's live demo

Good morning Kevin,

I mis-calendared a training on Yvonne's (our Director) calendar that begins at 10:00 a.m. our time tomorrow. Is there any way we can start the demo meeting earlier than 9:30 a.m., maybe 8:00 a.m.? I am so sorry to do this to you again!

*Valerie M. Carter, CPM*  
Executive Assistant  
Nevada Commission on Ethics



704 West Nye Lane, Suite 204  
Carson City, NV 89703  
(775) 687-5469, ext. 226  
Fax: (775) 687-1279  
Email: [vcarter@ethics.nv.gov](mailto:vcarter@ethics.nv.gov)  
<http://www.ethics.nv.gov>

**CONFIDENTIALITY:** The contents of this message and any attachments hereto may be subject to the confidentiality provisions contained in NRS 281A.440 and should not be disclosed to other parties, distributed, or copied in any way.



Please consider the environment before printing this e-mail.

Cheryl A. Lau, Esq.  
Chair

Keith A. Weaver, Esq.  
Vice-Chair

Yvonne Nevarez-Goodson, Esq.  
Executive Director  
(D) 775-687-4312  
[ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov)



**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>

January 20, 2017

James R. Wells, CPA  
Director  
Governor's Finance Office  
209 E. Musser Street, Room 200  
Carson City, Nevada 89701

**Re: Work Program for Electronic Document Management/Filing System and Searchable Opinion Database**

Dear Director Wells,

The Nevada Commission on Ethics is responsible for advising and educating all State and local government public officers and employees regarding the provisions of the Nevada Ethics in Government Law (NRS 281A). In addition to its outreach and education mission, the Commission also serves as a quasi-judicial body responsible for interpreting and enforcing the Ethics Law in both advisory and complaint-driven matters ("Requests for Opinion" or "RFOs"), and defending its administrative decisions in various judicial forums. Public officers and employees are statutorily entitled to legal representation before the Commission in all matters related to RFOs, including, under certain circumstances, representation from an attorney who is elected or appointed to represent the public office. All quasi-judicial functions of the Commission are subject to the Nevada Administrative Procedures Act (NRS 233B) and all other relevant due process considerations under State law.

Pursuant to NRS 281A.270, the Commission's overall budget is funded through a proportionate split between the State General Fund and Counties and Cities with certain threshold populations (currently 21% State, 79% Local Government), based on the jurisdiction of the RFOs. Any unspent funds allocated to the Commission by the local governments during each fiscal year do not revert to the State General Fund. Those funds are instead placed into a reserve account during the next fiscal year and later credited back to the locals in future assessments. Under the Governor's Recommended Budget for the next biennium, the State/Local split will change to 72% Local Government and 28% State.

Over the last several years, the Commission has struggled to comply with increasing technology demands **required by State law**, including Internet and Website requirements as set forth in AB 60 (2015) and SB 236 (2013). In particular, the Commission seeks: 1) a limited case management and document database system to ensure efficiencies in RFO and form filing management; 2) an online searchable database of published Commission opinions that is accessible through the Commission's Website and available to the public; and 3) an online application to provide electronic forms and submissions via the Commission's Website.

The Commission has acquired a quote from a local information technology company, Precision Document Imaging, which can provide all of the above-referenced resources at a reasonable price, and which resources have the ability to adapt to advanced technology as additional resources may become available. The Nevada Purchasing Division has also confirmed that these goods at the quoted amounts do not require an RFP or RFI.

Given the significant projected cost-savings in the Commission's remaining FY17 Budget, the Commission requests a work program to move funds from Category 03 (In-State Travel) and Category 11 (Court Reporting) to Category 26 (I.T.) to acquire this document management/database system to fund the upfront, one-time costs to create these customized systems. The on-going costs in the next biennium are nominal and keep the Commission under its original 2x Cap requirement and only slightly over the 5% reduction from 2x Cap.

Specifically, for initial start-up costs and funding through the end of FY17, we are requesting a total of \$19,800 from the Commission's projected FY17 savings, which includes initial one-time start-up costs of \$18,000 plus \$600/month for the last 3 months of FY17. We anticipate the program would be built by no later than the end of March and the monthly costs would not be incurred until the last quarter of FY17. The ongoing annual cost for the next biennium will be \$7,200/FY. Please see back-up spreadsheets outlining current projections for the remainder of FY17.

We are requesting the transfer of \$3,000 from Category 03 and \$16,800 from Category 11 to Category 26 for this work program.

### **Limited Case Management/Document Database System**

The Commission currently processes all of its RFO cases through an internal, staff-driven system to manage all of its cases, including: electronic and physical filing; calendaring of internal and statutory deadlines; producing individual notices in each case; issuing Commission orders; and compiling statistical data. This system is more appropriate for informal case processing, but the sophistication of the Commission's workload and associated legal requirements subject too much of the Commission's processes to human error and oversight, and creates inconsistencies between cases. If these processes could be coordinated through a more formal, uniform case management system, the Commission staff could focus its time and attention away from administrative oversight to more substantive responsibilities, including legal research and writing, investigations and resolutions of RFOs. Most, if not all, quasi-judicial bodies and administrative agencies have some system of document management more sophisticated than the process currently undertaken by the Commission staff.

### **On-Line Searchable Database of Commission Opinions-(AB 60 – 2015)**

The Commission was one of many State agencies required to establish a new Website, as its old Website was no longer supported by the State's IT Systems. Notably, the Commission does not have any IT staff, and EITS was unable to assist the

Commission with this website transition. The Commission has only a minimal contract with an outside IT company (CTS) for desktop and server support. Remarkably, the Commission dedicated significant staff time to learn and create a new Website that is now supported by the new State system and which launched on approximately January 1, 2017. However, unlike the Commission's old Website platform, the State's new web-based system (EKTRON) does not have the capability to provide a searchable database of published Commission opinions. Since launching the website (less than one month ago), the Commission staff has received numerous calls and complaints regarding the now limited access to Commission opinions on its new website, noting the requirement in NRS 281A.480(5) which mandates it.

When the Commission processes an RFO, either an advisory or complaint case, various procedural and substantive legal due process rights are triggered, including processing, investigating and hearing matters. In complaint cases, the Legislature has provided a "safe harbor" provision in the Ethics Law that protects a public officer or employee from a finding of a willful violation by the Commission when the public officer has relied in good faith upon the legal advice of the publicly elected or appointed attorney. Prior to 2015, as a condition for safe harbor protection, the public officer or employee had to prove that his/her conduct was not contrary to a published opinion issued by the Commission. **In 2015**, the Legislature amended NRS 281A.480 to clarify that the public officer or employee could establish evidence of good faith reliance upon legal counsel and that the legal advice was based upon a reasonable legal determination the conduct would not be contrary to any prior published opinion issued by the Commission "**which was publicly available on the Internet website of the Commission.**" (NRS 281A.480(5)(b)).

The timing of this legislation coincided with the demands upon the Commission to launch a new Website because its existing Website would no longer be supported by the State systems. The Commission's old Website had a "Google Search" function that enabled members of the public and attorneys to generally search the Commission's opinions, but even that search functionality was limited. Under the new EKTRON web capabilities for the Commission's new website, there is no option to provide a searchable database of the Commission's opinions. Accordingly, in conjunction with the document management system, Precision Document Imaging can provide an online database to host the Commission's published opinions and make them searchable via a hyperlink on the Commission's new Website.

### **Electronic Forms/Submissions of Commission Forms (SB 236 – 2013)**

The Commission is statutorily responsible for accepting various administrative forms that must be submitted by public officers and employees, as well as other documents that may be submitted by the public. Recent legislation in 2013 (SB 236) requires state agencies to make these forms available in an electronic version on the Internet website of the agency with the capability for the person to complete the form electronically and submit the form via the Internet. The Commission has struggled to comply with this requirement given the technological deficiencies and lack of resources available to the Commission since 2013. The Commission has sought assistance from EITS on multiple occasions to ensure compliance with SB 236. However, EITS has consistently informed the Commission that it is unable to provide assistance given that agency's backlog and staffing deficiencies.

Every year, the Commission accepts thousands of acknowledgment forms from public officers that must be separately scanned and saved by Commission staff and retained under State law for 6 years. The ability for public officers to file these forms electronically will result in a huge cost savings to the Commission and public officers throughout the State.

Precision Document Imaging is able to provide the hosted, online document management and searchable opinion databases and ensure that all administrative forms may be completed and submitted online through the Commission's Website.

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

SB30  
and  
Amendment

---

---

SENATE BILL NO. 30—COMMITTEE ON  
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 16, 2016

---

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to the solicitation or acceptance of gifts by the Attorney General. (BDR 23-377)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

---

---

AN ACT relating to the Office of the Attorney General; revising provisions relating to the solicitation or acceptance of gifts by the Attorney General; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 The Nevada Ethics in Government Law sets forth standards for the conduct of  
2 public officers and employees, which standards are interpreted and enforced by the  
3 Commission on Ethics. (Chapter 281A of NRS) In particular, the Nevada Ethics in  
4 Government Law prohibits a public officer, including the Attorney General, from  
5 seeking or accepting a gift which would tend improperly to influence a reasonable  
6 person in the public officer’s position to depart from the faithful and impartial  
7 discharge of the public officer’s public duties. (NRS 281A.400) The term “gift” is  
8 not defined for the purposes of that prohibition. In addition to that prohibition, this  
9 bill prohibits the Attorney General from soliciting or accepting money, services or  
10 anything of value unless consideration of equal or greater value is received.  
11 However, this bill excludes from the prohibition political contributions, loans,  
12 certain ceremonial gifts, payments associated with certain meetings, events or trips  
13 and items received from persons related to or dependent on the Attorney General.  
14 Because this new prohibition is part of the Nevada Ethics in Government Law, it  
15 will be enforced by the Commission on Ethics.





THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     **Section 1.** Chapter 281A of NRS is hereby amended by  
2 adding thereto a new section to read as follows:

3     1. *The Attorney General shall not solicit or accept any gift.*

4     2. *As used in this section:*

5     (a) *“Anything of value,” with respect to an educational or*  
6 *informational meeting, event or trip, includes, without limitation,*  
7 *any actual expenses for food, beverages, registration fees, travel or*  
8 *lodging provided or given to or paid for the benefit of the Attorney*  
9 *General or reimbursement for any such actual expenses paid by*  
10 *the Attorney General, if the expenses are incurred on a day during*  
11 *which the Attorney General undertakes or attends an educational*  
12 *or informational meeting, event or trip or during which the*  
13 *Attorney General travels to or from an educational or*  
14 *informational meeting, event or trip.*

15     (b) *“Educational or informational meeting, event or trip”:*

16     (1) *Means any meeting, event or trip undertaken or*  
17 *attended by the Attorney General if, in connection with the*  
18 *meeting, event or trip:*

19     (I) *The Attorney General receives anything of value*  
20 *from an interested person to undertake or attend the meeting,*  
21 *event or trip; and*

22     (II) *The Attorney General provides or receives any*  
23 *education or information on matters relating to the prosecutorial,*  
24 *administrative or political action of the Attorney General.*

25     (2) *Includes, without limitation, any reception, gathering,*  
26 *conference, convention, discussion, forum, roundtable, seminar,*  
27 *symposium, speaking engagement or other similar meeting, event*  
28 *or trip with an educational or informational component.*

29     (3) *Does not include a meeting, event or trip undertaken or*  
30 *attended by the Attorney General for personal reasons or for*  
31 *reasons relating to any professional or occupational license held*  
32 *by the Attorney General, unless the Attorney General participates*  
33 *as one of the primary speakers, instructors or presenters at the*  
34 *meeting, event or trip.*

35     (c) *“Gift” means any payment, conveyance, transfer,*  
36 *distribution, deposit, advance, loan, forbearance, subscription,*  
37 *pledge or rendering of money, services or anything else of value,*  
38 *unless consideration of equal or greater value is received. The*  
39 *term does not include:*

40     (1) *Any political contribution of money or services related*  
41 *to a political campaign.*



1           (2) *Any commercially reasonable loan made in the ordinary*  
2 *course of business.*

3           (3) *Anything of value provided for an educational or*  
4 *informational meeting, event or trip.*

5           (4) *Any ceremonial gift received for a birthday, wedding,*  
6 *anniversary, holiday or other ceremonial occasion from a donor*  
7 *who is not an interested person.*

8           (5) *Anything of value received from a person who is:*

9           (I) *Related to the Attorney General, or to the spouse or*  
10 *domestic partner of the Attorney General, by blood, adoption,*  
11 *marriage or domestic partnership within the third degree of*  
12 *consanguinity or affinity; or*

13           (II) *A member of the Attorney General's household.*

14           (d) *"Interested person" means a person who has a substantial*  
15 *interest in the prosecutorial, administrative or political action of*  
16 *the Attorney General. The term includes, without limitation, a*  
17 *group of interested persons acting in concert, regardless of*  
18 *whether formally organized.*

19           (e) *"Member of the Attorney General's household" means:*

20           (1) *The spouse or domestic partner of the Attorney*  
21 *General;*

22           (2) *A person who is related to the Attorney General, or to*  
23 *the spouse or domestic partner of the Attorney General, by blood,*  
24 *adoption, marriage or domestic partnership within the third*  
25 *degree of consanguinity or affinity and who lives in the same*  
26 *home or dwelling as the Attorney General; or*

27           (3) *A person, regardless of whether a relative of the*  
28 *Attorney General or the spouse or domestic partner of the*  
29 *Attorney General, who:*

30           (I) *Lives in the same home or dwelling as the Attorney*  
31 *General and who is dependent on and receiving substantial*  
32 *support from the Attorney General;*

33           (II) *Does not live in the same home or dwelling as the*  
34 *Attorney General but who is dependent on and receiving*  
35 *substantial support from the Attorney General; or*

36           (III) *Lived in the same home or dwelling as the Attorney*  
37 *General for 6 months or more during the year immediately*  
38 *preceding the date of any provision or transfer of anything of*  
39 *value to the Attorney General and who was dependent on and*  
40 *receiving substantial support from the Attorney General during*  
41 *that period.*

42           **Sec. 2.** NRS 281A.400 is hereby amended to read as follows:

43           281A.400 A code of ethical standards is hereby established to  
44 govern the conduct of public officers and employees:



1        1. ~~IA~~ *In addition to the provisions of section 1 of this act, a*  
2 public officer or employee shall not seek or accept any gift, service,  
3 favor, employment, engagement, emolument or economic  
4 opportunity which would tend improperly to influence a reasonable  
5 person in the public officer's or employee's position to depart from  
6 the faithful and impartial discharge of the public officer's or  
7 employee's public duties.

8        2. A public officer or employee shall not use the public  
9 officer's or employee's position in government to secure or grant  
10 unwarranted privileges, preferences, exemptions or advantages for  
11 the public officer or employee, any business entity in which the  
12 public officer or employee has a significant pecuniary interest, or  
13 any person to whom the public officer or employee has a  
14 commitment in a private capacity to the interests of that person. As  
15 used in this subsection, "unwarranted" means without justification  
16 or adequate reason.

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

21        4. A public officer or employee shall not accept any salary,  
22 retainer, augmentation, expense allowance or other compensation  
23 from any private source for the performance of the public officer's  
24 or employee's duties as a public officer or employee.

25        5. If a public officer or employee acquires, through the public  
26 officer's or employee's public duties or relationships, any  
27 information which by law or practice is not at the time available to  
28 people generally, the public officer or employee shall not use the  
29 information to further a significant pecuniary interest of the public  
30 officer or employee or any other person or business entity.

31        6. A public officer or employee shall not suppress any  
32 governmental report or other official document because it might  
33 tend to affect unfavorably a significant pecuniary interest of the  
34 public officer or employee.

35        7. Except for State Legislators who are subject to the  
36 restrictions set forth in subsection 8, a public officer or employee  
37 shall not use governmental time, property, equipment or other  
38 facility to benefit a significant personal or pecuniary interest of the  
39 public officer or employee. This subsection does not prohibit:

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

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



1 (2) The use does not interfere with the performance of the  
2 public officer's or employee's public duties;

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

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

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

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

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

15 8. A State Legislator shall not:

16 (a) Use governmental time, property, equipment or other facility  
17 for a nongovernmental purpose or for the private benefit of the State  
18 Legislator or any other person. This paragraph does not prohibit:

19 (1) A limited use of state property and resources for personal  
20 purposes if:

21 (I) The use does not interfere with the performance of the  
22 State Legislator's public duties;

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

24 (III) The use does not create the appearance of  
25 impropriety;

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

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

32 (b) Require or authorize a legislative employee, while on duty,  
33 to perform personal services or assist in a private activity, except:

34 (1) In unusual and infrequent situations where the  
35 employee's service is reasonably necessary to permit the State  
36 Legislator or legislative employee to perform that person's official  
37 duties; or

38 (2) Where such service has otherwise been established as  
39 legislative policy.

40 9. A public officer or employee shall not attempt to benefit a  
41 significant personal or pecuniary interest of the public officer or  
42 employee through the influence of a subordinate.

43 10. A public officer or employee shall not seek other  
44 employment or contracts through the use of the public officer's or  
45 employee's official position.



1     **Sec. 3.** This act becomes effective upon passage and approval.

③



\* S B 3 0 \*

PROPOSED AMENDMENTS TO SB 30

Contact information:

Brett Kandt  
Chief Deputy Attorney General  
684-1201 or [bkandt@ag.nv.gov](mailto:bkandt@ag.nv.gov)  
100 N. Carson Street  
Carson City, NV 89701

PROPOSE TO AMEND BILL AS FOLLOWS:

Amendment #1:

Amend the bill by deleting **Section 1** in its entirety and replacing with the following:

**Section 1.** Chapter 281A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A public officer who is appointed or elected to a position established by Article 5 of the Constitution of the State of Nevada shall not solicit or accept any gift worth more than \$25.*

*2. As used in this section, "Gift" has the meaning ascribed to it in NRS 281.5585.*

Amendment #2:

Amend the bill by amending **Section 2** at page 4, line 1 to read as follows:

42 **Sec. 2.** NRS 281A.400 is hereby amended to read as follows:

43 281A.400 A code of ethical standards is hereby established to  
44 govern the conduct of public officers and employees:

1 1. **[A]** *In addition to any gift that may be prohibited by the provisions of section 1 of this act, a*

2 public officer or employee shall not seek or accept any gift, service,  
3 favor, employment, engagement, emolument or economic  
4 opportunity which would tend improperly to influence a reasonable  
5 person in the public officer's or employee's position to depart from  
6 the faithful and impartial discharge of the public officer's or  
7 employee's public duties.

**Purpose of amendments:** To more closely align the provisions of Senate Bill No. 307, chapter 320, Statutes of Nevada 2015, at p. 1711, with comparable provisions of application to all state executive branch constitutional officers.

SB36

SENATE BILL NO. 36—COMMITTEE ON  
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE OFFICE OF THE GOVERNOR)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Revises provisions relating to ethics in government.  
(BDR 23-230)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

AN ACT relating to ethics in government; removing State  
Legislators entirely from the jurisdiction of the  
Commission on Ethics; revising the membership of  
the Commission; revising the provisions governing the  
assessments paid by cities and counties to the  
Commission; and providing other matters properly  
relating thereto.

**Legislative Counsel’s Digest:**

1 Under the Nevada Constitution, the legislative House of which a Legislator is a  
2 member has exclusive jurisdiction over discipline of its members. (Nev. Const. Art.  
3 4, § 6) In 2009, the Nevada Supreme Court held that under the constitutional  
4 doctrine of separation of powers, the House of which a Legislator is a member is  
5 the only governmental entity that is authorized to sanction the Legislator for  
6 conduct within the sphere of legitimate legislative activity, such as voting or  
7 abstention on legislation and, by extension, disclosure of conflicts of interest.  
8 Moreover, the Court held that the Legislature cannot delegate its authority to  
9 discipline state legislators for conduct within the sphere of legitimate legislative  
10 activity to another branch of government. (*Comm’n on Ethics v. Hardy*, 125 Nev.  
11 285, 294-96 & n.9 (2009)) Existing law sets forth a nonexhaustive list of actions by  
12 a Legislator that are considered within the sphere of legitimate legislative activity  
13 based on long-standing case law interpreting and applying the constitutional  
14 doctrines of separation of powers and legislative privilege and immunity under the  
15 Speech or Debate Clause of Section 6 of Article I of the United States Constitution.  
16 (NRS 41.071)

17 The Commission on Ethics, which is an agency of the Executive Department of  
18 the State Government, was created under existing law to administer and enforce the





19 Nevada Ethics in Government Law. (NRS 281A.200) The Commission has  
20 concurrent jurisdiction over Legislators with respect to alleged ethical violations  
21 that do not fall within the sphere of legitimate legislative activity, such as misuse of  
22 office. (NRS 281A.280; *Hardy*, 125 Nev. at 294-96 & n.9)

23 **Sections 1-3 and 6-9** of this bill remove State Legislators entirely from the  
24 jurisdiction of the Commission on Ethics. Therefore, determination of all issues  
25 relating to the ethical conduct of Legislators will be within the exclusive  
26 jurisdiction of the House of which the Legislator is a member. Since the *Hardy*  
27 decision in 2009, each House of the Legislature has had a standing rule in place that  
28 provides for a committee on ethics to address questions regarding breaches of  
29 ethics and conflicts of interest of Legislators for their respective Houses. (*See, e.g.*,  
30 Senate Standing Rule No. 23, File No. 4, Statutes of Nevada 2015, p. 3981;  
31 Assembly Standing Rule No. 23, File No. 1, Statutes of Nevada 2015, p. 3956)

32 Under existing law, the Commission on Ethics consists of eight members, with  
33 four members appointed by the Legislative Commission and four members  
34 appointed by the Governor. **Section 4** of this bill eliminates the members appointed  
35 by the Legislative Commission and adds another member appointed by the  
36 Governor, which results in a total of five members of the Commission on Ethics.

37 Existing law requires certain cities and counties to cover some of the costs  
38 incurred by the Commission on Ethics in carrying out its functions by paying  
39 assessments during each biennium. (NRS 281A.270) **Section 5** of this bill removes  
40 the requirement that the Executive Director of the Commission on Ethics consult  
41 with the Budget Division of the Office of Finance and the Fiscal Analysis Division  
42 of the Legislative Counsel Bureau before determining the amount of such  
43 assessments due for each city and county for a biennium.

44 Pursuant to **section 11** of this bill, the Commission on Ethics retains its  
45 concurrent jurisdiction over any requests for an opinion regarding a Legislator's  
46 conduct that are pending before the Commission on the effective date of this bill.  
47 **Section 11** also provides that the revised composition of the Commission on Ethics  
48 does not affect the status of any requests for an opinion pending before the  
49 Commission on the effective date of this bill.

---

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 281A.020 is hereby amended to read as  
2 follows:

3 281A.020 1. It is hereby declared to be the public policy of  
4 this State that:

5 (a) A public office is a public trust and shall be held for the sole  
6 benefit of the people.

7 (b) A public officer or employee must commit himself or herself  
8 to avoid conflicts between the private interests of the public officer  
9 or employee and those of the general public whom the public officer  
10 or employee serves.

11 2. The Legislature finds and declares that:

12 (a) The increasing complexity of state and local government,  
13 more and more closely related to private life and enterprise, enlarges  
14 the potentiality for conflict of interests.



1 (b) To enhance the people's faith in the integrity and  
2 impartiality of public officers and employees, adequate guidelines  
3 are required to show the appropriate separation between the roles of  
4 persons who are both public servants and private citizens.

5 ~~[(c) In interpreting and applying the provisions of this chapter  
6 that are applicable to State Legislators, the Commission must give  
7 appropriate weight and proper deference to the public policy of this  
8 State under which State Legislators serve as "citizen Legislators"  
9 who have other occupations and business interests, who are  
10 expected to have particular philosophies and perspectives that are  
11 necessarily influenced by the life experiences of the Legislator,  
12 including, without limitation, professional, family and business  
13 experiences, and who are expected to contribute those philosophies  
14 and perspectives to the debate over issues with which the  
15 Legislature is confronted.]~~

16 ~~—(d) The provisions of this chapter do not, under any  
17 circumstances, allow the Commission to exercise jurisdiction or  
18 authority over or inquire into, intrude upon or interfere with the  
19 functions of a State Legislator that are protected by legislative  
20 privilege and immunity pursuant to the Constitution of the State of  
21 Nevada or NRS 41.071.]~~

22 **Sec. 2.** NRS 281A.080 is hereby amended to read as follows:

23 281A.080 1. The making of a "decision" is the exercise of  
24 governmental power to adopt laws, regulations or standards, render  
25 quasi-judicial decisions, establish executive policy or determine  
26 questions involving substantial discretion.

27 2. The term does not include:

28 (a) The functions of the judiciary.

29 (b) The functions of a State Legislator . ~~[that are protected by  
30 legislative privilege and immunity pursuant to the Constitution of  
31 the State of Nevada or NRS 41.071.]~~

32 **Sec. 3.** NRS 281A.160 is hereby amended to read as follows:

33 281A.160 1. "Public officer" means a person who is:

34 (a) Elected or appointed to a position which:

35 (1) Is established by the Constitution of the State of Nevada,  
36 a statute of this State or a charter or ordinance of any county, city or  
37 other political subdivision; and

38 (2) Involves the exercise of a public power, trust or duty; or

39 (b) Designated as a public officer for the purposes of this  
40 chapter pursuant to NRS 281A.182.

41 2. As used in this section, "the exercise of a public power, trust  
42 or duty" means:

43 (a) Actions taken in an official capacity which involve a  
44 substantial and material exercise of administrative discretion in the  
45 formulation of public policy;



- 1 (b) The expenditure of public money; and  
2 (c) The administration of laws and rules of the State or any  
3 county, city or other political subdivision.  
4 3. "Public officer" does not include:  
5 (a) Any justice, judge or other officer of the court system;  
6 (b) Any member of a board, commission or other body whose  
7 function is advisory;  
8 (c) Any member of a special district whose official duties do not  
9 include the formulation of a budget for the district or the  
10 authorization of the expenditure of the district's money; ~~for~~  
11 (d) A county health officer appointed pursuant to NRS 439.290  
12 ~~for~~; or  
13 (e) *A State Legislator.*  
14 4. "Public office" does not include an office held by:  
15 (a) Any justice, judge or other officer of the court system;  
16 (b) Any member of a board, commission or other body whose  
17 function is advisory;  
18 (c) Any member of a special district whose official duties do not  
19 include the formulation of a budget for the district or the  
20 authorization of the expenditure of the district's money; ~~for~~  
21 (d) A county health officer appointed pursuant to NRS 439.290  
22 ~~for~~; or  
23 (e) *A State Legislator.*  
24 **Sec. 4.** NRS 281A.200 is hereby amended to read as follows:  
25 281A.200 1. The Commission on Ethics, consisting of ~~eight~~  
26 *five* members, is hereby created.  
27 2. ~~The Legislative Commission shall appoint to the~~  
28 ~~Commission four residents of the State, at least two of whom must~~  
29 ~~be former public officers or employees, and at least one of whom~~  
30 ~~must be an attorney licensed to practice law in this State.~~  
31 ~~—3—~~ The Governor shall appoint to the Commission ~~four~~ *five*  
32 residents of the State, at least two of whom must be former public  
33 officers or employees, and at least ~~one~~ *two* of whom must be ~~an~~  
34 ~~attorney~~ *attorneys* licensed to practice law in this State.  
35 ~~4—~~ 3. Not more than ~~four~~ *three* members of the Commission  
36 may be members of the same political party. Not more than ~~four~~  
37 *three* members of the Commission may be residents of the same  
38 county.  
39 ~~5—~~ 4. None of the members of the Commission may, while  
40 the member is serving on the Commission:  
41 (a) Hold another public office;  
42 (b) Be actively involved in the work of any political party or  
43 political campaign; or



1 (c) Communicate directly with a State Legislator or a member of  
2 a local legislative body on behalf of someone other than himself or  
3 herself or the Commission, for compensation, to influence:

4 (1) The State Legislator with regard to introducing or voting  
5 upon any matter or taking other legislative action; or

6 (2) The member of the local legislative body with regard to  
7 introducing or voting upon any ordinance or resolution, taking other  
8 legislative action or voting upon:

9 (I) The appropriation of public money;

10 (II) The issuance of a license or permit; or

11 (III) Any proposed subdivision of land or special  
12 exception or variance from zoning regulations.

13 ~~6-~~ 5. After the initial terms, the terms of the members are 4  
14 years. Any vacancy in the membership must be filled by the  
15 appropriate appointing authority for the unexpired term. Each  
16 member may serve no more than two consecutive full terms.

17 **Sec. 5.** NRS 281A.270 is hereby amended to read as follows:

18 281A.270 1. Each county whose population is 10,000 or  
19 more and each city whose population is 15,000 or more and that is  
20 located within such a county shall pay an assessment for the costs  
21 incurred by the Commission each biennium in carrying out its  
22 functions pursuant to this chapter. The total amount of money to be  
23 derived from assessments paid pursuant to this subsection for a  
24 biennium must be determined by the Legislature in the legislatively  
25 approved budget of the Commission for that biennium. The  
26 assessments must be apportioned among each such city and county  
27 based on the proportion that the total population of the city or the  
28 total population of the unincorporated area of the county bears to the  
29 total population of all such cities and the unincorporated areas of all  
30 such counties in this State.

31 2. On or before July 1 of each odd-numbered year, the  
32 Executive Director shall ~~in consultation with the Budget Division  
33 of the Office of Finance and the Fiscal Analysis Division of the  
34 Legislative Counsel Bureau,~~ determine for the next ensuing  
35 biennium the amount of the assessments due for each city and  
36 county that is required to pay an assessment pursuant to subsection  
37 1. The assessments must be paid to the Commission in semiannual  
38 installments that are due on or before August 1 and February 1 of  
39 each year of the biennium. The Executive Director shall send out a  
40 billing statement to each such city or county which states the  
41 amount of the semiannual installment payment due from the city or  
42 county.

43 3. Any money that the Commission receives pursuant to  
44 subsection 2:



1 (a) Must be deposited in the State Treasury, accounted for  
2 separately in the State General Fund and credited to the budget  
3 account for the Commission;

4 (b) May only be used to carry out the provisions of this chapter  
5 and only to the extent authorized for expenditure by the Legislature;

6 (c) Does not revert to the State General Fund at the end of any  
7 fiscal year; and

8 (d) Does not revert to a city or county if:

9 (1) The actual expenditures by the Commission are less than  
10 the amount of the assessments approved by the Legislature pursuant  
11 to subsection 1 and the city or county has already remitted its  
12 semiannual installment to the Commission for the billing period; or

13 (2) The budget of the Commission is modified after the  
14 amount of the assessments has been approved by the Legislature  
15 pursuant to subsection 1 and the city or county has already remitted  
16 its semiannual installment to the Commission for the billing period.

17 4. If any installment payment is not paid on or before the date  
18 on which it is due, the Executive Director shall make reasonable  
19 efforts to collect the delinquent payment. If the Executive Director  
20 is not able to collect the arrearage, the Executive Director shall  
21 submit a claim for the amount of the unpaid installment payment to  
22 the Department of Taxation. If the Department of Taxation receives  
23 such a claim, the Department shall deduct the amount of the claim  
24 from money that would otherwise be allocated from the Local  
25 Government Tax Distribution Account to the city or county that  
26 owes the installment payment and shall transfer that amount to the  
27 Commission.

28 5. As used in this section, "population" means the current  
29 population estimate for that city or county as determined and  
30 published by the Department of Taxation and the demographer  
31 employed pursuant to NRS 360.283.

32 **Sec. 6.** NRS 281A.400 is hereby amended to read as follows:

33 281A.400 A code of ethical standards is hereby established to  
34 govern the conduct of public officers and employees:

35 1. A public officer or employee shall not seek or accept any  
36 gift, service, favor, employment, engagement, emolument or  
37 economic opportunity which would tend improperly to influence a  
38 reasonable person in the public officer's or employee's position to  
39 depart from the faithful and impartial discharge of the public  
40 officer's or employee's public duties.

41 2. A public officer or employee shall not use the public  
42 officer's or employee's position in government to secure or grant  
43 unwarranted privileges, preferences, exemptions or advantages for  
44 the public officer or employee, any business entity in which the  
45 public officer or employee has a significant pecuniary interest, or



1 any person to whom the public officer or employee has a  
2 commitment in a private capacity to the interests of that person. As  
3 used in this subsection, “unwarranted” means without justification  
4 or adequate reason.

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

9 4. A public officer or employee shall not accept any salary,  
10 retainer, augmentation, expense allowance or other compensation  
11 from any private source for the performance of the public officer’s  
12 or employee’s duties as a public officer or employee.

13 5. If a public officer or employee acquires, through the public  
14 officer’s or employee’s public duties or relationships, any  
15 information which by law or practice is not at the time available to  
16 people generally, the public officer or employee shall not use the  
17 information to further a significant pecuniary interest of the public  
18 officer or employee or any other person or business entity.

19 6. A public officer or employee shall not suppress any  
20 governmental report or other official document because it might  
21 tend to affect unfavorably a significant pecuniary interest of the  
22 public officer or employee.

23 7. ~~Except for State Legislators who are subject to the~~  
24 ~~restrictions set forth in subsection 8, a~~ A public officer or employee  
25 shall not use governmental time, property, equipment or other  
26 facility to benefit a significant personal or pecuniary interest of the  
27 public officer or employee. This subsection does not prohibit:

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

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

34 (2) The use does not interfere with the performance of the  
35 public officer’s or employee’s public duties;

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

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

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

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

43 ➤ If a governmental agency incurs a cost as a result of a use that is  
44 authorized pursuant to this subsection or would ordinarily charge a  
45 member of the general public for the use, the public officer or



1 employee shall promptly reimburse the cost or pay the charge to the  
2 governmental agency.

3 8. ~~¶A State Legislator shall not:~~

4 ~~—(a) Use governmental time, property, equipment or other facility~~  
5 ~~for a nongovernmental purpose or for the private benefit of the State~~  
6 ~~Legislator or any other person. This paragraph does not prohibit:~~

7 ~~—(1) A limited use of state property and resources for personal~~  
8 ~~purposes if:~~

9 ~~—(I) The use does not interfere with the performance of the~~  
10 ~~State Legislator's public duties;~~

11 ~~—(II) The cost or value related to the use is nominal; and~~

12 ~~—(III) The use does not create the appearance of~~  
13 ~~impropriety;~~

14 ~~—(2) The use of mailing lists, computer data or other~~  
15 ~~information lawfully obtained from a governmental agency which is~~  
16 ~~available to members of the general public for nongovernmental~~  
17 ~~purposes; or~~

18 ~~—(3) The use of telephones or other means of communication~~  
19 ~~if there is not a special charge for that use.~~

20 ~~—(b) Require or authorize a legislative employee, while on duty,~~  
21 ~~to perform personal services or assist in a private activity, except:~~

22 ~~—(1) In unusual and infrequent situations where the~~  
23 ~~employee's service is reasonably necessary to permit the State~~  
24 ~~Legislator or legislative employee to perform that person's official~~  
25 ~~duties; or~~

26 ~~—(2) Where such service has otherwise been established as~~  
27 ~~legislative policy.~~

28 ~~—9.†~~ A public officer or employee shall not attempt to benefit a  
29 significant personal or pecuniary interest of the public officer or  
30 employee through the influence of a subordinate.

31 ~~†H0.†~~ 9. A public officer or employee shall not seek other  
32 employment or contracts through the use of the public officer's or  
33 employee's official position.

34 **Sec. 7.** NRS 281A.410 is hereby amended to read as follows:

35 281A.410 In addition to the requirements of the code of ethical  
36 standards and the other provisions of this chapter:

37 1. If a public officer or employee serves in a state agency of the  
38 Executive Department or an agency of any county, city or other  
39 political subdivision, the public officer or employee:

40 (a) Shall not accept compensation from any private person to  
41 represent or counsel the private person on any issue pending before  
42 the agency in which that public officer or employee serves, if the  
43 agency makes decisions; and

44 (b) If the public officer or employee leaves the service of the  
45 agency, shall not, for 1 year after leaving the service of the agency,



1 represent or counsel for compensation a private person upon any  
2 issue which was under consideration by the agency during the  
3 public officer's or employee's service. As used in this paragraph,  
4 "issue" includes a case, proceeding, application, contract or  
5 determination, but does not include the proposal or consideration of  
6 legislative measures or administrative regulations.

7 2. Except as otherwise provided in subsection 3, ~~†a-State~~  
8 ~~Legislator or†~~ a member of a local legislative body, or a public  
9 officer or employee whose public service requires less than half of  
10 his or her time, may represent or counsel a private person before an  
11 agency in which he or she does not serve.

12 3. A member of a local legislative body shall not represent or  
13 counsel a private person for compensation before another local  
14 agency if the territorial jurisdiction of the other local agency  
15 includes any part of the county in which the member serves. The  
16 Commission may relieve the member from the strict application of  
17 the provisions of this subsection if:

18 (a) The member requests an opinion from the Commission  
19 pursuant to subsection 1 of NRS 281A.440; and

20 (b) The Commission determines that such relief is not contrary  
21 to:

22 (1) The best interests of the public;

23 (2) The continued ethical integrity of each local agency  
24 affected by the matter; and

25 (3) The provisions of this chapter.

26 4. Unless permitted by this section, a public officer or  
27 employee shall not represent or counsel a private person for  
28 compensation before any state agency of the Executive or  
29 Legislative Department.

30 5. Not later than January 15 of each year, if any ~~†State~~  
31 ~~Legislator,†~~ member of a local legislative body or other public  
32 officer permitted by this section has, within the preceding year,  
33 represented or counseled a private person for compensation before a  
34 state agency of the Executive Department, he or she shall disclose  
35 for each such representation or counseling during the previous  
36 calendar year:

37 (a) The name of the client;

38 (b) The nature of the representation; and

39 (c) The name of the state agency.

40 6. The disclosure required by subsection 5 must be made in  
41 writing and filed with the Commission on a form prescribed by the  
42 Commission. For the purposes of this subsection, the disclosure is  
43 timely filed if, on or before the last day for filing, the disclosure is  
44 filed in one of the following ways:





1 (a) Delivered in person to the principal office of the  
2 Commission in Carson City.

3 (b) Mailed to the Commission by first-class mail, or other class  
4 of mail that is at least as expeditious, postage prepaid. Filing by mail  
5 is complete upon timely depositing the disclosure with the United  
6 States Postal Service.

7 (c) Dispatched to a third-party commercial carrier for delivery to  
8 the Commission within 3 calendar days. Filing by third-party  
9 commercial carrier is complete upon timely depositing the  
10 disclosure with the third-party commercial carrier.

11 (d) Transmitted to the Commission by facsimile machine or  
12 other electronic means authorized by the Commission. Filing by  
13 facsimile machine or other electronic means is complete upon  
14 receipt of the transmission by the Commission.

15 7. The Commission shall retain a disclosure filed pursuant to  
16 this section for 6 years after the date on which the disclosure was  
17 filed.

18 **Sec. 8.** NRS 281A.420 is hereby amended to read as follows:

19 281A.420 1. Except as otherwise provided in this section, a  
20 public officer or employee shall not approve, disapprove, vote,  
21 abstain from voting or otherwise act upon a matter:

22 (a) Regarding which the public officer or employee has accepted  
23 a gift or loan;

24 (b) In which the public officer or employee has a significant  
25 pecuniary interest; or

26 (c) Which would reasonably be affected by the public officer's  
27 or employee's commitment in a private capacity to the interests of  
28 another person,

29 ↪ without disclosing information concerning the gift or loan,  
30 significant pecuniary interest or commitment in a private capacity to  
31 the interests of the person that is sufficient to inform the public of  
32 the potential effect of the action or abstention upon the person who  
33 provided the gift or loan, upon the public officer's or employee's  
34 significant pecuniary interest, or upon the person to whom the  
35 public officer or employee has a commitment in a private capacity.  
36 Such a disclosure must be made at the time the matter is considered.  
37 If the public officer or employee is a member of a body which  
38 makes decisions, the public officer or employee shall make the  
39 disclosure in public to the chair and other members of the body. If  
40 the public officer or employee is not a member of such a body and  
41 holds an appointive office, the public officer or employee shall  
42 make the disclosure to the supervisory head of the public officer's or  
43 employee's organization or, if the public officer holds an elective  
44 office, to the general public in the area from which the public officer  
45 is elected.



1 2. The provisions of subsection 1 do not require a public  
2 officer to disclose:

3 (a) Any campaign contributions that the public officer reported  
4 in a timely manner pursuant to NRS 294A.120 or 294A.125; or

5 (b) Any contributions to a legal defense fund that the public  
6 officer reported in a timely manner pursuant to NRS 294A.286.

7 3. Except as otherwise provided in this section, in addition to  
8 the requirements of subsection 1, a public officer shall not vote upon  
9 or advocate the passage or failure of, but may otherwise participate  
10 in the consideration of, a matter with respect to which the  
11 independence of judgment of a reasonable person in the public  
12 officer's situation would be materially affected by:

13 (a) The public officer's acceptance of a gift or loan;

14 (b) The public officer's significant pecuniary interest; or

15 (c) The public officer's commitment in a private capacity to the  
16 interests of another person.

17 4. In interpreting and applying the provisions of subsection 3:

18 (a) It must be presumed that the independence of judgment of a  
19 reasonable person in the public officer's situation would not be  
20 materially affected by the public officer's acceptance of a gift or  
21 loan, significant pecuniary interest or commitment in a private  
22 capacity to the interests of another person where the resulting  
23 benefit or detriment accruing to the public officer, or if the public  
24 officer has a commitment in a private capacity to the interests of  
25 another person, accruing to the other person, is not greater than that  
26 accruing to any other member of any general business, profession,  
27 occupation or group that is affected by the matter. The presumption  
28 set forth in this paragraph does not affect the applicability of the  
29 requirements set forth in subsection 1 relating to the disclosure of  
30 the acceptance of a gift or loan, significant pecuniary interest or  
31 commitment in a private capacity to the interests of another person.

32 (b) The Commission must give appropriate weight and proper  
33 deference to the public policy of this State which favors the right of  
34 a public officer to perform the duties for which the public officer  
35 was elected or appointed and to vote or otherwise act upon a matter,  
36 provided the public officer has properly disclosed the public  
37 officer's acceptance of a gift or loan, significant pecuniary interest  
38 or commitment in a private capacity to the interests of another  
39 person in the manner required by subsection 1. Because abstention  
40 by a public officer disrupts the normal course of representative  
41 government and deprives the public and the public officer's  
42 constituents of a voice in governmental affairs, the provisions of this  
43 section are intended to require abstention only in clear cases where  
44 the independence of judgment of a reasonable person in the public  
45 officer's situation would be materially affected by the public



1 officer's acceptance of a gift or loan, significant pecuniary interest  
2 or commitment in a private capacity to the interests of another  
3 person.

4 5. Except as otherwise provided in NRS 241.0355, if a public  
5 officer declares to the body or committee in which the vote is to be  
6 taken that the public officer will abstain from voting because of the  
7 requirements of this section, the necessary quorum to act upon and  
8 the number of votes necessary to act upon the matter, as fixed by  
9 any statute, ordinance or rule, is reduced as though the member  
10 abstaining were not a member of the body or committee.

11 6. The provisions of this section do not, under any  
12 circumstances:

13 (a) Prohibit a member of a local legislative body from  
14 requesting or introducing a legislative measure; or

15 (b) Require a member of a local legislative body to take any  
16 particular action before or while requesting or introducing a  
17 legislative measure.

18 ~~17. The provisions of this section do not, under any  
19 circumstances, apply to State Legislators or allow the Commission  
20 to exercise jurisdiction or authority over State Legislators. The  
21 responsibility of a State Legislator to make disclosures concerning  
22 gifts, loans, interests or commitments and the responsibility of a  
23 State Legislator to abstain from voting upon or advocating the  
24 passage or failure of a matter are governed by the Standing Rules of  
25 the Legislative Department of State Government which are adopted,  
26 administered and enforced exclusively by the appropriate bodies of  
27 the Legislative Department of State Government pursuant to Section  
28 6 of Article 4 of the Nevada Constitution.~~

29 ~~8. As used in this section, "public officer" and "public  
30 employee" do not include a State Legislator.~~

31 **Sec. 9.** NRS 281A.480 is hereby amended to read as follows:

32 281A.480 1. In addition to any other penalties provided by  
33 law and in accordance with the provisions of NRS 281A.475, the  
34 Commission may impose on a public officer or employee or former  
35 public officer or employee civil penalties:

36 (a) Not to exceed \$5,000 for a first willful violation of this  
37 chapter;

38 (b) Not to exceed \$10,000 for a separate act or event that  
39 constitutes a second willful violation of this chapter; and

40 (c) Not to exceed \$25,000 for a separate act or event that  
41 constitutes a third willful violation of this chapter.

42 2. In addition to any other penalties provided by law, the  
43 Commission may, upon its own motion or upon the motion of the  
44 person about whom an opinion was requested pursuant to NRS  
45 281A.440, impose a civil penalty not to exceed \$5,000 and assess an



1 amount equal to the amount of attorney's fees and costs actually and  
2 reasonably incurred by the person about whom an opinion was  
3 requested pursuant to NRS 281A.440 against a person who  
4 prevents, interferes with or attempts to prevent or interfere with the  
5 discovery or investigation of a violation of this chapter.

6 3. If the Commission finds that a violation of a provision of  
7 this chapter by a public officer or employee or former public officer  
8 or employee has resulted in the realization of a financial benefit by  
9 the current or former public officer or employee or another person,  
10 the Commission may, in addition to any other penalties provided by  
11 law, require the current or former public officer or employee to pay  
12 a civil penalty of not more than twice the amount so realized.

13 4. In addition to any other penalties provided by law, if a  
14 proceeding results in an opinion that:

15 ~~(a) One or more willful violations of this chapter have been~~  
16 ~~committed by a State Legislator removable from office only through~~  
17 ~~expulsion by the State Legislator's own House pursuant to Section 6~~  
18 ~~of Article 4 of the Nevada Constitution, the Commission shall:~~

19 ~~— (1) If the State Legislator is a member of the Senate, submit~~  
20 ~~the opinion to the Majority Leader of the Senate or, if the Majority~~  
21 ~~Leader of the Senate is the subject of the opinion or the person who~~  
22 ~~requested the opinion, to the President Pro Tempore of the Senate;~~  
23 ~~or~~

24 ~~— (2) If the State Legislator is a member of the Assembly,~~  
25 ~~submit the opinion to the Speaker of the Assembly or, if the Speaker~~  
26 ~~of the Assembly is the subject of the opinion or the person who~~  
27 ~~requested the opinion, to the Speaker Pro Tempore of the Assembly.~~

28 ~~(b)~~ One or more willful violations of this chapter have been  
29 committed by a state officer removable from office only through  
30 impeachment pursuant to Article 7 of the Nevada Constitution, the  
31 Commission shall submit the opinion to the Speaker of the  
32 Assembly and the Majority Leader of the Senate or, if the Speaker  
33 of the Assembly or the Majority Leader of the Senate is the person  
34 who requested the opinion, to the Speaker Pro Tempore of the  
35 Assembly or the President Pro Tempore of the Senate, as  
36 appropriate.

37 ~~(c)~~ (b) One or more willful violations of this chapter have  
38 been committed by a public officer other than a public officer  
39 described in ~~paragraphs~~ paragraph (a) , ~~and (b).~~ the willful  
40 violations shall be deemed to be malfeasance in office for the  
41 purposes of NRS 283.440 and the Commission:

42 (1) May file a complaint in the appropriate court for removal  
43 of the public officer pursuant to NRS 283.440 when the public  
44 officer is found in the opinion to have committed fewer than three  
45 willful violations of this chapter.



1 (2) Shall file a complaint in the appropriate court for removal  
2 of the public officer pursuant to NRS 283.440 when the public  
3 officer is found in the opinion to have committed three or more  
4 willful violations of this chapter.

5 ➤ This paragraph grants an exclusive right to the Commission, and  
6 no other person may file a complaint against the public officer  
7 pursuant to NRS 283.440 based on any violation found in the  
8 opinion.

9 5. Notwithstanding any other provision of this chapter, any act  
10 or failure to act by a public officer or employee or former public  
11 officer or employee relating to this chapter is not a willful violation  
12 of this chapter if the public officer or employee establishes by  
13 sufficient evidence that:

14 (a) The public officer or employee relied in good faith upon the  
15 advice of the legal counsel retained by his or her public body,  
16 agency or employer; and

17 (b) The advice of the legal counsel was:

18 (1) Provided to the public officer or employee before the  
19 public officer or employee acted or failed to act; and

20 (2) Based on a reasonable legal determination by the legal  
21 counsel under the circumstances when the advice was given that the  
22 act or failure to act by the public officer or employee would not be  
23 contrary to any prior published opinion issued by the Commission  
24 which was publicly available on the Internet website of the  
25 Commission.

26 6. In addition to any other penalties provided by law, a public  
27 employee who commits a willful violation of this chapter is subject  
28 to disciplinary proceedings by the employer of the public employee  
29 and must be referred for action in accordance to the applicable  
30 provisions governing the employment of the public employee.

31 7. The provisions of this chapter do not abrogate or decrease  
32 the effect of the provisions of the Nevada Revised Statutes which  
33 define crimes or prescribe punishments with respect to the conduct  
34 of public officers or employees. If the Commission finds that a  
35 public officer or employee has committed a willful violation of this  
36 chapter which it believes may also constitute a criminal offense, the  
37 Commission shall refer the matter to the Attorney General or the  
38 district attorney, as appropriate, for a determination of whether a  
39 crime has been committed that warrants prosecution.

40 8. The imposition of a civil penalty pursuant to subsection 1, 2  
41 or 3 is a final decision for the purposes of judicial review pursuant  
42 to NRS 233B.130.

43 9. A finding by the Commission that a public officer or  
44 employee has violated any provision of this chapter must be



1 supported by a preponderance of the evidence unless a greater  
2 burden is otherwise prescribed by law.

3 **Sec. 10.** 1. Notwithstanding the provisions of NRS  
4 281A.200, the term of each member of the Commission on Ethics  
5 who was appointed by the Legislative Commission expires on the  
6 effective date of this act.

7 2. As soon as practicable after the effective date of this act, the  
8 Governor shall appoint to the Commission on Ethics the member  
9 added pursuant to subsection 2 of NRS 281A.200, as amended by  
10 section 4 of this act.

11 **Sec. 11.** 1. The amendatory provisions of this act that  
12 remove the concurrent jurisdiction of the Commission on Ethics  
13 over State Legislators do not apply to any request for an opinion  
14 regarding a Legislator's conduct submitted pursuant to NRS  
15 281A.440 that is pending before the Commission on Ethics on the  
16 effective date of this act.

17 2. The revision of the composition of the Commission on  
18 Ethics in NRS 281A.200, as amended by section 4 of this act, does  
19 not affect the status of any request for an opinion pursuant to NRS  
20 281A.440 that is pending before the Commission on Ethics on the  
21 effective date of this act.

22 **Sec. 12.** This act becomes effective upon passage and  
23 approval.



# SB84 Amendment

MOCK-UP

PROPOSED AMENDMENT 3575 TO  
SENATE BILL NO. 84

PREPARED FOR SENATE COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS  
APRIL 12, 2017

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     **Section 1.** Chapter 281A of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections ~~1.3~~ 1.3 to 14, inclusive, of this  
3 act.  
4     *Sec. 1.3. “Adjudicatory hearing” means a hearing held by the*  
5 *Commission pursuant to section 6.5 of this act to receive evidence*  
6 *concerning an ethics complaint.*  
7     *Sec. 1.5. “Advisory opinion” means an advisory opinion rendered*  
8 *by the Commission pursuant to sections 3.1 to 3.5, inclusive, of this act.*  
9     **Sec. 2.** *“Deferral ~~order~~ agreement” means an ~~order~~ agreement*  
10 *entered ~~by the Commission~~ into between the Executive Director and the*  
11 *subject of an ethics complaint pursuant to section 6 of this act.*  
12     *Sec. 2.2. “Ethics complaint” means a request for an opinion which*  
13 *is filed with the Commission or initiated by the Commission on its own*  
14 *motion pursuant to section 3.7 of this act regarding the propriety of the*  
15 *conduct of a public officer or employee under the statutory ethical*  
16 *standards set forth in this chapter.*



1 Sec. 2.5. "Request for an advisory opinion" means a request for an  
2 advisory opinion which is filed with the Commission pursuant to section  
3 3.2 of this act by a public officer or employee who is:

4 1. Seeking guidance on matters which directly relate to the propriety  
5 of his or her own past, present or future conduct as a public officer or  
6 employee under the statutory ethical standards set forth in this chapter;  
7 or

8 2. Requesting relief pursuant to NRS 281A.410, 281A.430 or  
9 281A.550.

10 Sec. 2.7. "Review panel" means a review panel appointed pursuant  
11 to NRS 281A.220.

12 ~~Sec. 3. If a person who requests an opinion pursuant to subsection~~  
13 ~~1 or 2 of NRS 281A.440 does not:~~

14 ~~1. Submit all necessary information to the Commission; and~~

15 ~~2. Declare by oath or affirmation that the person will testify~~  
16 ~~truthfully;~~

17 ~~the Commission may decline to render an opinion.] (Deleted by~~  
18 ~~amendment.)~~

19 Sec. 3.1. The provisions of sections 3.1 to 3.5, inclusive, of this act  
20 apply to proceedings concerning a request for an advisory opinion.

21 Sec. 3.2. 1. A public officer or employee may file with the  
22 Commission a request for an advisory opinion to:

23 (a) Seek guidance on matters which directly relate to the propriety of  
24 his or her own past, present or future conduct as a public officer or  
25 employee under the statutory ethical standards set forth in this chapter;  
26 or

27 (b) Request relief pursuant to NRS 281A.410, 281A.430 or 281A.550.

28 2. The request for an advisory opinion must be:

29 (a) Filed on a form prescribed by the Commission; and

30 (b) Submitted with all necessary information for the Commission to  
31 render an advisory opinion in the matter.

32 3. The Commission may decline to render an advisory opinion if the  
33 public officer or employee does not:

34 (a) Submit all necessary information for the Commission to render  
35 an advisory opinion in the matter; or

36 (b) Declare by oath or affirmation that he or she will testify truthfully  
37 regarding the matter.

38 Sec. 3.3. 1. If a public officer or employee properly files a request  
39 for an advisory opinion, the Commission shall render an advisory  
40 opinion that interprets the statutory ethical standards and applies those  
41 standards to the given set of facts and circumstances. The Commission  
42 shall render the advisory opinion within 45 days after receiving the  
43 request, unless the requester waives this time limit.

1 2. If the advisory opinion rendered by the Commission relates to the  
2 propriety of the requester's own present or future conduct, the advisory  
3 opinion is:

4 (a) Binding upon the requester with regard to the requester's own  
5 future conduct; and

6 (b) A final decision that is subject to judicial review pursuant to NRS  
7 233B.130.

8 3. If the requester seeks judicial review pursuant to NRS 233B.130,  
9 any proceedings concerning such judicial review must be confidential  
10 and held in closed court without admittance of persons other than those  
11 necessary to the proceedings, unless the requester waives this right to  
12 confidential proceedings.

13 Sec. 3.4. 1. Except as otherwise provided in this section, the  
14 following materials are confidential and are not public records pursuant  
15 to chapter 239 of NRS:

16 (a) A request for an advisory opinion;

17 (b) The advisory opinion rendered by the Commission in response to  
18 the request; and

19 (c) Any information, communications, records, documents or other  
20 materials in the possession of the Commission or its staff that are related  
21 to the request.

22 2. The provisions of subsection 1 do not apply if the public officer or  
23 employee who files the request for an advisory opinion:

24 (a) Acts in contravention of the advisory opinion, in which case the  
25 Commission may disclose the request, the advisory opinion and any  
26 information, communications, records, documents or other materials in  
27 the possession of the Commission or its staff that are related to the  
28 request;

29 (b) Voluntarily discloses in any manner the request, the advisory  
30 opinion or any information, communications, records, documents or  
31 other materials in the possession of the Commission or its staff that are  
32 related to the request, except to:

33 (1) The public body, agency or employer of the public officer or  
34 employee; or

35 (2) A person to whom the Commission authorizes the current or  
36 former public officer or employee to make such a disclosure; or

37 (c) Authorizes the Commission in writing to make the request, the  
38 advisory opinion or any information, communications, records,  
39 documents or other materials in the possession of the Commission or its  
40 staff that are related to the request publicly available.

41 Sec. 3.5. 1. Except as otherwise provided in this section, the  
42 provisions of chapter 241 of NRS do not apply to:

43 (a) Any meeting or hearing held by the Commission to receive  
44 information or evidence concerning a request for an advisory opinion;  
45 and

1 (b) Any deliberations or actions of the Commission on such  
2 information or evidence.

3 2. The public officer or employee who files the request for an  
4 advisory opinion may also file a request with the Commission to hold a  
5 public meeting or hearing regarding the request for an advisory opinion.

6 Sec. 3.6. The provisions of sections 3.6 to 13, inclusive, of this act  
7 and NRS 281A.450, 281A.465, 281A.475 and 281A.480 apply to  
8 proceedings concerning an ethics complaint.

9 Sec. 3.7. 1. Except as otherwise provided in this section and NRS  
10 281A.280, the Commission may render an opinion that interprets the  
11 statutory ethical standards and applies those standards to a given set of  
12 facts and circumstances regarding the propriety of the conduct of a  
13 public officer or employee if an ethics complaint is:

14 (a) Filed by a specialized or local ethics committee established  
15 pursuant to NRS 281A.350.

16 (b) Filed by any person, except a person who is incarcerated in a  
17 correctional facility in this State or any other jurisdiction.

18 (c) Initiated by the Commission on its own motion, except the  
19 Commission shall not initiate such an ethics complaint based solely upon  
20 an anonymous complaint.

21 2. An ethics complaint filed by a person must be:

22 (a) Verified under oath and filed on a form prescribed by the  
23 Commission; and

24 (b) Submitted with sufficient evidence to support the allegations in  
25 order for the Commission to make a determination of whether it has  
26 jurisdiction in the matter and whether an investigation is warranted in  
27 the matter pursuant to sections 3.8 and 3.9 of this act.

28 3. The Commission may decline to render an opinion if the person  
29 who files the ethics complaint does not submit all necessary evidence in  
30 the matter.

31 Sec. 3.8. 1. Based on the evidence submitted with an ethics  
32 complaint filed with the Commission pursuant to section 3.7 of this act,  
33 the Commission shall determine whether it has jurisdiction in the matter  
34 and whether an investigation is warranted in the matter. The  
35 Commission shall make its determination within 45 days after receiving  
36 the ethics complaint, unless the public officer or employee who is the  
37 subject of the ethics complaint waives this time limit.

38 2. If the Commission determines that it does not have jurisdiction in  
39 the matter, the Commission shall dismiss the matter.

40 3. If the Commission determines that it has jurisdiction in the  
41 matter but the evidence submitted with the ethics complaint is not  
42 sufficient to warrant an investigation in the matter, the Commission  
43 shall dismiss the matter, with or without issuing a letter of caution or  
44 instruction to the public officer or employee pursuant to section 12.5 of  
45 this act.

1 4. If the Commission determines that it has jurisdiction in the  
2 matter and the evidence submitted with the ethics complaint is sufficient  
3 to warrant an investigation in the matter, the Commission may direct the  
4 Executive Director to investigate the ethics complaint pursuant to section  
5 3.9 of this act.

6 Sec. 3.9. 1. If the Commission directs the Executive Director to  
7 investigate an ethics complaint pursuant to section 3.8 of this act or if the  
8 Commission initiates an ethics complaint on its own motion pursuant to  
9 section 3.7 of this act, the Executive Director shall investigate the facts  
10 and circumstances relating to the ethics complaint to determine whether  
11 there is just and sufficient cause for the Commission to render an  
12 opinion in the matter.

13 2. The Executive Director shall notify the public officer or employee  
14 who is the subject of the ethics complaint and provide the public officer  
15 or employee an opportunity to submit to the Executive Director a  
16 response to the allegations against the public officer or employee. The  
17 response must be submitted within 30 days after the date on which the  
18 public officer or employee received the notice of the ethics complaint,  
19 unless the Executive Director grants an extension.

20 3. The purpose of the response is to provide the Executive Director  
21 and the review panel with any information relevant to the ethics  
22 complaint which the public officer or employee believes may assist:

23 (a) The Executive Director in performing his or her investigation and  
24 other functions pursuant to this section and section 4 of this act; and

25 (b) The review panel in performing its review and other functions  
26 pursuant to section 5 of this act.

27 4. The public officer or employee is not required in the response or  
28 in any proceedings before the review panel to assert, claim or raise any  
29 objection or defense, in law or fact, to the allegations against the public  
30 officer or employee, and no objection or defense, in law or fact, is  
31 waived, abandoned or barred by the failure to assert, claim or raise it in  
32 the response or in any proceedings before the review panel.

33 Sec. 4. 1. Except as otherwise provided in this subsection, ~~if a~~  
34 ~~request for an opinion is submitted to or initiated by the Commission~~  
35 ~~pursuant to subsection 2 of NRS 281A.440,~~ the Executive Director shall  
36 complete the investigation required by ~~[NRS 281A.440]~~ section 3.9 of this  
37 act and present a written recommendation to the ~~[Commission]~~ review  
38 panel within 70 days after ~~[the determination by]~~ the Commission ~~[that it~~  
39 ~~has jurisdiction concerning the request]~~ directs the Executive Director to  
40 investigate the ethics complaint or after ~~[the motion of]~~ the Commission  
41 ~~[initiating the request,]~~ initiates the ethics complaint on its own motion,  
42 as applicable. The public officer or employee who is the subject of the  
43 ~~[request]~~ ethics complaint may waive this time limit.

44 2. The recommendation must:

45 (a) Set forth the factual and legal basis for the recommendation.

1 (b) State whether the Executive Director believes that there is just  
2 and sufficient cause for the Commission to render an opinion in the  
3 matter; and

4 ~~[(b)]~~ (c) If the Executive Director believes that a disposition of the  
5 matter without ~~an~~ an adjudicatory hearing is appropriate under the facts  
6 and circumstances, ~~include~~ state any suggested disposition that is  
7 consistent with the provisions of this chapter ~~;~~ and

8 ~~—(c) Set forth the factual and legal basis for the recommendation.]~~  
9 including, without limitation, whether the Executive Director believes  
10 that the conduct at issue may be appropriately addressed through  
11 additional training or other corrective action under the terms and  
12 conditions of a deferral agreement.

13 Sec. 5. 1. Except as otherwise provided in this ~~subsection, if a~~  
14 ~~request for an opinion is submitted to or initiated by the Commission~~  
15 ~~pursuant to subsection 2 of NRS 281A.440,~~ section, the ~~Commission~~  
16 review panel shall determine whether there is just and sufficient cause  
17 for the Commission to render an opinion in the matter within 15 days  
18 after the Executive Director has provided the recommendation required  
19 by section 4 of this act ~~;~~ and shall cause a record of its proceedings to  
20 ~~be kept.~~ The public officer or employee who is the subject of the  
21 ~~request~~ ethics complaint may waive this time limit.

22 2. The review panel shall cause a record of its proceedings to be  
23 kept.

24 3. The ~~Commission~~ review panel shall not determine that there is  
25 just and sufficient cause for the Commission to render an opinion in the  
26 matter unless the Executive Director has provided the public officer or  
27 employee an opportunity to respond to the allegations as required by  
28 ~~NRS 281A.440.]~~ section 3.9 of this act.

29 ~~[(2)]~~ 4. If the ~~Commission~~ review panel determines that there is not  
30 just and sufficient cause for the Commission to render an opinion in the  
31 matter, it shall dismiss the matter, with or without prejudice, and with  
32 or without issuing a letter of caution or instruction to the public officer  
33 or employee ~~]. A letter of caution is confidential, but the Commission~~  
34 ~~may consider a letter of caution in deciding the appropriate action to be~~  
35 ~~taken on any subsequent request for an opinion involving the public~~  
36 ~~officer or employee, unless the letter is not relevant to the issues~~  
37 ~~presented by the subsequent request.~~

38 ~~—3.]~~ pursuant to section 12.5 of this act.

39 5. If the ~~Commission~~ review panel determines that there is just  
40 and sufficient cause for the Commission to render an opinion in the  
41 matter but reasonably believes that the conduct at issue ~~is more~~ may be  
42 appropriately addressed through additional training or other corrective  
43 action ~~;~~ it may enter under the terms and conditions of a deferral  
44 ~~order.]~~ agreement, the review panel may:



1 (a) Approve a deferral agreement proposed by the Executive Director  
2 and the public officer or employee instead of referring the ethics  
3 complaint to the Commission for further proceedings in the matter; or

4 (b) Authorize the Executive Director and the public officer or  
5 employee to develop such a deferral agreement and may thereafter  
6 approve such a deferral agreement instead of referring the ethics  
7 complaint to the Commission for further proceedings in the matter.

8 6. If the review panel does not approve a deferral agreement  
9 pursuant to subsection 5 or if the public officer or employee declines to  
10 enter into such a deferral agreement, the review panel shall refer the  
11 ethics complaint to the Commission for further proceedings in the  
12 matter.

13 ~~[4.] 7. If the [Commission] review panel determines that there is just~~  
14 ~~and sufficient cause for the Commission to render an opinion in the~~  
15 ~~matter ~~and~~ and reasonably believes that the conduct at issue may not be~~  
16 ~~appropriately addressed through additional training or other corrective~~  
17 ~~action under the terms and conditions of a deferral agreement, the~~  
18 ~~review panel shall refer the ethics complaint to the Commission ~~shall~~~~  
19 ~~hold a hearing and render its opinion within 60 days after the date of the~~  
20 ~~determination unless the public officer or employee waives this time limit~~  
21 ~~or a deferral order is entered by the Commission.] for further~~  
22 ~~proceedings in the matter.~~

23 Sec. 5.5. The provisions of chapter 241 of NRS do not apply to:

24 1. Any meeting or hearing held by the review panel to receive  
25 information or evidence concerning an ethics complaint; and

26 2. Any deliberations or actions of the review panel on such  
27 information or evidence.

28 ~~Sec. 6. 1. [If a request for an opinion is submitted to or initiated~~  
29 ~~by the Commission pursuant to subsection 2 of NRS 281A.440, the~~  
30 ~~Commission determines that there is just and sufficient cause to render~~  
31 ~~an opinion and the Commission reasonably believes that a public officer~~  
32 ~~or employee has engaged in conduct that is appropriately addressed~~  
33 ~~through additional training or other corrective action, the Commission]~~  
34 In proceedings concerning an ethics complaint, the Executive Director  
35 and the public officer or employee who is the subject of the ethics  
36 complaint may develop a deferral agreement to defer further proceedings  
37 in the matter ~~and enter a~~ under the terms and conditions of the deferral  
38 ~~order.~~ agreement.

39 2. A deferral agreement does not become effective unless approved  
40 by the review panel. If the review panel approves a deferral agreement,  
41 the Commission shall enforce the terms and conditions of the deferral  
42 agreement.

43 3. A deferral ~~order is confidential and~~ agreement must:

44 (a) Specify the training or other corrective action to be completed by  
45 or imposed upon the public officer or employee;

1 (b) Specify any ~~[penalty,]~~ other terms and conditions, consistent with  
2 the provisions of this chapter, to be imposed upon the public officer or  
3 employee; and

4 (c) Provide that the Commission may vacate the ~~[order]~~ deferral  
5 agreement and ~~[proceed with a hearing]~~ conduct further proceedings in  
6 the matter if the Commission finds that the public officer or employee  
7 has failed to comply with any ~~[condition]~~ terms and conditions of the  
8 ~~[order]~~ deferral agreement.

9 ~~[3.]~~ 4. The imposition of training or other corrective action and the  
10 imposition of any ~~[penalty described]~~ other terms and conditions in a  
11 deferral ~~[order]~~ agreement is without prejudice to any other disposition  
12 of the matter, consistent with this chapter, that may be ordered by the  
13 Commission if it vacates the ~~[order, proceeds with a hearing]~~ deferral  
14 agreement and conducts further proceedings in the matter and finds that  
15 the public officer or employee has violated any provision of this chapter.

16 ~~[4.]~~ 5. The Executive Director shall monitor the compliance of the  
17 public officer or employee who is the subject of ~~[a]~~ the deferral ~~[order]~~  
18 agreement and may require the public officer or employee to document  
19 his or her compliance with the ~~[order]~~ deferral agreement.

20 6. The Executive Director shall:

21 (a) Inform the Commission ~~[shall give]~~ of any alleged failure of the  
22 public officer or employee to comply with the deferral agreement;

23 (b) Give the public officer or employee written notice of any alleged  
24 failure to comply with the ~~[order and shall allow]~~ deferral agreement;  
25 and

26 (c) Allow the public officer or employee not less than 15 days to  
27 respond to such a notice.

28 7. Within 60 days after the date on which the public officer or  
29 employee responds or was entitled to respond to the written notice of any  
30 alleged failure to comply with the deferral agreement, the Commission  
31 shall determine whether the public officer or employee failed to comply  
32 with the deferral agreement, unless the public officer or employee waives  
33 this time limit.

34 8. If the Commission determines that the public officer or employee  
35 failed to comply with the deferral agreement, the Commission may take  
36 any action it deems appropriate, consistent with the terms and conditions  
37 of the deferral agreement and the provisions of this chapter, including,  
38 without limitation, vacating the deferral agreement and conducting  
39 further proceedings in the matter.

40 ~~[5.]~~ 9. If the public officer or employee who is the subject of ~~[a]~~ the  
41 deferral ~~[order]~~ agreement complies in a satisfactory manner with the  
42 ~~[order]~~ deferral agreement, the Commission ~~[may]~~ shall dismiss the  
43 ~~[request for an opinion or take any other action it deems appropriate,~~  
44 ~~consistent with the provisions of this chapter.]~~ matter.

1 Sec. 6.5. 1. If the review panel refers an ethics complaint to the  
2 Commission for further proceedings in the matter pursuant to section 5  
3 of this act or if the Commission vacates a deferral agreement and  
4 conducts further proceedings in the matter pursuant to section 6 of this  
5 act, the Commission shall hold an adjudicatory hearing and render an  
6 opinion in the matter within 60 days after the date on which the review  
7 panel refers the ethics complaint to the Commission or the Commission  
8 vacates the deferral agreement, as appropriate, unless the public officer  
9 or employee who is the subject of the ethics complaint waives this time  
10 limit.

11 2. If the Commission holds an adjudicatory hearing to receive  
12 evidence concerning an ethics complaint, the Commission shall:

13 (a) Notify the public officer or employee who is the subject of the  
14 ethics complaint of the date, time and place of the hearing;

15 (b) Allow the public officer or employee to be represented by counsel;  
16 and

17 (c) Allow the public officer or employee to hear the evidence  
18 presented to the Commission and to respond and present evidence on his  
19 or her own behalf.

20 3. Unless the public officer or employee agrees to a shorter time, an  
21 adjudicatory hearing may not be held less than 10 days after the date on  
22 which the notice of the hearing is given to the public officer or employee.

23 4. For good cause shown, the Commission may take testimony from  
24 a person by telephone or video conference at an adjudicatory hearing or  
25 at any other proceedings concerning the ethics complaint.

26 ~~Sec. 7. Each request for an opinion that a public officer or~~  
27 ~~employee submits to the Commission pursuant to subsection 1 of NRS~~  
28 ~~281A.440, each opinion rendered by the Commission in response to the~~  
29 ~~request and any motion, determination, evidence or record of a hearing~~  
30 ~~relating to the request are confidential unless the public officer or~~  
31 ~~employee who requested the opinion:~~

32 ~~1. Acts in contravention of the opinion, in which case the~~  
33 ~~Commission may disclose the request for the opinion, the contents of the~~  
34 ~~opinion and any motion, determination, evidence or record of a hearing~~  
35 ~~related to the request;~~

36 ~~2. Discloses the request for the opinion, the contents of the opinion,~~  
37 ~~or any motion, determination, evidence or record of a hearing related to~~  
38 ~~the request in any manner except to:~~

39 ~~(a) The public body, agency or employer of the public officer or~~  
40 ~~employee; or~~

41 ~~(b) A person to whom the Commission authorizes the current or~~  
42 ~~former public officer or employee to make such a disclosure; or~~

43 ~~3. Requests the Commission to disclose the request, the contents of~~  
44 ~~the opinion, or any motion, determination, evidence or record of a~~  
45 ~~hearing related to the request.] (Deleted by amendment.)~~



1     **Sec. 8. 1.** *Except as otherwise provided in this section and section*  
2 *9 of this act, all information, communications, records, documents or*  
3 *other ~~material~~ materials in the possession of the Commission ~~for its~~ ,*  
4 *the review panel or their staff that ~~is~~ are related to ~~a request for an~~*  
5 *opinion regarding a public officer or employee submitted to or initiated*  
6 *by the Commission pursuant to subsection 2 of NRS 281A.440 an ethics*  
7 *complaint are confidential and are not public records pursuant to*  
8 *chapter 239 of NRS until:*

9     (a) *The ~~Commission~~ review panel determines ~~that~~ whether there*  
10 *is just and sufficient cause to render an opinion in the matter and serves*  
11 *written notice of its determination on the public officer or employee who*  
12 *is the subject of the ~~request,~~ ethics complaint; or*

13     (b) *The public officer or employee who is the subject of the ~~request~~*  
14 *ethics complaint authorizes the Commission in writing to make the*  
15 *information, communications, records, documents or other ~~material~~*  
16 *which materials that are related to the ~~request~~ ethics complaint*  
17 *publicly available,*

18     ↳ *whichever occurs first.*

19     2. *Except as otherwise provided in subsection 3, if a person who*  
20 *~~submits a request for an opinion pursuant to paragraph (b) of~~*  
21 *~~subsection 2 of NRS 281A.440~~ files an ethics complaint asks that his or*  
22 *her identity as the requester be kept confidential, the Commission:*

23     (a) *Shall keep the identity of the requester confidential if he or she is*  
24 *a public officer or employee who works for the same public body, agency*  
25 *or employer as the public officer or employee who is the subject of the*  
26 *~~request,~~ ethics complaint.*

27     (b) *May keep the identity of the requester confidential if he or she*  
28 *offers sufficient facts and circumstances showing a reasonable*  
29 *likelihood that disclosure of his or her identity will subject the requester*  
30 *or a member of his or her household to a bona fide threat of physical*  
31 *force or violence.*

32     3. *If the Commission keeps the identity of the requester confidential,*  
33 *the Commission shall not render an opinion in the matter unless there is*  
34 *sufficient evidence without the testimony of the requester to consider the*  
35 *propriety of the conduct of the public officer or employee who is the*  
36 *subject of the ~~request,~~ ethics complaint. If the ~~Commission~~ Executive*  
37 *Director intends to present the testimony of the requester as evidence for*  
38 *consideration by the Commission at the adjudicatory hearing or in*  
39 *rendering an opinion in the matter and the public officer or employee*  
40 *who is the subject of the ~~request,~~ ethics complaint submits a written*  
41 *discovery request to the Commission pursuant to section 9 of this act, the*  
42 *Commission shall disclose the name of the requester only as a proposed*  
43 *witness within a reasonable time before the adjudicatory hearing on the*  
44 *matter.*

1     Sec. 9. 1. Except as otherwise provided in this section, the  
2     investigative file related to ~~[a request for an opinion regarding a public~~  
3     ~~officer or employee]~~ an ethics complaint is confidential ~~[.]~~ and is not a  
4     public record pursuant to chapter 239 of NRS.

5     2. At any time after being served with written notice of the  
6     determination of the ~~[Commission]~~ review panel regarding the existence  
7     of just and sufficient cause for the Commission to render an opinion in  
8     the matter, the public officer or employee who is the subject of the  
9     ~~[request for an opinion]~~ ethics complaint may submit a written discovery  
10    request to the Commission for a list of proposed witnesses and a copy of  
11    any portion of the investigative file that the ~~[Commission]~~ Executive  
12    Director intends to present as evidence for consideration ~~[as evidence]~~ by  
13    the Commission at the adjudicatory hearing or in rendering an opinion  
14    in the matter.

15    3. Any portion of the investigative file which the ~~[Commission]~~  
16    Executive Director presents as evidence for consideration by the  
17    Commission at the adjudicatory hearing or in rendering an opinion in  
18    the matter becomes a public record and must be open for inspection  
19    pursuant to ~~[NRS 239.010.]~~ chapter 239 of NRS.

20    4. For the purposes of this section ~~[, the]~~ :

21    (a) The investigative file includes, without limitation ~~[, any]~~ :

22    (1) Any response concerning the ethics complaint prepared by the  
23    public officer or employee pursuant to section 3.9 of this act and  
24    submitted to the Executive Director and the review panel during the  
25    course of the investigation and any proceedings before the review panel;

26    (2) Any recommendation concerning the ethics complaint  
27    prepared by the Executive Director pursuant to section 4 of this act and  
28    submitted to the review panel during the course of the investigation and  
29    any proceedings before the review panel; and

30    (3) Any other information provided to or obtained by ~~the~~  
31    ~~Commission or its staff]~~ or on behalf of the Executive Director through  
32    any form of communication during the course of ~~[an]~~ the investigation  
33    and any proceedings before the review panel and any records, documents  
34    or other ~~[material]~~ materials created or maintained during the course of  
35    ~~[an]~~ the investigation and any proceedings before the review panel which  
36    relate to the public officer or employee who is the subject of the ~~[request~~  
37    ~~for an opinion,]~~ ethics complaint, including, without limitation, a  
38    transcript, regardless of whether such information, records, documents  
39    or other ~~[material]~~ materials are obtained pursuant to a subpoena.

40    (b) The investigative file does not include any deferral agreement.

41    Sec. 10. ~~[I.] Whenever the Commission holds a hearing to receive~~  
42    ~~evidence concerning the propriety of the conduct of a public officer or~~  
43    ~~employee, the Commission shall:~~

44    ~~(a) Notify the public officer or employee of the date, time and place~~  
45    ~~of the hearing;~~

1 ~~—(b) Allow the public officer or employee to be represented by counsel;~~  
2 ~~and~~

3 ~~—(c) Allow the public officer or employee to hear the evidence~~  
4 ~~presented to the Commission and to respond and present evidence on his~~  
5 ~~or her own behalf.~~

6 ~~↳ Unless the public officer or employee agrees to a shorter time, the~~  
7 ~~hearing must be held not less than 10 days after the notice is given.~~

8 ~~—2. If a person who is not a party to a hearing before the~~  
9 ~~Commission, including, without limitation, a person who has requested~~  
10 ~~an opinion pursuant to paragraph (a) or (b) of subsection 2 of NRS~~  
11 ~~281A.440, wishes to ask a question of a witness at the hearing, the~~  
12 ~~person must submit the question to the Executive Director in writing.~~  
13 ~~The Executive Director may submit the question to the Commission if~~  
14 ~~the Executive Director deems the question relevant and appropriate. This~~  
15 ~~subsection does not require the Commission or the Executive Director to~~  
16 ~~ask any question submitted by a person who is not a party to the~~  
17 ~~proceeding.~~

18 ~~—3. For good cause shown, the Commission may take testimony from~~  
19 ~~a person by telephone or video conference.] (Deleted by amendment.)~~

20 **Sec. 11. The provisions of chapter 241 of NRS do not apply to:**

21 1. Any meeting or hearing held by the Commission to receive  
22 information or evidence concerning [the propriety of the conduct of a  
23 public officer or employee and the] **an ethics complaint; and**

24 2. Any deliberations of the Commission on such information or  
25 evidence . ], including, without limitation, any proceedings of the  
26 Commission conducted pursuant to subsection 1 of section 5 of this act,  
27 are not subject to the provisions of chapter 241 of NRS.]

28 **Sec. 12. 1. [Each opinion off] If the Commission [issued after a**  
29 **hearing] renders an opinion in proceedings concerning an ethics**  
30 **complaint, the opinion must include findings of fact and conclusions of**  
31 **law.**

32 **2. If [and to the extent that] , in proceedings concerning an ethics**  
33 **complaint, the Commission determines that a violation of this chapter:**

34 **(a) Has not been proven, the Commission shall dismiss the matter,**  
35 **with or without prejudice, and with or without issuing a letter of caution**  
36 **[as described in section 5 of this act.] or instruction to the public officer**  
37 **or employee pursuant to section 12.5 of this act.**

38 **(b) Has been proven, the Commission may take any action**  
39 **authorized by this chapter.**

40 **Sec. 12.5. 1. In proceedings concerning an ethics complaint, the**  
41 **Commission or the review panel, as appropriate, may issue a letter of**  
42 **caution or instruction to the public officer or employee who is the subject**  
43 **of the ethics complaint to caution or instruct the public officer or**  
44 **employee regarding the propriety of his or her conduct under the**  
45 **statutory ethical standards set forth in this chapter.**

1 2. If the Commission or the review panel issues a letter of caution or  
2 instruction to the public officer or employee, the letter:

3 (a) Is confidential and is not a public record pursuant to chapter 239  
4 of NRS.

5 (b) May be considered in deciding the appropriate action to be taken  
6 on any subsequent ethics complaint involving the public officer or  
7 employee, unless the letter is not relevant to the issues presented by the  
8 subsequent ethics complaint.

9 Sec. 13. 1. Except as otherwise provided in this section, ~~as a~~  
10 ~~condition of a deferral order or~~ in proceedings concerning an ethics  
11 complaint, the Commission, based on a finding ~~of~~ that a violation of  
12 this chapter ~~following a hearing, the Commission~~ has been proven, or  
13 the review panel, as part of the terms and conditions of a deferral  
14 agreement, may, in addition to any other penalty provided by law ~~+~~ and  
15 in accordance with the provisions of NRS 281A.475:

16 (a) Require ~~a~~ the public officer or employee who is the subject of  
17 the ethics complaint to:

18 (1) Comply in all respects with the provisions of this chapter for a  
19 specified period without being the subject of another ~~request for an~~  
20 opinion:

21 ~~(I) That arises~~ ethics complaint arising from an alleged  
22 violation of this chapter by the public officer or employee which ~~is~~  
23 ~~alleged to have occurred~~ occurs during ~~that~~ the specified period ~~+~~ and

24 ~~(II) As to~~ and for which the ~~Commission~~ review panel  
25 determines that there is just and sufficient cause for the Commission to  
26 ~~hold a hearing,~~ render an opinion in the matter.

- 27 (2) Attend and complete training.
- 28 (3) Follow a remedial course of action.
- 29 (4) Issue a public apology.
- 30 (5) Comply with conditions or limitations on future conduct.

31 (b) Publicly admonish, reprimand or censure ~~a~~ the public officer or  
32 employee.

33 (c) Take any combination of such actions or any other reasonable  
34 action that the Commission or the review panel, as appropriate,  
35 determines will remedy the violation or alleged violation or deter similar  
36 violations ~~+~~ or conduct.

37 2. ~~The~~ In carrying out the provisions of subsection 1, the  
38 Commission, based on a finding that a violation of this chapter has been  
39 proven, or the review panel, as part of the terms and conditions of a  
40 deferral agreement, may publicly:

41 (a) Admonish a public officer or employee if ~~the Commission~~  
42 ~~determines~~ it is determined that the public officer or employee has  
43 violated any provision of this chapter, but the violation is not willful ~~+~~,  
44 or if such an admonishment is imposed as part of the terms and  
45 conditions of a deferral agreement. An ~~admonition~~ admonishment is a

1 written expression of disapproval of the conduct of the public officer or  
2 employee.

3 (b) Reprimand a public officer or employee if ~~the Commission~~  
4 ~~determines~~ it is determined that the public officer or employee has  
5 willfully violated any provision of this chapter ~~1~~, but there is no  
6 evidence that the willful violation involved bad faith, malicious intent or  
7 knowing or reckless disregard of the law, or if such a reprimand is  
8 imposed as part of the terms and conditions of a deferral agreement. A  
9 reprimand is a severe written reproof for the conduct of the public officer  
10 or employee.

11 (c) Censure a public officer or employee if ~~the Commission~~  
12 ~~determines~~ it is determined that the public officer or employee has  
13 willfully violated any provision of this chapter and there is evidence that  
14 the willful violation involved bad faith, malicious intent or knowing or  
15 reckless disregard of the law or there are no substantial mitigating  
16 factors ~~are present~~ pursuant to NRS 281A.475 for the willful violation,  
17 or if such a censure is imposed as part of the terms and conditions of a  
18 deferral agreement. A censure is a formal written condemnation of the  
19 conduct of the public officer or employee.

20 3. Any action taken by the Commission pursuant to this section is a  
21 final decision for the purposes of judicial review pursuant to NRS  
22 233B.130. Any action taken by the review panel pursuant to this chapter,  
23 including, without limitation, any action relating to a deferral  
24 agreement, is not a final decision for the purposes of judicial review  
25 pursuant to NRS 233B.130.

26 **Sec. 14.** For the purposes of NRS 41.032, the members of the  
27 Commission and employees of the Commission shall be deemed to be  
28 exercising or performing a discretionary function or duty in taking any  
29 action ~~related to the rendering of an opinion~~ pursuant to the  
30 provisions of this chapter.

31 **Sec. 15.** NRS 281A.030 is hereby amended to read as follows:  
32 281A.030 As used in this chapter, unless the context otherwise  
33 requires, the words and terms defined in NRS 281A.035 to 281A.170,  
34 inclusive, and ~~section 2~~ sections 1.3 to 2.7, inclusive, of this act have the  
35 meanings ascribed to them in those sections.

36 **Sec. 15.5.** NRS 281A.135 is hereby amended to read as follows:  
37 281A.135 1. "Opinion" means an opinion rendered by the  
38 Commission in accordance with the provisions of this chapter.

39 2. The term includes, without limitation, the disposition of ~~a request~~  
40 ~~for an opinion~~ an ethics complaint by stipulation, agreed settlement,  
41 consent order or default as authorized by NRS 233B.121.

42 **Sec. 15.7.** NRS 281A.150 is hereby amended to read as follows:  
43 281A.150 "Public employee" means any person who ~~performs~~



1 1. Performs public duties under the direction and control of a public  
2 officer for compensation paid by the State or any county, city or other  
3 political subdivision ~~;~~ or

4 2. Is designated as a public employee for the purposes of this  
5 chapter pursuant to NRS 281A.182.

6 **Sec. 16.** NRS 281A.182 is hereby amended to read as follows:

7 281A.182 1. Any person who serves in one of the following  
8 positions is designated as a public officer solely and exclusively for the  
9 purposes of this chapter:

10 (a) A president of a university, state college or community college  
11 within the Nevada System of Higher Education.

12 (b) A superintendent of a county school district.

13 (c) A county manager or a city manager.

14 ~~[(d) The holder of any other position not excluded by subsection 4 of~~  
15 ~~NRS 281A.160 whose compensation is paid with public money and~~  
16 ~~whose duties involve the exercise of a public power, trust or duty as~~  
17 ~~defined in subsection 2 of NRS 281A.160.]~~

18 2. ~~[This section applies]~~ The provisions of subsection 1 apply to such  
19 a person regardless of whether the person serves in the position:

20 (a) By appointment, contract or employment;

21 (b) With or without compensation; or

22 (c) On a temporary, interim or acting basis.

23 3. A person who is not otherwise a public officer is designated as a  
24 public officer solely and exclusively for the purposes of this chapter if the  
25 person:

26 (a) Enters into a contract with any state or local agency;

27 (b) Is paid compensation with public money; and

28 (c) Serves in a position which involves the exercise of a public power,  
29 trust or duty and which ordinarily would be held or filled by a public  
30 officer.

31 4. A person who is not otherwise a public employee is designated as  
32 a public employee solely and exclusively for the purposes of this chapter  
33 if:

34 (a) The person enters into a contract with any state or local agency;

35 (b) The person is paid compensation with public money;

36 (c) The person serves in a position which involves the performance of  
37 public duties under the substantial and continuing direction and control  
38 of a public officer or supervisory public employee;

39 (d) The position ordinarily would be held or filled by a public  
40 employee and would require the public employee to hold a valid  
41 professional or occupational license or similar type of authorization  
42 issued by a state or local agency to perform the public duties of the  
43 position, other than a general business license or similar type of  
44 authorization;

1 (e) The position is entrusted with public duties of a substantial and  
2 continuing nature which ordinarily would require a public employee to  
3 avoid conflicts between the private interests of the public employee and  
4 those of the general public whom the public employee serves; and

5 (f) The person occupies the position on a full-time basis or its  
6 equivalent for a substantial and continuing period of time.

7 5. The provisions of subsections 3 and 4 must be interpreted and  
8 applied to ensure that a person does not evade the provisions of this  
9 chapter because a state or local agency elects to use a contractual  
10 relationship instead of an employment relationship for a position which  
11 ordinarily would be held or filled by a public officer or employee.

12 6. If, pursuant to this section, any person is designated as a public  
13 officer or employee for the purposes of this chapter, that designation:

14 (a) Does not make the person a public officer or employee for the  
15 purposes of any other law or for any other purposes; and

16 (b) Must not be used, interpreted or applied in any manner to  
17 establish, suggest or prove that the person is a public officer or employee  
18 for the purposes of any other law or for any other purposes.

19 **Sec. 16.5. NRS 281A.210 is hereby amended to read as follows:**

20 281A.210 1. The Commission shall:

21 (a) At its first meeting and annually thereafter elect a Chair and Vice  
22 Chair from among its members.

23 (b) Meet regularly at least once in each calendar quarter, unless there  
24 are no ethics complaints or requests ~~[made for an opinion]~~ for advisory  
25 opinions pursuant to ~~[NRS 281A.440,]~~ this chapter, and at other times  
26 upon the call of the Chair.

27 2. Members of the Commission are entitled to receive a salary of not  
28 more than \$80 per day, as fixed by the Commission, while engaged in the  
29 business of the Commission.

30 3. While engaged in the business of the Commission, each member  
31 and employee of the Commission is entitled to receive the per diem  
32 allowance and travel expenses provided for state officers and employees  
33 generally.

34 4. The Commission may, within the limits of legislative  
35 appropriation, maintain such facilities as are required to carry out its  
36 functions.

37 **Sec. 16.6. NRS 281A.220 is hereby amended to read as follows:**

38 281A.220 1. The Chair shall appoint one or more ~~[investigatory]~~  
39 review panels of ~~[two]~~ three members of the Commission on a rotating  
40 basis to perform the functions assigned to such review ~~[the~~  
41 ~~determinations of just and sufficient cause made by the Executive~~  
42 ~~Director]~~ panels pursuant to ~~[NRS 281A.440 and make a final~~  
43 ~~determination regarding whether there is just and sufficient cause for the~~  
44 ~~Commission to render an opinion in a matter.]~~ this chapter.

1 2. The Chair and Vice Chair of the Commission may not serve  
2 together on ~~an investigatory~~ a review panel.

3 3. ~~The~~ Not more than two members of ~~an investigatory~~ a review  
4 panel may ~~not~~ be members of the same political party.

5 4. If ~~an investigatory~~ a review panel determines that there is just and  
6 sufficient cause for the Commission to render an opinion in a matter, the  
7 members of the ~~investigatory~~ review panel shall not participate in any  
8 further proceedings of the Commission relating to that matter.

9 **Sec. 17.** NRS 281A.240 is hereby amended to read as follows:

10 281A.240 1. In addition to any other duties imposed upon the  
11 Executive Director, the Executive Director shall:

12 (a) Maintain complete and accurate records of all transactions and  
13 proceedings of the Commission.

14 (b) Receive ethics complaints and requests for advisory opinions  
15 pursuant to ~~NRS 281A.440.~~ this chapter.

16 (c) Gather information and conduct investigations regarding ethics  
17 complaints and requests for advisory opinions ~~received by the~~  
18 ~~Commission and submit~~ pursuant to this chapter.

19 ~~(d) Submit~~ recommendations to the ~~investigatory panel appointed~~  
20 ~~pursuant to NRS 281A.220 Commission~~ review panel regarding whether  
21 there is just and sufficient cause to for the Commission to render an  
22 opinion in ~~response to a particular request.~~

23 ~~(d)~~ a matter.

24 ~~(e)~~ (e) Recommend to the Commission any regulations or legislation that  
25 the Executive Director considers desirable or necessary to improve the  
26 operation of the Commission and maintain high standards of ethical  
27 conduct in government.

28 ~~(e)~~ (f) Upon the request of any public officer or the employer of a  
29 public employee, conduct training on the requirements of this chapter, the  
30 rules and regulations adopted by the Commission and previous opinions of  
31 the Commission. In any such training, the Executive Director shall  
32 emphasize that the Executive Director is not a member of the Commission  
33 and that only the Commission may issue opinions concerning the  
34 application of the statutory ethical standards to any given set of facts and  
35 circumstances. The Commission may charge a reasonable fee to cover the  
36 costs of training provided by the Executive Director pursuant to this  
37 subsection.

38 ~~(f)~~ (g) Perform such other duties, not inconsistent with law, as may  
39 be required by the Commission.

40 2. The Executive Director shall, within the limits of legislative  
41 appropriation, employ such persons as are necessary to carry out any of the  
42 Executive Director's duties relating to:

43 (a) The administration of the affairs of the Commission; and

44 (b) The investigation of matters under the jurisdiction of the  
45 Commission.



1 3. If the Executive Director is prohibited from acting on a particular  
2 matter or is otherwise unable to act on a particular matter, the Chair of the  
3 Commission shall designate a qualified person to perform the duties of the  
4 Executive Director with regard to that particular matter.

5 **Sec. 18.** NRS 281A.280 is hereby amended to read as follows:

6 281A.280 1. ~~The~~ *Except as otherwise provided in this*  
7 ~~subsection,~~ *section, the* Commission has jurisdiction to investigate and  
8 take appropriate action regarding an alleged violation of this chapter by a  
9 public officer or employee or former public officer or employee in any  
10 proceeding commenced by ~~f~~

11 ~~(a) The filing of a request for an opinion~~ *an ethics complaint, which*  
12 *is filed* with the Commission ~~f~~ ~~or~~

13 ~~(b) The~~ *or initiated by the* Commission on its own motion,  
14 ~~f~~ within 2 years after the alleged violation or reasonable discovery of  
15 the alleged violation.

16 2. *The Commission does not have jurisdiction regarding alleged*  
17 *conduct by a public officer or employee or former public officer or*  
18 *employee for which ~~f~~:*

19 *(a) A complaint may be filed or, if the applicable limitations period*  
20 *has expired, could have been filed with the United States Equal*  
21 *Employment Opportunity Commission or the Nevada Equal Rights*  
22 *Commission ~~f~~; or*

23 *(b) A complaint or employment-related grievance may be filed or, if*  
24 *the applicable limitations period has expired, could have been filed with*  
25 *another appropriate agency with jurisdiction to redress alleged*  
26 *discrimination or harassment, including, without limitation, a state or*  
27 *local employee-management relations board or similar state or local*  
28 *agency,*

29 *but any bar on the Commission's jurisdiction imposed by this*  
30 *subsection applies only to the extent that it pertains to the alleged*  
31 *discrimination or harassment, and this subsection does not deprive the*  
32 *Commission of jurisdiction regarding the alleged conduct if such*  
33 *conduct is sanctionable separately or concurrently under the provisions*  
34 *of this chapter, irrespective of the alleged discrimination or harassment.*

35 ~~f~~ 3. For the purposes of this section, a proceeding is commenced:

36 (a) On the date on which ~~a request for an opinion~~ *an ethics*  
37 *complaint* is filed in the proper form with the Commission in accordance  
38 with the regulations of the Commission; or

39 (b) If the ~~proceeding is commenced~~ *ethics complaint is initiated* by  
40 the Commission on its own motion, on the date on which the Commission  
41 serves the public officer or employee or former public officer or employee  
42 with notice of the ~~proceeding~~ *ethics complaint* in accordance with the  
43 regulations of the Commission.

44 **Sec. 18.5.** NRS 281A.290 is hereby amended to read as follows:

45 281A.290 The Commission shall:

1 1. Adopt procedural regulations that are necessary and proper to carry  
2 out the provisions of this chapter, including, without limitation:  
3 (a) To facilitate the receipt of inquiries by the Commission;  
4 (b) For the filing of an ethics complaint or a request for an advisory  
5 opinion with the Commission;  
6 (c) For the withdrawal of an ethics complaint or a request for an  
7 advisory opinion by the person who filed the ethics complaint or request;  
8 and  
9 (d) To facilitate the prompt rendition of opinions by the Commission.  
10 2. Prescribe, by regulation, forms and procedures for the submission  
11 of statements of acknowledgment filed by public officers pursuant to NRS  
12 281A.500, maintain files of such statements and make the statements  
13 available for public inspection.  
14 3. Cause the making of such investigations as are reasonable and  
15 necessary for the rendition of its opinions pursuant to this chapter.  
16 4. Inform the Attorney General or district attorney of all cases of  
17 noncompliance with the requirements of this chapter.  
18 5. Recommend to the Legislature such further legislation as the  
19 Commission considers desirable or necessary to promote and maintain  
20 high standards of ethical conduct in government.  
21 6. Publish a manual for the use of public officers and employees that  
22 explains the requirements of this chapter.  
23 ↪ The Legislative Counsel shall prepare annotations to this chapter for  
24 inclusion in the Nevada Revised Statutes based on the published opinions  
25 of the Commission.  
26 **Sec. 19.** NRS 281A.300 is hereby amended to read as follows:  
27 281A.300 1. The Chair and Vice Chair of the Commission may  
28 administer oaths.  
29 2. The Commission, upon majority vote, may issue a subpoena to  
30 compel the attendance of a witness and the production of any books and  
31 papers for any hearing before the Commission.  
32 3. Upon the request of the Executive Director, the Chair or, in the  
33 Chair's absence, the Vice Chair, may issue a subpoena to compel the  
34 participation of a potential witness and the production of any books and  
35 papers during the course of any investigation.  
36 4. Upon the request of the Executive Director or the public officer or  
37 employee who is the subject of ~~[a request for an opinion,]~~ an ethics  
38 complaint, the Chair or, in the Chair's absence, the Vice Chair, may issue  
39 a subpoena to compel the attendance of a witness and the production of  
40 any books and papers for any hearing before the Commission. A  
41 public officer or employee who requests the issuance of a subpoena  
42 pursuant to this subsection must serve the subpoena in the manner  
43 provided in the Nevada Rules of Civil Procedure for service of subpoenas  
44 in a civil action and must pay the costs of such service.

1 ~~{3.}~~ 5. Before issuing a subpoena to a public officer or employee who  
2 is the subject of ~~{a request for an opinion}~~ an ethics complaint to compel  
3 his or her participation in any investigation, his or her attendance as a  
4 witness or his or her production of any books ~~{or}~~ and papers, the  
5 Executive Director shall submit a written request to the public officer or  
6 employee requesting:

7 (a) The ~~{appearance}~~ voluntary participation of the public officer or  
8 employee in the investigation;

9 (b) The voluntary attendance of the public officer or employee as a  
10 witness; or

11 ~~{(b)}~~ (c) The voluntary production by the public officer or employee of  
12 any books and papers relating to the ~~{request for an opinion}~~  
13 ~~—4.}~~ ethics complaint.

14 6. Each written request submitted by the Executive Director pursuant  
15 to subsection ~~{3}~~ 5 must specify the time and place for the voluntary  
16 participation of the public officer or employee in the investigation,  
17 attendance of the public officer or employee as a witness or ~~{the}~~  
18 production of any books and papers, and designate with certainty the books  
19 and papers requested, if any.

20 7. If the public officer or employee fails or refuses to respond to the  
21 Executive Director's written request pursuant to subsection 5 to  
22 voluntarily participate or attend at the time and place specified or produce  
23 the books and papers requested by the Executive Director within 5  
24 business days after receipt of the written request, the Chair or, in the  
25 Chair's absence, the Vice Chair, may issue the subpoena. Failure of the  
26 public officer or employee to comply with the written request of the  
27 Executive Director shall be deemed a waiver by the public officer or  
28 employee of the time limits set forth in ~~{subsections 4, 5 and 6 of NRS~~  
29 ~~281A.440.}~~ sections ~~{4 and 5}~~ 3.6 to 13, inclusive, of this act ~~{}~~ and NRS  
30 281A.450, 281A.465, 281A.475 and 281A.480 that apply to proceedings  
31 concerning the ethics complaint.

32 ~~{5.}~~ 8. If any witness fails or refuses to participate, attend, testify or  
33 produce any books and papers as required by the subpoena, the Chair ~~{of~~  
34 ~~the Commission}~~ or, in the Chair's absence, the Vice Chair, may report to  
35 the district court by petition, setting forth that:

36 (a) Due notice has been given of the time and place of the  
37 participation or attendance of the witness or the production of the books  
38 and papers;

39 (b) The witness has been subpoenaed ~~{by the Commission}~~ pursuant to  
40 this section; and

41 (c) The witness has failed or refused to participate, attend, testify or  
42 produce the books and papers as required by the subpoena, ~~{before the~~  
43 ~~Commission,}~~ or has failed or refused to answer questions propounded to  
44 the witness,

1 ~~↪~~ and asking for an order of the court compelling the witness to  
2 participate, attend ~~[and]~~ testify or produce the books and papers ~~[before~~  
3 ~~the Commission.~~

4 ~~—6.] as required by the subpoena.~~

5 9. Upon such a petition, the court shall enter an order directing the  
6 witness to appear before the court at a time and place to be fixed by the  
7 court in its order, the time to be not more than 10 days after the date of the  
8 order, and then and there show cause why the witness has not participated,  
9 attended, testified or produced the books or papers ~~[before the~~  
10 ~~Commission.] as required by the subpoena.~~ A certified copy of the order  
11 must be served upon the witness.

12 ~~[7.] 10.~~ If it appears to the court that the subpoena was regularly  
13 issued ~~[by the Commission,]~~ pursuant to this section, the court shall enter  
14 an order that the witness ~~[appear before the Commission,]~~ comply with the  
15 subpoena, at the time and place fixed in the order, and participate, attend,  
16 testify or produce the required books and papers. Upon failure to obey the  
17 order, the witness must be dealt with as for contempt of court.

18 **Sec. 20.** NRS 281A.400 is hereby amended to read as follows:

19 281A.400 A code of ethical standards is hereby established to govern  
20 the conduct of public officers and employees:

21 1. A public officer or employee shall not seek or accept any gift,  
22 service, favor, employment, engagement, emolument or economic  
23 opportunity for the public officer or employee or any ~~[other]~~ person to  
24 whom the public officer or employee has a commitment in a private  
25 capacity which would tend improperly to influence a reasonable person in  
26 the public officer's or employee's position to depart from the faithful and  
27 impartial discharge of the public officer's or employee's public duties.

28 2. A public officer or employee shall not use the public officer's or  
29 employee's position in government to secure ~~†~~

30 ~~—(a) Coerce, harass, retaliate against or punish any other person or~~  
31 ~~business entity for a purpose which is inconsistent with the proper~~  
32 ~~performance of the officer's or employee's public duties; or~~

33 ~~—(b) Secure~~ or grant unwarranted privileges, preferences, exemptions  
34 or advantages for the public officer or employee .any ~~[for any other person~~  
35 or] business entity ~~[†]~~ in which the public officer or employee has a  
36 significant pecuniary interest ~~[†]~~ or any person to whom the public officer  
37 or employee has a commitment in a private capacity . ~~[to the interests of~~  
38 that person.] As used in this subsection, ~~[paragraph,]~~ "unwarranted"  
39 means without justification or adequate reason.

40 3. A public officer or employee shall not participate as an agent of  
41 government in the negotiation or execution of a contract between the  
42 government and the public officer or employee, any business entity in  
43 which the public officer or employee has a significant pecuniary interest ~~[†]~~  
44 or any person to whom the public officer or employee has a commitment  
45 in a private capacity.

1 4. A public officer or employee shall not accept any salary, retainer,  
2 augmentation, expense allowance or other compensation from any private  
3 source , *for the public officer or employee or any person to whom the*  
4 *public officer or employee has a commitment in a private capacity*, for  
5 the performance of the public officer's or employee's duties as a public  
6 officer or employee.

7 5. If a public officer or employee acquires, through the public  
8 officer's or employee's public duties or relationships, any information  
9 which by law or practice is not at the time available to people generally,  
10 the public officer or employee shall not use the information to further a  
11 significant pecuniary interest of the public officer or employee or any other  
12 person or business entity.

13 6. A public officer or employee shall not suppress any governmental  
14 report or other official document because it might tend to affect  
15 unfavorably a significant pecuniary interest of the public officer or  
16 employee ~~or~~ *or any person to whom the public officer or employee has a*  
17 *commitment in a private capacity*.

18 7. Except for State Legislators who are subject to the restrictions set  
19 forth in subsection 8, a public officer or employee shall not use  
20 governmental time, property, equipment or other facility to benefit a  
21 significant personal or pecuniary interest of the public officer or employee  
22 ~~or~~ *or any person to whom the public officer or employee has a*  
23 *commitment in a private capacity*. This subsection does not prohibit:

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

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

30 (2) The use does not interfere with the performance of the public  
31 officer's or employee's public duties;

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

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

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

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

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

44 8. A State Legislator shall not:

1 (a) Use governmental time, property, equipment or other facility for a  
2 nongovernmental purpose or for the private benefit of the State Legislator  
3 or any other person. This paragraph does not prohibit:

4 (1) A limited use of state property and resources for personal  
5 purposes if:

6 (I) The use does not interfere with the performance of the State  
7 Legislator's public duties;

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

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

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

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

15 (b) Require or authorize a legislative employee, while on duty, to  
16 perform personal services or assist in a private activity, except:

17 (1) In unusual and infrequent situations where the employee's  
18 service is reasonably necessary to permit the State Legislator or legislative  
19 employee to perform that person's official duties; or

20 (2) Where such service has otherwise been established as legislative  
21 policy.

22 9. A public officer or employee shall not attempt to benefit a  
23 significant personal or pecuniary interest of the public officer or employee  
24 *or any person to whom the public officer or employee has a commitment*  
25 *in a private capacity* through the influence of a subordinate.

26 10. A public officer or employee shall not seek other employment or  
27 contracts *for the public officer or employee or any person to whom the*  
28 *public officer or employee has a commitment in a private capacity*  
29 through the use of the public officer's or employee's official position.

30 ~~11. A public officer or employee shall not engage in any other~~  
31 ~~conduct that is contrary to the public policy of this State as expressed in~~  
32 ~~NRS 281A.020.~~

33 ~~12. The conduct described in this section does not include any~~  
34 ~~conduct for which a complaint may be filed with the United States Equal~~  
35 ~~Employment Opportunity Commission or the Nevada Equal Rights~~  
36 ~~Commission.]~~

37 **Sec. 20.3. NRS 281A.410 is hereby amended to read as follows:**

38 281A.410 In addition to the requirements of the code of ethical  
39 standards and the other provisions of this chapter:

40 1. If a public officer or employee serves in a state agency of the  
41 Executive Department or an agency of any county, city or other political  
42 subdivision, the public officer or employee:

43 (a) Shall not accept compensation from any private person to represent  
44 or counsel the private person on any issue pending before the agency in



1 which that public officer or employee serves, if the agency makes  
2 decisions; and

3 (b) If the public officer or employee leaves the service of the agency,  
4 shall not, for 1 year after leaving the service of the agency, represent or  
5 counsel for compensation a private person upon any issue which was under  
6 consideration by the agency during the public officer's or employee's  
7 service. As used in this paragraph, "issue" includes a case, proceeding,  
8 application, contract or determination, but does not include the proposal or  
9 consideration of legislative measures or administrative regulations.

10 2. Except as otherwise provided in subsection 3, a State Legislator or  
11 a member of a local legislative body, or a public officer or employee  
12 whose public service requires less than half of his or her time, may  
13 represent or counsel a private person before an agency in which he or she  
14 does not serve.

15 3. A member of a local legislative body shall not represent or counsel  
16 a private person for compensation before another local agency if the  
17 territorial jurisdiction of the other local agency includes any part of the  
18 county in which the member serves. The Commission may relieve the  
19 member from the strict application of the provisions of this subsection if:

20 (a) The member requests an advisory opinion from the Commission  
21 pursuant to ~~[subsection 1 of NRS 281A.440;]~~ section 3.2 of this act; and

- 22 (b) The Commission determines that such relief is not contrary to:
  - 23 (1) The best interests of the public;
  - 24 (2) The continued ethical integrity of each local agency affected by  
25 the matter; and
  - 26 (3) The provisions of this chapter.

27 4. For the purposes of subsection 3, the request for the advisory  
28 opinion, the advisory opinion and all meetings, hearings and  
29 proceedings of the Commission in such a matter are governed by the  
30 provisions of 3.1 to 3.5, inclusive, of this act.

31 5. Unless permitted by this section, a public officer or employee shall  
32 not represent or counsel a private person for compensation before any state  
33 agency of the Executive or Legislative Department.

34 ~~[5. Not later than January 15 of each year, if any State Legislator,~~  
35 ~~member of a local legislative body or other public officer permitted by this~~  
36 ~~section has, within the preceding year, represented or counseled a private~~  
37 ~~person for compensation before a state agency of the Executive~~  
38 ~~Department, he or she shall disclose for each such representation or~~  
39 ~~counseling during the previous calendar year:~~

- 40 ~~—(a) The name of the client;~~
- 41 ~~—(b) The nature of the representation; and~~
- 42 ~~—(c) The name of the state agency.~~

43 ~~—6. The disclosure required by subsection 5 must be made in writing~~  
44 ~~and filed with the Commission on a form prescribed by the Commission.~~  
45 ~~For the purposes of this subsection, the disclosure is timely filed if, on or~~

1 ~~before the last day for filing, the disclosure is filed in one of the following~~  
2 ~~ways:~~

3 ~~—(a) Delivered in person to the principal office of the Commission in~~  
4 ~~Carson City.~~

5 ~~—(b) Mailed to the Commission by first class mail, or other class of mail~~  
6 ~~that is at least as expeditious, postage prepaid. Filing by mail is complete~~  
7 ~~upon timely depositing the disclosure with the United States Postal~~  
8 ~~Service.~~

9 ~~—(c) Dispatched to a third party commercial carrier for delivery to the~~  
10 ~~Commission within 3 calendar days. Filing by third party commercial~~  
11 ~~carrier is complete upon timely depositing the disclosure with the third~~  
12 ~~party commercial carrier.~~

13 ~~—(d) Transmitted to the Commission by facsimile machine or other~~  
14 ~~electronic means authorized by the Commission. Filing by facsimile~~  
15 ~~machine or other electronic means is complete upon receipt of the~~  
16 ~~transmission by the Commission.~~

17 ~~7. The Commission shall retain a disclosure filed pursuant to this~~  
18 ~~section for 6 years after the date on which the disclosure was filed.]~~

19 **Sec. 20.5. NRS 281A.420 is hereby amended to read as follows:**

20 281A.420 1. Except as otherwise provided in this section, a public  
21 officer or employee shall not approve, disapprove, vote, abstain from  
22 voting or otherwise act upon a matter:

23 (a) Regarding which the public officer or employee has accepted a gift  
24 or loan;

25 (b) In which the public officer or employee has a significant pecuniary  
26 interest; or

27 (c) Which would reasonably be affected by the public officer's or  
28 employee's commitment in a private capacity to the interests of another  
29 person,

30 ↪ without disclosing information concerning the gift or loan, significant  
31 pecuniary interest or commitment in a private capacity to the interests of  
32 the person that is sufficient to inform the public of the potential effect of  
33 the action or abstention upon the person who provided the gift or loan,  
34 upon the public officer's or employee's significant pecuniary interest, or  
35 upon the person to whom the public officer or employee has a commitment  
36 in a private capacity. ~~[Such a]~~ *If, to the extent permitted by NRS*  
37 *281A.410, any public officer or employee has, within the preceding year,*  
38 *represented or counseled a private person for compensation before a*  
39 *state agency of the Executive Department and any matter comes before*  
40 *the public officer or employee in which such representation or*  
41 *counseling during the previous year must be disclosed pursuant to this*  
42 *subsection, the public officer or employee shall disclose information that*  
43 *is sufficient to inform the public of the nature and extent of each such*  
44 *representation or counseling in addition to all other information that*  
45 *must be disclosed pursuant to this subsection.*



1 2. A disclosure *required by subsection 1* must be made at the time the  
2 matter is considered. If the public officer or employee is a member of a  
3 body which makes decisions, the public officer or employee shall make the  
4 disclosure in public to the chair and other members of the body. If the  
5 public officer or employee is not a member of such a body and holds an  
6 appointive office, the public officer or employee shall make the disclosure  
7 to the supervisory head of the public officer's or employee's organization  
8 or, if the public officer holds an elective office, to the general public in the  
9 area from which the public officer is elected.

10 ~~2.~~ 3. The provisions of subsection 1 do not require a public officer  
11 to disclose:

12 (a) Any campaign contributions that the public officer reported in a  
13 timely manner pursuant to NRS 294A.120 or 294A.125; or

14 (b) Any contributions to a legal defense fund that the public officer  
15 reported in a timely manner pursuant to NRS 294A.286.

16 ~~3.~~ 4. Except as otherwise provided in this section, in addition to the  
17 requirements of subsection 1, a public officer shall not vote upon or  
18 advocate the passage or failure of, but may otherwise participate in the  
19 consideration of, a matter with respect to which the independence of  
20 judgment of a reasonable person in the public officer's situation would be  
21 materially affected by:

22 (a) The public officer's acceptance of a gift or loan;

23 (b) The public officer's significant pecuniary interest; or

24 (c) The public officer's commitment in a private capacity to the  
25 interests of another person.

26 ~~4.~~ 5. In interpreting and applying the provisions of subsection ~~3.~~ 4.

27 (a) It must be presumed that the independence of judgment of a  
28 reasonable person in the public officer's situation would not be materially  
29 affected by the public officer's acceptance of a gift or loan, significant  
30 pecuniary interest or commitment in a private capacity to the interests of  
31 another person where the resulting benefit or detriment accruing to the  
32 public officer, or if the public officer has a commitment in a private  
33 capacity to the interests of another person, accruing to the other person, is  
34 not greater than that accruing to any other member of any general business,  
35 profession, occupation or group that is affected by the matter. The  
36 presumption set forth in this paragraph does not affect the applicability of  
37 the requirements set forth in subsection 1 relating to the disclosure of the  
38 acceptance of a gift or loan, significant pecuniary interest or commitment  
39 in a private capacity to the interests of another person.

40 (b) The Commission must give appropriate weight and proper  
41 deference to the public policy of this State which favors the right of a  
42 public officer to perform the duties for which the public officer was elected  
43 or appointed and to vote or otherwise act upon a matter, provided the  
44 public officer has properly disclosed the public officer's acceptance of a  
45 gift or loan, significant pecuniary interest or commitment in a private

1 capacity to the interests of another person in the manner required by  
2 subsection 1. Because abstention by a public officer disrupts the normal  
3 course of representative government and deprives the public and the public  
4 officer's constituents of a voice in governmental affairs, the provisions of  
5 this section are intended to require abstention only in clear cases where the  
6 independence of judgment of a reasonable person in the public officer's  
7 situation would be materially affected by the public officer's acceptance of  
8 a gift or loan, significant pecuniary interest or commitment in a private  
9 capacity to the interests of another person.

10 ~~§5.1~~ 6. Except as otherwise provided in NRS 241.0355, if a public  
11 officer declares to the body or committee in which the vote is to be taken  
12 that the public officer will abstain from voting because of the requirements  
13 of this section, the necessary quorum to act upon and the number of votes  
14 necessary to act upon the matter, as fixed by any statute, ordinance or rule,  
15 is reduced as though the member abstaining were not a member of the  
16 body or committee.

17 ~~§6.1~~ 7. The provisions of this section do not, under any circumstances:

18 (a) Prohibit a member of a local legislative body from requesting or  
19 introducing a legislative measure; or

20 (b) Require a member of a local legislative body to take any particular  
21 action before or while requesting or introducing a legislative measure.

22 ~~§7.1~~ 8. The provisions of this section do not, under any circumstances,  
23 apply to State Legislators or allow the Commission to exercise jurisdiction  
24 or authority over State Legislators. The responsibility of a State Legislator  
25 to make disclosures concerning gifts, loans, interests or commitments and  
26 the responsibility of a State Legislator to abstain from voting upon or  
27 advocating the passage or failure of a matter are governed by the Standing  
28 Rules of the Legislative Department of State Government which are  
29 adopted, administered and enforced exclusively by the appropriate bodies  
30 of the Legislative Department of State Government pursuant to Section 6  
31 of Article 4 of the Nevada Constitution.

32 ~~§8.1~~ 9. As used in this section, "public officer" and "public employee"  
33 do not include a State Legislator.

34 **Sec. 20.7. NRS 281A.430 is hereby amended to read as follows:**

35 281A.430 1. Except as otherwise provided in this section and NRS  
36 218A.970 and 332.800, a public officer or employee shall not bid on or  
37 enter into a contract between an agency and any business entity in which  
38 the public officer or employee has a significant pecuniary interest.

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

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

7 4. Except as otherwise provided in subsection 2, 3 or 5, a public  
8 officer or employee may bid on or enter into a contract with an agency if:

9 (a) The contracting process is controlled by the rules of open  
10 competitive bidding or the rules of open competitive bidding are not  
11 employed as a result of the applicability of NRS 332.112 or 332.148;

12 (b) The sources of supply are limited;

13 (c) The public officer or employee has not taken part in developing the  
14 contract plans or specifications; and

15 (d) The public officer or employee will not be personally involved in  
16 opening, considering or accepting offers.

17 ↪ If a public officer who is authorized to bid on or enter into a contract  
18 with an agency pursuant to this subsection is a member of the governing  
19 body of the agency, the public officer, pursuant to the requirements of  
20 NRS 281A.420, shall disclose the public officer's interest in the contract  
21 and shall not vote on or advocate the approval of the contract.

22 5. A member of a local legislative body shall not, either individually  
23 or through any business entity in which the member has a significant  
24 pecuniary interest, sell goods or services to the local agency governed by  
25 his or her local legislative body unless:

26 (a) The member, or the business entity in which the member has a  
27 significant pecuniary interest, offers the sole source of supply of the goods  
28 or services within the territorial jurisdiction of the local agency governed  
29 by his or her local legislative body;

30 (b) The local legislative body includes in the public notice and agenda  
31 for the meeting at which it will consider the purchase of such goods or  
32 services a clear and conspicuous statement that it is considering purchasing  
33 such goods or services from one of its members, or from a business entity  
34 in which the member has a significant pecuniary interest;

35 (c) At the meeting, the member discloses his or her significant  
36 pecuniary interest in the purchase of such goods or services and does not  
37 vote upon or advocate the approval of the matter pursuant to the  
38 requirements of NRS 281A.420; and

39 (d) The local legislative body approves the purchase of such goods or  
40 services in accordance with all other applicable provisions of law.

41 6. The Commission may relieve a public officer or employee from the  
42 strict application of the provisions of this section if:

43 (a) The public officer or employee requests an *advisory* opinion from  
44 the Commission pursuant to ~~subsection 1 of NRS 281A.440;~~ section 3.2  
45 of this act; and

- 1 (b) The Commission determines that such relief is not contrary to:
- 2 (1) The best interests of the public;
- 3 (2) The continued ethical integrity of each agency affected by the
- 4 matter; and
- 5 (3) The provisions of this chapter.

6 7. For the purposes of subsection 6, the request for the advisory  
 7 opinion, the advisory opinion and all meetings, hearings and  
 8 proceedings of the Commission in such a matter are governed by the  
 9 provisions of 3.1 to 3.5, inclusive, of this act.

10 **Sec. 21.** ~~NRS 281A.440 is hereby amended to read as follows:~~

11 ~~281A.440 1. The Commission shall render an opinion interpreting~~  
 12 ~~the statutory ethical standards and apply the standards to a given set of~~  
 13 ~~facts and circumstances within 45 days after receiving a request, on a form~~  
 14 ~~prescribed by the Commission, from a public officer or employee who is~~  
 15 ~~seeking guidance on questions which directly relate to the propriety of the~~  
 16 ~~requester's own past, present or future conduct as a public officer or~~  
 17 ~~employee, unless the public officer or employee waives the time limit. The~~  
 18 ~~public officer or employee may also request the Commission to hold a~~  
 19 ~~public hearing regarding the requested opinion. If a requested opinion~~  
 20 ~~relates to the propriety of the requester's own present or future conduct,~~  
 21 ~~the opinion of the Commission is:~~

- 22 ~~— (a) Binding upon the requester as to the requester's future conduct; and~~
- 23 ~~— (b) Final and subject to judicial review pursuant to NRS 233B.130,~~  
 24 ~~except that a proceeding regarding this review must be held in closed court~~  
 25 ~~without admittance of persons other than those necessary to the~~  
 26 ~~proceeding, unless this right to confidential proceedings is waived by the~~  
 27 ~~requester.~~

28 ~~2. The Commission may render an opinion interpreting the statutory~~  
 29 ~~ethical standards and apply the standards to a given set of facts and~~  
 30 ~~circumstances:~~

- 31 ~~— (a) Upon request from a specialized or local ethics committee.~~
- 32 ~~— (b) Except as otherwise provided in this subsection, upon request from~~  
 33 ~~a person, if the requester submits:~~
  - 34 ~~— (1) The request on a form prescribed by the Commission; and~~
  - 35 ~~— (2) All related evidence deemed necessary by the Executive~~  
 36 ~~Director and the [investigatory panel] Commission to make a~~  
 37 ~~determination of whether there is just and sufficient cause to render an~~  
 38 ~~opinion in the matter.~~
- 39 ~~— (c) Upon the Commission's own motion regarding the propriety of~~  
 40 ~~conduct by a public officer or employee. **Any meeting or hearing held by**~~  
 41 ~~**the Commission relating to such a motion and the deliberations of the**~~  
 42 ~~**Commission on the motion are not subject to the provisions of chapter**~~  
 43 ~~**241 of NRS.** The Commission shall not initiate proceedings pursuant to~~  
 44 ~~this paragraph based solely upon an anonymous complaint.~~

1 ~~→ The Commission shall not render an opinion interpreting the statutory~~  
2 ~~ethical standards or apply those standards to a given set of facts and~~  
3 ~~circumstances if the request is submitted by a person who is incarcerated in~~  
4 ~~a correctional facility in this State.~~

5 ~~— 3. Within 45 days after receiving a request for an opinion pursuant to~~  
6 ~~paragraph (a) or (b) of subsection 2, the Commission shall determine~~  
7 ~~whether it has jurisdiction concerning the request, unless the public officer~~  
8 ~~or employee who is the subject of the request waives this time limit. **Any**~~  
9 ~~**meeting or hearing held by the Commission to determine whether it has**~~  
10 ~~**jurisdiction concerning the request and the deliberations of the**~~  
11 ~~**Commission relating to that determination are not subject to the**~~  
12 ~~**provisions of chapter 241 of NRS.** Upon a determination by the~~  
13 ~~Commission that it has jurisdiction concerning a request for an opinion~~  
14 ~~pursuant to paragraph (a) or (b) of subsection 2, or upon the motion of the~~  
15 ~~Commission initiating a request for an opinion pursuant to paragraph (c) of~~  
16 ~~subsection 2, as applicable, the Executive Director shall investigate the~~  
17 ~~facts and circumstances relating to the request to determine whether there~~  
18 ~~is just and sufficient cause for the Commission to render an opinion in the~~  
19 ~~matter. The Executive Director shall notify the public officer or employee~~  
20 ~~who is the subject of the request and provide the public officer or~~  
21 ~~employee an opportunity to submit to the Executive Director a response to~~  
22 ~~the allegations against the public officer or employee within 30 days after~~  
23 ~~the date on which the public officer or employee received the notice of the~~  
24 ~~request. The purpose of the response is to provide the Executive Director~~  
25 ~~with any information relevant to the request which the public officer or~~  
26 ~~employee believes may assist the Executive Director [and the investigatory~~  
27 ~~panel] \_\_\_\_\_ in \_\_\_\_\_ conducting~~  
28 ~~the investigation. The public officer or employee is not required in the~~  
29 ~~response or in any proceeding before the [investigatory panel]~~  
30 ~~**Commission conducted pursuant to subsection 1 of section 5 of this act**~~  
31 ~~to assert, claim or raise any objection or defense, in law or fact, to the~~  
32 ~~allegations against the public officer or employee and no objection or~~  
33 ~~defense, in law or fact, is waived, abandoned or barred by the failure to~~  
34 ~~assert, claim or raise it in the response or in any proceeding **conducted**~~  
35 ~~before the [investigatory panel].~~

36 ~~— 4. The Executive Director shall complete the investigation and~~  
37 ~~present a written recommendation relating to just and sufficient cause,~~  
38 ~~including, without limitation, the specific evidence or reasons that support~~  
39 ~~the recommendation, to the investigatory panel within 70 days after the~~  
40 ~~determination by the Commission that it has jurisdiction concerning the~~  
41 ~~request or after the motion of the Commission initiating the request, as~~  
42 ~~applicable, unless the public officer or employee waives this time limit.~~

43 ~~— 5. Within 15 days after the Executive Director has provided the~~  
44 ~~written recommendation in the matter to the investigatory panel pursuant~~  
45 ~~to subsection 4, the investigatory panel shall conclude the investigation~~

1 ~~and make a final determination regarding whether there is just and~~  
2 ~~sufficient cause for the Commission to render an opinion in the matter,~~  
3 ~~unless the public officer or employee waives this time limit. The~~  
4 ~~investigatory panel shall not determine that there is just and sufficient~~  
5 ~~cause for the Commission to render an opinion in the matter unless the~~  
6 ~~Executive Director has provided the public officer or employee an~~  
7 ~~opportunity to respond to the allegations against the public officer or~~  
8 ~~employee as required by subsection 3. The investigatory panel shall cause~~  
9 ~~a record of its proceedings in each matter to be kept.~~

10 ~~— 6. If the investigatory panel determines that there is just and sufficient~~  
11 ~~cause for the Commission to render an opinion in the matter, the~~  
12 ~~Commission shall hold a hearing and render an opinion in the matter~~  
13 ~~within 60 days after the determination of just and sufficient cause by the~~  
14 ~~investigatory panel, unless the public officer or employee waives this time~~  
15 ~~limit.~~

16 ~~— 7. Each request for an opinion that a public officer or employee~~  
17 ~~submits to the Commission pursuant to subsection 1, each opinion~~  
18 ~~rendered by the Commission in response to such a request and any motion,~~  
19 ~~determination, evidence or record of a hearing relating to such a request~~  
20 ~~are confidential unless the public officer or employee who requested the~~  
21 ~~opinion:~~

22 ~~— (a) Acts in contravention of the opinion, in which case the Commission~~  
23 ~~may disclose the request for the opinion, the contents of the opinion and~~  
24 ~~any motion, evidence or record of a hearing related thereto;~~

25 ~~— (b) Discloses the request for the opinion, the contents of the opinion, or~~  
26 ~~any motion, evidence or record of a hearing related thereto in any manner~~  
27 ~~except to:~~

28 ~~— (1) The public body, agency or employer of the public officer or~~  
29 ~~employee; or~~

30 ~~— (2) A person to whom the Commission authorizes the current or~~  
31 ~~former public officer or employee to make such a disclosure; or~~

32 ~~— (c) Requests the Commission to disclose the request for the opinion,~~  
33 ~~the contents of the opinion, or any motion, evidence or record of a hearing~~  
34 ~~related thereto.~~

35 ~~— 8. Except as otherwise provided in subsections 9 and 10, all~~  
36 ~~information, communications, records, documents or other material in the~~  
37 ~~possession of the Commission or its staff that is related to a request for an~~  
38 ~~opinion regarding a public officer or employee submitted to or initiated by~~  
39 ~~the Commission pursuant to subsection 2, including, without limitation, the~~  
40 ~~record of the proceedings of the investigatory panel made pursuant to~~  
41 ~~subsection 5, are confidential and not public records pursuant to chapter~~  
42 ~~239 of NRS until:~~

43 ~~— (a) The investigatory panel determines whether there is just and~~  
44 ~~sufficient cause to render an opinion in the matter and serves written notice~~  
45 ~~of such a determination on the public officer or employee who is the~~



1 ~~subject of the request for an opinion submitted or initiated pursuant to~~  
2 ~~subsection 2; or~~  
3 ~~—(b) The public officer or employee who is the subject of a request for~~  
4 ~~an opinion submitted or initiated pursuant to subsection 2 authorizes the~~  
5 ~~Commission in writing to make its information, communications, records,~~  
6 ~~documents or other material which are related to the request publicly~~  
7 ~~available;~~  
8 ~~—whichever occurs first.~~  
9 ~~—9. Except as otherwise provided in this subsection, if a person who~~  
10 ~~submits a request for an opinion pursuant to paragraph (b) of subsection 2~~  
11 ~~asks for the person's name to be kept confidential, the Commission:~~  
12 ~~—(a) Shall keep the person's name confidential if the person is a public~~  
13 ~~officer or employee who works for the same public body, agency or~~  
14 ~~employer as the public officer or employee who is the subject of the~~  
15 ~~request.~~  
16 ~~—(b) May keep the person's name confidential if the person offers~~  
17 ~~sufficient facts and circumstances showing a reasonable likelihood that~~  
18 ~~disclosure of the person's name will subject the person or a member of the~~  
19 ~~person's household to a bona fide threat of physical force or violence.~~  
20 ~~—If the Commission keeps the person's name confidential, the~~  
21 ~~Commission shall not render an opinion in the matter unless there is~~  
22 ~~sufficient evidence without the person's testimony to consider the~~  
23 ~~propriety of the conduct of the public officer or employee who is~~  
24 ~~the subject of the request. If the Commission intends to present the~~  
25 ~~person's testimony for consideration as evidence in rendering an opinion in~~  
26 ~~the matter, the Commission shall disclose the person's name within a~~  
27 ~~reasonable time before the Commission's hearing on the matter.~~  
28 ~~—10. Except as otherwise provided in this subsection, the investigative~~  
29 ~~file related to a request for an opinion regarding a public officer or~~  
30 ~~employee, as described in subsection 17, is confidential. At any time after~~  
31 ~~being served with written notice of the determination of the investigatory~~  
32 ~~panel regarding the existence of just and sufficient cause for the~~  
33 ~~Commission to render an opinion in the matter, the public officer or~~  
34 ~~employee who is the subject of the request for an opinion may submit a~~  
35 ~~written discovery request to the Commission for a copy of any portion of~~  
36 ~~the investigative file that the Commission intends to present for~~  
37 ~~consideration as evidence in rendering an opinion in the matter and a list of~~  
38 ~~proposed witnesses. Any portion of the investigative file which the~~  
39 ~~Commission presents as evidence in rendering an opinion in the matter~~  
40 ~~becomes a public record as provided in chapter 239 of NRS.~~  
41 ~~—11. Whenever the Commission holds a hearing pursuant to this~~  
42 ~~section, the Commission shall:~~  
43 ~~—(a) Notify the person about whom the opinion was requested of the~~  
44 ~~place and time of the Commission's hearing on the matter;~~  
45 ~~—(b) Allow the person to be represented by counsel; and~~

1 ~~—(c) Allow the person to hear the evidence presented to the Commission~~  
2 ~~and to respond and present evidence on the person's own behalf.~~  
3 ~~↪ The Commission's hearing may be held no sooner than 10 days after the~~  
4 ~~notice is given unless the person agrees to a shorter time.~~  
5 ~~—12. If a person who is not a party to a hearing before the Commission,~~  
6 ~~including, without limitation, a person who has requested an opinion~~  
7 ~~pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of~~  
8 ~~a witness at the hearing, the person must submit the question to the~~  
9 ~~Executive Director in writing. The Executive Director may submit the~~  
10 ~~question to the Commission if the Executive Director deems the question~~  
11 ~~relevant and appropriate. This subsection does not require the Commission~~  
12 ~~to ask any question submitted by a person who is not a party to the~~  
13 ~~proceeding.~~  
14 ~~—13. If a person who requests an opinion pursuant to subsection 1 or 2~~  
15 ~~does not:~~  
16 ~~—(a) Submit all necessary information to the Commission; and~~  
17 ~~—(b) Declare by oath or affirmation that the person will testify truthfully,~~  
18 ~~↪ the Commission may decline to render an opinion.~~  
19 ~~—14. For good cause shown, the Commission may take testimony from~~  
20 ~~a person by telephone or video conference.~~  
21 ~~—15. For the purposes of NRS 41.032, the members of the Commission~~  
22 ~~and its employees shall be deemed to be exercising or performing a~~  
23 ~~discretionary function or duty when taking an action related to the~~  
24 ~~rendering of an opinion pursuant to this section.~~  
25 ~~—16. A meeting or hearing that the Commission or the investigatory~~  
26 ~~panel holds to receive information or evidence concerning the propriety of~~  
27 ~~the conduct of a public officer or employee pursuant to this section and the~~  
28 ~~deliberations of the Commission and the investigatory panel on such~~  
29 ~~information or evidence are not subject to the provisions of chapter 241 of~~  
30 ~~NRS.~~  
31 ~~—17. For the purposes of this section, the investigative file which~~  
32 ~~relates to a request for an opinion regarding a public officer or employee~~  
33 ~~includes, without limitation, any information provided to or obtained by~~  
34 ~~the Commission, its staff or an investigatory panel through any form of~~  
35 ~~communication during the course of an investigation and any records,~~  
36 ~~documents or other material created or maintained during the course of an~~  
37 ~~investigation which relate to the public officer or employee who is the~~  
38 ~~subject of the request for an opinion, including, without limitation, a~~  
39 ~~transcript, regardless of whether such information, records, documents or~~  
40 ~~other material are obtained by a subpoena.] ~~Commission pursuant to~~~~  
41 ~~~~subsection 1 of section 5 of this act.] (Deleted by amendment.)~~~~  
42 Sec. 21.5. NRS 281A.450 is hereby amended to read as follows:  
43 281A.450 1. If [a request for an opinion is submitted to] *an ethics*  
44 *complaint is filed with* or initiated by the Commission concerning a  
45 present or former state officer or employee, unless the state officer or



1 employee retains his or her legal counsel or the Attorney General tenders  
2 the defense of the state officer or employee to an insurer who, pursuant to  
3 a contract of insurance, is authorized to defend the state officer or  
4 employee, the Attorney General shall defend the state officer or employee  
5 or employ special counsel to defend the state officer or employee in any  
6 proceeding relating to the ~~request for the opinion~~ ethics complaint if:

7 (a) The state officer or employee submits a written request for defense  
8 in the manner provided in NRS 41.0339; and

9 (b) Based on the facts and allegations known to the Attorney General,  
10 the Attorney General determines that the act or omission on which the  
11 alleged violation is based:

12 (1) Appears to be within the course and scope of public duty or  
13 employment of the state officer or employee; and

14 (2) Appears to have been performed or omitted in good faith.

15 2. The Attorney General shall create a written record setting forth the  
16 basis for the Attorney General's determination of whether to defend the  
17 state officer or employee pursuant to paragraph (b) of subsection 1. The  
18 written record is not admissible in evidence at trial or in any other judicial  
19 or administrative proceeding in which the state officer or employee is a  
20 party, except in connection with an application to withdraw as the attorney  
21 of record.

22 **Sec. 22.** NRS 281A.465 is hereby amended to read as follows:

23 281A.465 In any matter in which the Commission disposes of ~~the~~  
24 ~~request for an opinion~~ an ethics complaint by stipulation, agreed  
25 settlement ~~or~~ consent order ~~or in which the review panel approves a~~  
26 ~~deferral order~~ agreement, the Commission or the review panel, as  
27 appropriate, shall treat comparable situations in a comparable manner and  
28 shall ensure that the disposition of the matter bears a reasonable  
29 relationship to the severity of the violation or alleged violation.

30 **Sec. 23.** NRS 281A.475 is hereby amended to read as follows:

31 281A.475 1. ~~The~~ The Commission, in determining whether a  
32 violation of this chapter is a willful violation and, if so, the ~~amount of any~~  
33 ~~civil~~ penalty to be imposed on a public officer or employee or former  
34 public officer or employee pursuant to NRS 281A.480 ~~or section 13 of~~  
35 this act, or the ~~Commission~~ review panel, in determining whether to  
36 approve a deferral agreement regarding an alleged violation, shall  
37 consider, without limitation:

38 (a) The seriousness of the violation or alleged violation, including,  
39 without limitation, the nature, circumstances, extent and gravity of the  
40 violation or alleged violation;

41 (b) The number and history of previous warnings ~~issued to~~, letters of  
42 caution or instruction, deferral agreements or violations or alleged  
43 violations of the provisions of this chapter ~~by~~ relating to the public  
44 officer or employee;

1 (c) The cost to ~~the Commission to~~ conduct the investigation and any  
2 ~~hearing~~ meetings, hearings or other proceedings relating to the violation  
3 or alleged violation;

4 (d) Any mitigating factors, including, without limitation, any self-  
5 reporting, prompt correction of the violation or alleged violation, any  
6 attempts to rectify the violation or alleged violation before any ethics  
7 complaint is filed and any cooperation by the public officer or employee in  
8 resolving the ethics complaint;

9 (e) Any restitution or reimbursement paid to parties affected by the  
10 violation or alleged violation;

11 (f) The extent of any financial gain resulting from the violation or  
12 alleged violation; and

13 (g) Any other matter justice may require.

14 2. The factors set forth in this section are not exclusive or exhaustive,  
15 and the Commission or the review panel, as appropriate, may consider  
16 other factors in the disposition of the matter if they bear a reasonable  
17 relationship to the ~~Commission's~~ determination of the severity of the  
18 violation or alleged violation.

19 3. In applying the factors set forth in this section, the Commission or  
20 the review panel, as appropriate, shall treat comparable situations in a  
21 comparable manner and shall ensure that the disposition of the matter  
22 bears a reasonable relationship to the severity of the violation or alleged  
23 violation.

24 **Sec. 24.** NRS 281A.480 is hereby amended to read as follows:

25 281A.480 1. In addition to any other penalties provided by law and  
26 in accordance with the provisions of NRS 281A.475, the Commission may  
27 impose on a public officer or employee or former public officer or  
28 employee civil penalties:

29 (a) Not to exceed \$5,000 for a first willful violation of this chapter;

30 (b) Not to exceed \$10,000 for a separate act or event that constitutes a  
31 second willful violation of this chapter; and

32 (c) Not to exceed \$25,000 for a separate act or event that constitutes a  
33 third willful violation of this chapter.

34 2. In addition to any other penalties provided by law, if any person  
35 prevents, interferes with or attempts to prevent or interfere with any  
36 investigation or proceedings pursuant to this chapter or the discovery of  
37 a violation of this chapter, the Commission may, upon its own motion or  
38 upon the motion of the ~~person about whom an opinion was requested~~  
39 ~~pursuant to NRS 281A.440, impose a~~ current or former public officer or  
40 employee who is the subject of the investigation or proceedings:

41 (a) Impose on the person committing such acts a civil penalty not to  
42 exceed \$5,000 ; and

43 (b) If appropriate under the facts and circumstances, assess against  
44 the person committing such acts an amount equal to the amount of  
45 attorney's fees and costs actually and reasonably incurred by the ~~person~~

1 ~~about whom an opinion was requested pursuant to NRS 281A.440 against~~  
2 ~~a person who prevents, interferes with or attempts to prevent or interfere~~  
3 ~~with the discovery or investigation of a violation of this chapter.] current~~  
4 ~~or former public officer or employee as a result of the person's acts.~~

5 3. If the Commission finds that a violation of a provision of this  
6 chapter by a public officer or employee or former public officer or  
7 employee has resulted in the realization of a financial benefit by the  
8 current or former public officer or employee or another person, the  
9 Commission may, in addition to any other penalties provided by law,  
10 require the current or former public officer or employee to pay a civil  
11 penalty of not more than twice the amount so realized.

12 4. In addition to any other penalties provided by law, if a proceeding  
13 results in an opinion that:

14 (a) One or more willful violations of this chapter have been committed  
15 by a State Legislator removable from office only through expulsion by the  
16 State Legislator's own House pursuant to Section 6 of Article 4 of the  
17 Nevada Constitution, the Commission shall:

18 (1) If the State Legislator is a member of the Senate, submit the  
19 opinion to the Majority Leader of the Senate or, if the Majority Leader of  
20 the Senate is the subject of the opinion or the person who requested the  
21 opinion, to the President Pro Tempore of the Senate; or

22 (2) If the State Legislator is a member of the Assembly, submit the  
23 opinion to the Speaker of the Assembly or, if the Speaker of the Assembly  
24 is the subject of the opinion or the person who requested the opinion, to the  
25 Speaker Pro Tempore of the Assembly.

26 (b) One or more willful violations of this chapter have been committed  
27 by a state officer removable from office only through impeachment  
28 pursuant to Article 7 of the Nevada Constitution, the Commission shall  
29 submit the opinion to the Speaker of the Assembly and the Majority  
30 Leader of the Senate or, if the Speaker of the Assembly or the Majority  
31 Leader of the Senate is the person who requested the opinion, to the  
32 Speaker Pro Tempore of the Assembly or the President Pro Tempore of the  
33 Senate, as appropriate.

34 (c) One or more willful violations of this chapter have been committed  
35 by a public officer other than a public officer described in paragraphs (a)  
36 and (b), the willful violations shall be deemed to be malfeasance in office  
37 for the purposes of NRS 283.440 and the Commission:

38 (1) May file a complaint in the appropriate court for removal of the  
39 public officer pursuant to NRS 283.440 when the public officer is found in  
40 the opinion to have committed fewer than three willful violations of this  
41 chapter.

42 (2) Shall file a complaint in the appropriate court for removal of the  
43 public officer pursuant to NRS 283.440 when the public officer is found in  
44 the opinion to have committed three or more willful violations of this  
45 chapter.

1 ↪ This paragraph grants an exclusive right to the Commission, and no  
2 other person may file a complaint against the public officer pursuant to  
3 NRS 283.440 based on any violation found in the opinion.

4 5. Notwithstanding any other provision of this chapter, any act or  
5 failure to act by a public officer or employee or former public officer or  
6 employee relating to this chapter is not a willful violation of this chapter if  
7 the public officer or employee establishes by sufficient evidence that:

8 (a) The public officer or employee relied in good faith upon the advice  
9 of the legal counsel retained by his or her public body, agency or  
10 employer; and

11 (b) The advice of the legal counsel was:

12 (1) Provided to the public officer or employee before the public  
13 officer or employee acted or failed to act; and

14 (2) Based on a reasonable legal determination by the legal counsel  
15 under the circumstances when the advice was given that the act or failure  
16 to act by the public officer or employee would not be contrary to ~~any prior~~  
17 ~~published opinion issued by the Commission which was publicly available~~  
18 ~~on the Internet website of the Commission.~~ the provisions of this chapter  
19 as interpreted by the Commission.

20 6. In addition to any other penalties provided by law, if a public  
21 employee ~~who~~ commits a willful violation of this chapter or fails to  
22 complete a period of compliance imposed by the Commission , or by the  
23 review panel as part of the terms and conditions of a deferral agreement,  
24 pursuant to ~~subparagraph (1) of paragraph (a) of subsection 1 of~~  
25 section 13 of this act , the public employee is subject to disciplinary  
26 proceedings by the employer of the public employee and must be referred  
27 for action in accordance to the applicable provisions governing the  
28 employment of the public employee.

29 7. The provisions of this chapter do not abrogate or decrease the  
30 effect of the provisions of the Nevada Revised Statutes which define  
31 crimes or prescribe punishments with respect to the conduct of public  
32 officers or employees. If the Commission finds that a public officer or  
33 employee has committed a willful violation of this chapter which it  
34 believes may also constitute a criminal offense, the Commission shall refer  
35 the matter to the Attorney General or the district attorney, as appropriate,  
36 for a determination of whether a crime has been committed that warrants  
37 prosecution.

38 8. The imposition of a civil penalty pursuant to subsection 1, 2 or 3 is  
39 a final decision for the purposes of judicial review pursuant to NRS  
40 233B.130.

41 9. A finding by the Commission that a public officer or employee has  
42 violated any provision of this chapter must be supported by a  
43 preponderance of the evidence unless a greater burden is otherwise  
44 prescribed by law.

1     **Sec. 25.** NRS 281A.500 is hereby amended to read as follows:  
2     281A.500 1. On or before the date on which a public officer swears  
3 or affirms the oath of office, the public officer must be informed of the  
4 statutory ethical standards and the duty to file an acknowledgment of the  
5 statutory ethical standards in accordance with this section by:  
6     (a) For an appointed public officer, the appointing authority of the  
7 public officer; and  
8     (b) For an elected public officer of:  
9         (1) The county and other political subdivisions within the county  
10 except cities, the county clerk;  
11         (2) The city, the city clerk;  
12         (3) The Legislative Department of the State Government, the  
13 Director of the Legislative Counsel Bureau; and  
14         (4) The Executive Department of the State Government, the  
15 Director of the Department of Administration, or his or her designee.  
16 2. Within 30 days after a public employee begins employment:  
17     (a) The Director of the Department of Administration, or his or her  
18 designee, shall provide each new public employee of a state agency with  
19 the information prepared by the Commission concerning the statutory  
20 ethical standards; and  
21     (b) The manager of each local agency, or his or her designee, shall  
22 provide each new public employee of the local agency with the  
23 information prepared by the Commission concerning the statutory ethical  
24 standards.  
25 3. Each public officer shall acknowledge that the public officer:  
26     (a) Has received, read and understands the statutory ethical standards;  
27 and  
28     (b) Has a responsibility to inform himself or herself of any  
29 amendments to the statutory ethical standards as soon as reasonably  
30 practicable after each session of the Legislature.  
31 4. The acknowledgment must be executed on a form prescribed by the  
32 Commission and must be filed with the Commission:  
33     (a) If the public officer is elected to office at the general election, on or  
34 before January 15 of the year following the public officer's election.  
35     (b) If the public officer is elected to office at an election other than the  
36 general election or is appointed to office, on or before the 30th day  
37 following the date on which the public officer swears or affirms the oath of  
38 office.  
39 5. Except as otherwise provided in this subsection, a public officer  
40 shall execute and file the acknowledgment once for each term of office. If  
41 the public officer serves at the pleasure of  
42 the appointing authority and does not have a definite term of office, the  
43 public officer, in addition to executing and filing the acknowledgment after  
44 the public officer swears or affirms the oath of office in accordance with  
45 subsection 4, shall execute and file the acknowledgment on or before

1 January 15 of each even-numbered year while the public officer holds that  
2 office.

3 6. For the purposes of this section, the acknowledgment is timely  
4 filed if, on or before the last day for filing, the acknowledgment is filed in  
5 one of the following ways:

6 (a) Delivered in person to the principal office of the Commission in  
7 Carson City.

8 (b) Mailed to the Commission by first-class mail, or other class of mail  
9 that is at least as expeditious, postage prepaid. Filing by mail is complete  
10 upon timely depositing the acknowledgment with the United States Postal  
11 Service.

12 (c) Dispatched to a third-party commercial carrier for delivery to the  
13 Commission within 3 calendar days. Filing by third-party commercial  
14 carrier is complete upon timely depositing the acknowledgment with the  
15 third-party commercial carrier.

16 (d) Transmitted to the Commission by facsimile machine or other  
17 electronic means authorized by the Commission. Filing by facsimile  
18 machine or other electronic means is complete upon receipt of the  
19 transmission by the Commission.

20 7. *If a public officer is serving in a public office and executes and*  
21 *files the acknowledgment for that office as required by the applicable*  
22 *provisions of this section, the public officer shall be deemed to have*  
23 *satisfied the requirements of this section for any other office held*  
24 *concurrently by him or her.*

25 8. The form for making the acknowledgment must contain:

26 (a) The address of the Internet website of the Commission where a  
27 public officer may view the statutory ethical standards and print a copy of  
28 the standards; and

29 (b) The telephone number and mailing address of the Commission  
30 where a public officer may make a request to obtain a printed copy of the  
31 statutory ethical standards from the Commission.

32 ~~8.~~ 9. Whenever the Commission, or any public officer or employee  
33 as part of the public officer's or employee's official duties, provides a  
34 public officer with a printed copy of the form for making the  
35 acknowledgment, a printed copy of the statutory ethical standards must be  
36 included with the form.

37 ~~9.~~ 10. The Commission shall retain each acknowledgment filed  
38 pursuant to this section for 6 years after the date on which the  
39 acknowledgment was filed.

40 ~~10.~~ 11. Willful refusal to execute and file the acknowledgment  
41 required by this section shall be deemed to be:

42 (a) A willful violation of this chapter for the purposes of NRS  
43 281A.480 ~~and section 13 of this act;~~ and

44 (b) Nonfeasance in office for the purposes of NRS 283.440 and, if the  
45 public officer is removable from office pursuant to NRS 283.440, the

1 Commission may file a complaint in the appropriate court for removal of  
2 the public officer pursuant to that section. This paragraph grants an  
3 exclusive right to the Commission, and no other person may file a  
4 complaint against the public officer pursuant to NRS 283.440 based on any  
5 violation of this section.

6 ~~11.1~~ **12.** As used in this section, “general election” has the meaning  
7 ascribed to it in NRS 293.060.

8 **Sec. 26.** NRS 281A.510 is hereby amended to read as follows:

9 281A.510 1. A public officer or public employee shall not accept or  
10 receive an honorarium.

11 2. An honorarium paid on behalf of a public officer or public  
12 employee to a charitable organization from which the officer or employee  
13 does not derive any financial benefit is deemed not to be accepted or  
14 received by the officer or employee for the purposes of this section.

15 3. This section does not prohibit:

16 (a) The receipt of payment for work performed outside the normal  
17 course of a person’s public office or employment if the performance of that  
18 work is consistent with the applicable policies of the person’s public  
19 employer regarding supplemental employment.

20 (b) The receipt of an honorarium by the spouse of a public officer or  
21 public employee if it is related to the spouse’s profession or occupation.

22 4. As used in this section, “honorarium” means the payment of money  
23 or anything of value for an appearance or speech by the public officer or  
24 public employee in the officer’s or employee’s capacity as a public officer  
25 or public employee. The term does not include the payment of:

26 (a) The actual and necessary costs incurred by the public officer or  
27 public employee, the officer’s or employee’s spouse or the officer’s or  
28 employee’s aid for transportation and for lodging and meals while the  
29 public officer or public employee is away from the officer’s or employee’s  
30 residence.

31 (b) Compensation which would otherwise have been earned by the  
32 public officer or public employee in the normal course of the officer’s or  
33 employee’s public office or employment.

34 (c) A fee for a speech related to the officer’s or employee’s profession  
35 or occupation outside of the officer’s or employee’s public office or  
36 employment if:

37 (1) Other members of the profession or occupation are ordinarily  
38 compensated for such a speech; and

39 (2) The fee paid to the public officer or public employee is  
40 approximately the same as the fee that would be paid to a member of the  
41 private sector whose qualifications are similar to those of the officer or  
42 employee for a comparable speech.

43 (d) A fee for a speech delivered to an organization of legislatures,  
44 legislators or other elected officers.



1 5. In addition to any other ~~[penalty imposed pursuant to NRS~~  
2 ~~281A.480, or section 13 of this act,]~~ **penalties provided by law,** a public  
3 officer or public employee who violates the provisions of this section shall  
4 forfeit the amount of the honorarium.

5 **Sec. 27.** NRS 281A.550 is hereby amended to read as follows:

6 281A.550 1. A former member of the Public Utilities Commission  
7 of Nevada shall not:

8 (a) Be employed by a public utility or parent organization or subsidiary  
9 of a public utility; or

10 (b) Appear before the Public Utilities Commission of Nevada to testify  
11 on behalf of a public utility or parent organization or subsidiary of a public  
12 utility,

13 ↪ for 1 year after the termination of the member's service on the Public  
14 Utilities Commission of Nevada.

15 2. A former member of the Nevada Gaming Control Board or the  
16 Nevada Gaming Commission shall not:

17 (a) Appear before the Nevada Gaming Control Board or the Nevada  
18 Gaming Commission on behalf of a person who holds a license issued  
19 pursuant to chapter 463 or 464 of NRS or who is required to register with  
20 the Nevada Gaming Commission pursuant to chapter 463 of NRS; or

21 (b) Be employed by such a person,  
22 ↪ for 1 year after the termination of the member's service on the Nevada  
23 Gaming Control Board or the Nevada Gaming Commission.

24 3. In addition to the prohibitions set forth in subsections 1 and 2, and  
25 except as otherwise provided in subsections 4 and 6, a former public  
26 officer or employee of a board, commission, department, division or other  
27 agency of the Executive Department of State Government, except a  
28 clerical employee, shall not solicit or accept employment from a business  
29 or industry whose activities are governed by regulations adopted by the  
30 board, commission, department, division or other agency for 1 year after  
31 the termination of the former public officer's or employee's service or  
32 period of employment if:

33 (a) The former public officer's or employee's principal duties included  
34 the formulation of policy contained in the regulations governing the  
35 business or industry;

36 (b) During the immediately preceding year, the former public officer or  
37 employee directly performed activities, or controlled or influenced an  
38 audit, decision, investigation or other action, which significantly affected  
39 the business or industry which might, but for this section, employ the  
40 former public officer or employee; or

41 (c) As a result of the former public officer's or employee's  
42 governmental service or employment, the former public officer or  
43 employee possesses knowledge of the trade secrets of a direct business  
44 competitor.



1 4. The provisions of subsection 3 do not apply to a former public  
2 officer who was a member of a board, commission or similar body of the  
3 State if:

4 (a) The former public officer is engaged in the profession, occupation  
5 or business regulated by the board, commission or similar body;

6 (b) The former public officer holds a license issued by the board,  
7 commission or similar body; and

8 (c) Holding a license issued by the board, commission or similar body  
9 is a requirement for membership on the board, commission or similar  
10 body.

11 5. Except as otherwise provided in subsection 6, a former public  
12 officer or employee of the State or a political subdivision, except a clerical  
13 employee, shall not solicit or accept employment from a person to whom a  
14 contract for supplies, materials, equipment or services was awarded by the  
15 State or political subdivision, as applicable, for 1 year after the termination  
16 of the officer's or employee's service or period of employment, if:

17 (a) The amount of the contract exceeded \$25,000;

18 (b) The contract was awarded within the 12-month period immediately  
19 preceding the termination of the officer's or employee's service or period  
20 of employment; and

21 (c) The position held by the former public officer or employee at the  
22 time the contract was awarded allowed the former public officer or  
23 employee to affect or influence the awarding of the contract.

24 6. A current or former public officer or employee may request ~~that~~  
25 ~~the Commission apply~~ an advisory opinion pursuant to section 3.2 of  
26 this act concerning the application of the relevant facts in that person's  
27 case to the provisions of subsection 3 or 5, as applicable, and determine  
28 whether relief from the strict application of those provisions is proper. If  
29 the Commission determines that relief from the strict application of the  
30 provisions of subsection 3 or 5, as applicable, is not contrary to:

31 (a) The best interests of the public;

32 (b) The continued ethical integrity of the State Government or political  
33 subdivision, as applicable; and

34 (c) The provisions of this chapter,

35 ↪ it may issue an advisory opinion to that effect and grant such relief.

36 ~~The~~

37 7. For the purposes of subsection 6, the request for the advisory  
38 opinion, the advisory opinion and all meetings, hearings and proceedings  
39 of the Commission in such a ~~case is final and subject to judicial review~~  
40 ~~pursuant to NRS 233B.130, except that a proceeding regarding this review~~  
41 ~~must be held in closed court without admittance of persons other than~~  
42 ~~those necessary to the proceeding, unless this right to confidential~~  
43 ~~proceedings is waived by the current or former public officer or~~  
44 ~~employee.~~ matter are governed by the provisions of 3.1 to 3.5, inclusive,  
45 of this act.

1 8. The advisory opinion [of the Commission] does not relieve the  
2 current or former public officer or employee from the strict application  
3 of any provision of NRS 281A.410.

4 ~~{7. Each request for an opinion that a current or former public officer~~  
5 ~~or employee submits to the Commission pursuant to subsection 6, each~~  
6 ~~opinion rendered by the Commission in response to such a request and any~~  
7 ~~motion, determination, evidence or record of a hearing relating to such a~~  
8 ~~request are confidential unless the current or former public officer or~~  
9 ~~employee who requested the opinion:~~

10 ~~— (a) Acts in contravention of the opinion, in which case the Commission~~  
11 ~~may disclose the request for the opinion, the contents of the opinion and~~  
12 ~~any motion, determination, evidence or record of a hearing related thereto;~~

13 ~~— (b) Discloses the request for the opinion, the contents of the opinion or~~  
14 ~~any motion, determination, evidence or record of a hearing related thereto~~  
15 ~~in any manner except to:~~

16 ~~— (1) The public body, agency or employer of the public officer or~~  
17 ~~employee or a prospective employer of the public officer or employee; or~~

18 ~~— (2) Any person to whom the Commission authorizes the current or~~  
19 ~~former public officer or employee to make such a disclosure; or~~

20 ~~— (c) Requests the Commission to disclose the request for the opinion,~~  
21 ~~the contents of the opinion, or any motion, determination, evidence or~~  
22 ~~record of a hearing related thereto.~~

23 ~~— 8. A meeting or hearing that the Commission or an investigatory~~  
24 ~~panel holds to receive information or evidence concerning the propriety of~~  
25 ~~the conduct of a current or former public officer or employee pursuant to~~  
26 ~~this section and the deliberations of the Commission and the investigatory~~  
27 ~~panel on such information or evidence are not subject to the provisions of~~  
28 ~~chapter 241 of NRS.]~~

29 9. For the purposes of this section:

30 (a) A former member of the Public Utilities Commission of Nevada,  
31 the Nevada Gaming Control Board or the Nevada Gaming Commission;  
32 or

33 (b) Any other former public officer or employee governed by this  
34 section,

35 ~~↪~~ is employed by or is soliciting or accepting employment from a  
36 business, industry or other person described in this section if any  
37 agreement is sought or exists ~~for is contemplated~~ pursuant to which the  
38 personal services of the public officer or employee are provided or will be  
39 provided to the business, industry or other person.

40 10. As used in this section, “regulation” has the meaning ascribed to it  
41 in NRS 233B.038 and also includes regulations adopted by a board,  
42 commission, department, division or other agency of the Executive  
43 Department of State Government that is exempted from the requirements  
44 of chapter 233B of NRS.

1     **Sec. 28.** NRS 239.010 is hereby amended to read as follows:  
2     239.010 1. Except as otherwise provided in this section and NRS  
3 1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440, 62E.516,  
4 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100,  
5 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615,  
6 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067,  
7 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,  
8 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280,  
9 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141,  
10 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140,  
11 127.2817, 130.312, 130.712, 136.050, 159.044, 172.075, 172.245,  
12 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715,  
13 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771,  
14 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925,  
15 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131,  
16 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150,  
17 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570,  
18 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239B.030,  
19 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250,  
20 239C.270, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264,  
21 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910,  
22 271A.105, 281.195, 281A.350, ~~281A.440, 281A.550,~~ 284.4068, 286.110,  
23 287.0438, 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503,  
24 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333,  
25 333.335, 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420,  
26 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240,  
27 360.240, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160,  
28 368A.180, 372A.080, 378.290, 378.300, 379.008, 385A.830, 385B.100,  
29 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513,  
30 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.850, 394.167,  
31 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525,  
32 396.535, 398.403, 408.3885, 408.3886, 408.3888, 408.5484, 412.153,  
33 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236,  
34 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430,  
35 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170, 441A.195,  
36 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209,  
37 449.245, 449.720, 450.140, 453.164, 453.720, 453A.610, 453A.700,  
38 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846,  
39 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005,  
40 480.365, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.575,  
41 483.659, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031,  
42 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110,  
43 599B.090, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015,  
44 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137,  
45 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230,

1 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336, 630A.555,  
2 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.055,  
3 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087,  
4 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400,  
5 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170,  
6 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050,  
7 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130,  
8 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330,  
9 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228,  
10 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285,  
11 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243,  
12 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690,  
13 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873,  
14 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115,  
15 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190,  
16 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615,  
17 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230, 710.159,  
18 711.600, ~~and sections 5 to 9, inclusive,~~ 3.4, 8, 9 and 12.5 of this act,  
19 sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section  
20 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared  
21 by law to be confidential, all public books and public records of a  
22 governmental entity must be open at all times during office hours to  
23 inspection by any person, and may be fully copied or an abstract or  
24 memorandum may be prepared from those public books and public  
25 records. Any such copies, abstracts or memoranda may be used to supply  
26 the general public with copies, abstracts or memoranda of the records or  
27 may be used in any other way to the advantage of the governmental entity  
28 or of the general public. This section does not supersede or in any manner  
29 affect the federal laws governing copyrights or enlarge, diminish or affect  
30 in any other manner the rights of a person in any written book or record  
31 which is copyrighted pursuant to federal law.  
32 2. A governmental entity may not reject a book or record which is  
33 copyrighted solely because it is copyrighted.  
34 3. A governmental entity that has legal custody or control of a public  
35 book or record shall not deny a request made pursuant to subsection 1 to  
36 inspect or copy or receive a copy of a public book or record on the basis  
37 that the requested public book or record contains information that is  
38 confidential if the governmental entity can redact, delete, conceal or  
39 separate the confidential information from the information included in the  
40 public book or record that is not otherwise confidential.  
41 4. A person may request a copy of a public record in any medium in  
42 which the public record is readily available. An officer, employee or agent  
43 of a governmental entity who has legal custody or control of a public  
44 record:

1 (a) Shall not refuse to provide a copy of that public record in a readily  
2 available medium because the officer, employee or agent has already  
3 prepared or would prefer to provide the copy in a different medium.

4 (b) Except as otherwise provided in NRS 239.030, shall, upon request,  
5 prepare the copy of the public record and shall not require the person who  
6 has requested the copy to prepare the copy himself or herself.

7 **Sec. 29.** NRS 241.016 is hereby amended to read as follows:

8 241.016 1. The meetings of a public body that are quasi-judicial in  
9 nature are subject to the provisions of this chapter.

10 2. The following are exempt from the requirements of this chapter:

11 (a) The Legislature of the State of Nevada.

12 (b) Judicial proceedings, including, without limitation, proceedings  
13 before the Commission on Judicial Selection and, except as otherwise  
14 provided in NRS 1.4687, the Commission on Judicial Discipline.

15 (c) Meetings of the State Board of Parole Commissioners when acting  
16 to grant, deny, continue or revoke the parole of a prisoner or to establish or  
17 modify the terms of the parole of a prisoner.

18 3. Any provision of law, including, without limitation, NRS 91.270,  
19 219A.210, 239C.140, 281A.350, ~~281A.440, 281A.550,~~ 284.3629,  
20 286.150, 287.0415, 288.220, 289.387, 295.121, 360.247, 388.261,  
21 388A.495, 388C.150, 392.147, 392.467, 394.1699, 396.3295, 433.534,  
22 435.610, 463.110, 622.320, 622.340, 630.311, 630.336, 639.050, 642.518,  
23 642.557, 686B.170, 696B.550, 703.196 and 706.1725, *and ~~section~~*  
24 *sections 3.5, 5.5 and 11 of this act* which:

25 (a) Provides that any meeting, hearing or other proceeding is not  
26 subject to the provisions of this chapter; or

27 (b) Otherwise authorizes or requires a closed meeting, hearing or  
28 proceeding,

29 ↪ prevails over the general provisions of this chapter.

30 4. The exceptions provided to this chapter, and electronic  
31 communication, must not be used to circumvent the spirit or letter of this  
32 chapter to deliberate or act, outside of an open and public meeting, upon a  
33 matter over which the public body has supervision, control, jurisdiction or  
34 advisory powers.

35 **Sec. 29.2. NRS 241.0355 is hereby amended to read as follows:**

36 241.0355 1. A public body that is required to be composed of  
37 elected officials only may not take action by vote unless at least a majority  
38 of all the members of the public body vote in favor of the action. For  
39 purposes of this subsection, a public body may not count an abstention as a  
40 vote in favor of an action.

41 2. In a county whose population is 45,000 or more, the provisions of  
42 subsection ~~5~~ 6 of NRS 281A.420 do not apply to a public body that is  
43 required to be composed of elected officials only, unless before abstaining  
44 from the vote, the member of the public body receives and discloses the  
45 opinion of the legal counsel authorized by law to provide legal advice to

1 the public body that the abstention is required pursuant to NRS 281A.420.  
2 The opinion of counsel must be in writing and set forth with specificity the  
3 factual circumstances and analysis leading to that conclusion.

4 Sec. 29.6. Section 19 of the University of Nevada, Las Vegas,  
5 Campus Improvement Authority Law, being chapter 507, Statutes of  
6 Nevada 2013, at page 3303, as last amended by chapter 360, Statutes  
7 of Nevada 2015, at pages 2012 and 2014, is hereby amended to read as  
8 follows:

9 Sec. 19. 1. The Board of Directors shall hold an  
10 organizational meeting during October of 2013. At that meeting:

11 (a) The members of the Board appointed pursuant to paragraphs  
12 (a) to (f), inclusive, of subsection 1 of section 17 of this act shall  
13 appoint any other members required to be appointed by those  
14 members; and

15 (b) After the provisions of paragraph (a) have been carried out,  
16 the Board shall appoint:

17 (1) One of its members as Chair;

18 (2) One of its members as Vice Chair; and

19 (3) A Secretary and a Treasurer, who may be members of the  
20 Board and may be one person.

21 2. The Vice Chair of the Board of Directors shall serve as  
22 Chair when the position of Chair is vacant or when the Chair is  
23 absent from any meeting.

24 3. The Board of Directors shall meet regularly in the county in  
25 which the Authority area is located at such times and places as it  
26 designates. Special meetings may be held at the call of the Chair,  
27 upon notice to each member of the Board, as often as the needs of  
28 the Board require.

29 4. Except as otherwise provided in subsection ~~5~~ 6 of NRS  
30 281A.420:

31 (a) Eight of the members of the Board of Directors constitute a  
32 quorum at any meeting of the Board.

33 (b) The Board of Directors may take action only by a motion or  
34 resolution adopted with the approval of at least eight members of the  
35 Board.

36 5. The Board of Directors constitutes a public body for the  
37 purposes of chapter 241 of NRS.

38 Sec. 29.8. 1. Except as otherwise provided in this section, the  
39 Commission on Ethics:

40 (a) Shall apply the amendatory provisions of this act which govern  
41 the procedures applicable to administrative proceedings arising under  
42 chapter 281A of NRS to any such proceedings that are within the  
43 jurisdiction of the Commission and are commenced on or after the  
44 effective date of this act, whether or not the conduct at issue in such  
45 proceedings occurred before the effective date of this act.

1 (b) May apply the amendatory provisions of this act which govern  
2 the procedures applicable to administrative proceedings arising under  
3 chapter 281A of NRS to any such proceedings that were commenced  
4 before the effective date of this act and are still within the jurisdiction  
5 of the Commission and pending before the Commission on the  
6 effective date of this act, unless the Commission determines that such  
7 an application would be impracticable, unreasonable or  
8 unconstitutional under the circumstances, in which case the  
9 Commission shall apply the procedures in effect before the effective  
10 date of this act.

11 2. The amendatory provisions of sections 15.7, 16, 20, 20.3, 20.5  
12 and 27 of this act do not apply to any conduct occurring before the  
13 effective date of this act.

14 **Sec. 30.** NRS 281A.108 and ~~[281A.220]~~ 281A.440 are hereby  
15 repealed.

16 **Sec. 31.** This act becomes effective on July 1, 2017.

17

---

---

18 **TEXT OF REPEALED SECTIONS**

---

---

19 **281A.108 “Investigatory panel” or “panel” defined.**  
20 “Investigatory panel” or “panel” means an investigatory panel appointed  
21 by the Commission pursuant to NRS 281A.220.

~~[281A.220 Investigatory panels: Appointment; members; review and  
final determination of just and sufficient cause; disqualification of  
members from participation in further proceedings in matter.~~

~~— 1. The Chair shall appoint one or more investigatory panels of two  
members of the Commission on a rotating basis to review the  
determinations of just and sufficient cause made by the Executive Director  
pursuant to NRS 281A.440 and make a final determination regarding  
whether there is just and sufficient cause for the Commission to render an  
opinion in a matter.~~

~~— 2. The Chair and Vice Chair of the Commission may not serve  
together on an investigatory panel.~~

~~— 3. The members of an investigatory panel may not be members of the  
same political party.~~

~~— 4. If an investigatory panel determines that there is just and sufficient  
cause for the Commission to render an opinion in a matter, the members of  
the investigatory panel shall not participate in any further proceedings of  
the Commission relating to that matter.]~~



# ACR6 and SCR6



ASSEMBLY CONCURRENT RESOLUTION NO. 6–  
ASSEMBLYMEN ELLISON AND OSCARSON

MARCH 20, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Directs the Legislative Commission to conduct an interim study concerning increases in salary and benefits of state employees. (BDR R-44)

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to appoint a committee to conduct an interim study concerning increases in the salary and benefits of state employees.

1 WHEREAS, The delivery of essential governmental services to  
2 the people of this State is dependent on the men and women  
3 employed by the State; and

4 WHEREAS, During the Great Recession, state employees were  
5 required to take furloughs, reductions in pay, loss of merit and  
6 longevity pay and other reductions in benefits; and

7 WHEREAS, State employees who first entered state service  
8 during and after the Great Recession receive certain benefits on less  
9 favorable terms than state employees who were hired during earlier,  
10 more favorable times for this State; and

11 WHEREAS, This State makes a significant investment in the  
12 recruitment and training of state employees; and

13 WHEREAS, The departure from state service of experienced and  
14 trained state employees not only interrupts the delivery of essential  
15 governmental services to the people of this State, but also imposes  
16 costs to recruit and train their successors; and

17 WHEREAS, The payment of adequate salaries and benefits is  
18 necessary to attract, recruit and retain an effective workforce; now,  
19 therefore, be it

20 RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE  
21 SENATE CONCURRING, That the Legislative Commission is hereby  
22 directed to appoint a committee composed of three members of the



1 Assembly and three members of the Senate, one of whom must be  
2 appointed by the Legislative Commission as Chair of the committee,  
3 to conduct an interim study of the desirability and feasibility of  
4 increasing the salary and benefits of state employees; and be it  
5 further

6 RESOLVED, That in performing the study, the committee shall,  
7 without limitation:

8 1. Compare the current salaries and benefits of persons with  
9 similar qualifications who are employed by the State of Nevada with  
10 other public employers and in the private sector;

11 2. Determine the minimum salary and benefits required to  
12 attract and retain experienced and competent persons; and

13 3. Consider the elimination or reduction of the disparity  
14 between certain benefits received by state employees who first  
15 entered state service during and after the Great Recession and the  
16 benefits received by state employees who entered state service  
17 earlier; and be it further

18 RESOLVED, That any recommended legislation proposed by the  
19 committee must be approved by a majority of the members of the  
20 Assembly and a majority of the members of the Senate appointed to  
21 the committee; and be it further

22 RESOLVED, That the Legislative Commission submit a report of  
23 the results of the study and any recommended legislation to the  
24 Director of the Legislative Counsel Bureau for transmittal to the  
25 80th Session of the Nevada Legislature; and be it further

26 RESOLVED, That the Chief Clerk of the Assembly prepare and  
27 transmit a copy of this resolution to the Governor, the Administrator  
28 of the Division of Human Resource Management of the Department  
29 of Administration, the Chair of the Public Employees' Retirement  
30 Board and the Chair of the Board of the Public Employees' Benefits  
31 Program.



SENATE CONCURRENT RESOLUTION NO. 6—  
COMMITTEE ON FINANCE

MARCH 27, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Directs the Legislative Commission to conduct an interim study concerning salaries for certain positions in the unclassified and nonclassified service of the State. (BDR R-998)

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

SENATE CONCURRENT RESOLUTION—Directing the Legislative Commission to appoint a committee to conduct an interim study concerning salaries for certain positions in the unclassified and nonclassified service of the State.

1 WHEREAS, The Commission to Review the Compensation of  
2 Constitutional Officers, Legislators, Supreme Court Justices, Judges  
3 of the Court of Appeals, District Judges and Elected County  
4 Officers created by NRS 281.1571 makes its recommendations  
5 concerning the appropriate salaries to be paid to elected officers  
6 after comparing the current salaries of persons with similar  
7 qualifications who are employed by the State of Nevada and in the  
8 public sector and determining the minimum salary required to attract  
9 and retain experienced and competent persons; and

10 WHEREAS, The Administrator of the Division of Human  
11 Resource Management of the Department of Administration is  
12 authorized pursuant to NRS 284.175 to make recommendations to  
13 the Legislature concerning the appropriate salaries to be paid to  
14 employees in the classified service of the State after considering  
15 factors such as surveys of salaries of comparable jobs in government  
16 and private industry within the State of Nevada and western states,  
17 where appropriate, changes in the cost of living, the rate of turnover  
18 and difficulty of recruitment for particular positions and maintaining  
19 an equitable relationship among classifications; and



1 WHEREAS, There is no comparable mechanism for considering  
2 the appropriate salaries to be paid to state officers and employees  
3 who occupy positions in the unclassified and nonclassified service  
4 of the State; now, therefore, be it

5 RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE  
6 ASSEMBLY CONCURRING, That the Legislative Commission is  
7 hereby directed to appoint a committee to conduct an interim study,  
8 as described herein, which is composed of:

9 1. Three members of the Senate, two of whom are appointed  
10 by the Majority Leader of the Senate and one of whom is appointed  
11 by the Minority Leader of the Senate;

12 2. Three members of the Assembly, two of whom are  
13 appointed by the Speaker of the Assembly and one of whom is  
14 appointed by the Minority Leader of the Assembly; and

15 3. The Administrator of the Division of Human Resource  
16 Management of the Department of Administration, who shall serve  
17 as a nonvoting member of the committee; and be it further

18 RESOLVED, That the Legislative Commission shall designate  
19 one of the members appointed to the committee to serve as the Chair  
20 of the committee; and be it further

21 RESOLVED, That, the committee shall conduct an interim study  
22 concerning the appropriate salaries for certain positions in the  
23 unclassified and nonclassified service of the State, which must,  
24 without limitation:

25 1. Include a review of any position within the Judicial  
26 Department of the State Government, the Commission on Ethics, the  
27 Nevada Gaming Control Board, the Public Utilities Commission of  
28 Nevada and any other department, commission or agency of the  
29 State of Nevada as determined by the committee;

30 2. Include selection of the positions in the unclassified and  
31 nonclassified service of the State in each department, commission or  
32 agency of the State of Nevada which are to be included in the  
33 interim study;

34 3. Include a review of the salary paid to the state officer or  
35 employee in each position selected for review by the committee; and

36 4. Provide for a market salary analysis for each position  
37 selected for review by the committee to be performed in a manner  
38 determined by the committee; and be it further,

39 RESOLVED, That, in conducting the interim study, the committee  
40 may consider whether any position that is currently designated as  
41 within the classified, unclassified or nonclassified service of the  
42 State should be redesignated; and be it further

43 RESOLVED, That any recommended legislation proposed by the  
44 committee must be approved by a majority of the members of the



1 Senate and a majority of the members of the Assembly appointed to  
2 the committee; and be it further

3 RESOLVED, That the Legislative Commission shall submit a  
4 report of the results of the study and any recommendations for  
5 legislation to the Director of the Legislative Counsel Bureau for  
6 transmittal to the 80th Session of the Nevada Legislature; and be it  
7 further

8 RESOLVED, That the Secretary of the Senate prepare and  
9 transmit a copy of this resolution to the Governor, the Administrator  
10 of the Division of Human Resource Management of the Department  
11 of Administration and the Director of the Administrative Office of  
12 the Courts.

③



\* S C R 6 \*

AGENDA ITEM NO. 6

AGENDA ITEM NO. 6



4785 Caughlin Parkway  
Reno, Nevada 89519

P.O. Box 30000  
Reno, Nevada 89520  
www.mcllawfirm.com

RECEIVED

JUN 02 2016

COMMISSION  
ON ETHICS  
Telephone  
(775) 827-2000

Facsimile  
(775) 827-2185

E-Mail:  
rhsu@mcllawfirm.com

Rick R. Hsu, Esq.

June 2, 2016

**Via Hand Delivery**

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

Re: Additional Third Party Request for Opinion  
Subject: Gerald Antinoro

Dear Yvonne:

I hereby enclose a second Third Party Request for Opinion against Gerald Antinoro, which has been signed by Kris Thompson, the project manager for my client. An additional copy of the RFO is enclosed for your staff to stamp "received."

Although I did not prepare this RFO, I have been requested that you direct any communications to the requester through me at this point in time. Kindest regards,

Sincerely,

Rick R. Hsu

RRH

Enclosure

c: client (w/enclosure via email)

**NEVADA ETHICS  
OPINION REQUEST**

**NEVADA COMMISSION ON ETHICS  
THIRD-PARTY REQUEST FOR OPINION**

NRS 281A.440(2)

**RECEIVED**  
JUN 02 2016  
COMMISSION  
ON ETHICS

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.)

<b>NAME:</b> <small>(Last, First)</small>	Antinoro Gerald		<b>TITLE OF PUBLIC OFFICE:</b> <small>(Position: e.g. city manager)</small>	Sheriff
<b>PUBLIC ENTITY:</b> <small>(Name of the entity employing this position: e.g. the City of XYZ)</small>	Storey County			
<b>ADDRESS:</b> <small>(Street number and name)</small>	206 N. Street		<b>CITY, STATE, ZIP CODE</b>	Virginia City 89440
<b>TELEPHONE:</b>	<b>Work:</b>	<b>Other: (Home, cell)</b>	<b>E-MAIL:</b>	gantinoro@storeycounty.nv.gov
	775-881-8196			

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

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

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

Statute	Essence of Statute:
<input type="checkbox"/> NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
<input type="checkbox"/> 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.
<input checked="" type="checkbox"/> 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.
<input type="checkbox"/> 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.



<input type="checkbox"/>	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.
<input type="checkbox"/>	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.
<input type="checkbox"/>	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
<input checked="" type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
<input type="checkbox"/>	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).
<input type="checkbox"/>	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
<input type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
<input type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
<input type="checkbox"/>	NRS 281A.430/530	Engaging in government contracts in which public officer or employee has a significant pecuniary interest.
<input type="checkbox"/>	NRS 281A.500	Failing to timely file an ethical acknowledgment.
<input type="checkbox"/>	NRS 281A.510	Accepting or receiving an improper honorarium.
<input checked="" type="checkbox"/>	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.
<input type="checkbox"/>	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.

<b>NAME and TITLE:</b> (Person #1)		KRIS THOMPSON	
<b>ADDRESS:</b>		<b>CITY, STATE, ZIP</b>	Sparks NV 89434
<b>TELEPHONE:</b>		<b>E-MAIL:</b>	kthompson2011@yahoo.com
<b>NATURE OF TESTIMONY:</b>		Work: 775-342-3856 Other: (Home, cell) / Witnessed the twitter page with the endorsement by Antonero on official letterhead and w/ a logo of his badge.	
<b>NAME and TITLE:</b> (Person #2)			
<b>ADDRESS:</b>		<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE:</b>		<b>E-MAIL:</b>	
<b>NATURE OF TESTIMONY:</b>			

**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) 3.

**7. REQUESTER'S INFORMATION:**

YOUR NAME:	KRIS Thompson		
YOUR ADDRESS:	505 USA Parkway	CITY, STATE, ZIP:	Sparks NV 89434
YOUR TELEPHONE:	Day: 775-342-3856	Evening:	E-MAIL:

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:

6/1/18  
Date:

KRIS Thompson  
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.

**Charge #1 – Using Physical Accoutrements of his position to benefit or secure an advantage for a third party.**

The attached letter from Storey County Sheriff Gerald Antinoro endorsed a candidate for U.S. Congress. He prepared this letter endorsing the candidate on his official Sheriff's letterhead which includes a logo of his badge and a letterhead stating "STOREY COUNTY SHERIFF'S OFFICE.....Gerald Antinoro Sheriff."

This letter was transmitted to the endorsed candidate and published on her campaign twitter webpage.

[https://twitter.com/VoteFiore?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauth](https://twitter.com/VoteFiore?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauth)  
or

Pursuant to the Opinion by the Ethics Commission in 1999 re Richard Kirkland, government officials cannot "create the impression of government sanction." By issuing this endorsement on Sheriff's Office letterhead he communicates government sanction.

The Kirkland opinion creates a strict rule that an "appearance of impropriety" is created if in the course of endorsing a person's candidacy, a law enforcement official used the physical accoutrements of his office or position to bolster the endorsement. The physical accoutrements of office include uniforms and badges. The badge is prominent on the letterhead and in the endorsement.



## STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro  
Sheriff

May 27, 2016

---

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPSOC, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read 'Gerald Antinoro', written in a cursive style.

Gerald Antinoro



Michelle Flores

Michelle Flores



### STORREY COUNTY SHERIFF'S OFFICE

Michelle Flores  
Michelle Flores

Michelle Flores

Michelle Flores

Michelle Flores

Michelle Flores

Michelle Flores

This Page Intentionally Left Blank





**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,

Request for Opinion No. **16-54C**  
**Confidential**

\_\_\_\_\_  
Subject. /

**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) on June 2, 2016, alleging that you may have engaged in conduct contrary to certain provisions of Nevada Revised Statutes (NRS) Chapter 281A, the Nevada Ethics in Government Law. Pursuant to NAC 281A.405, the Commission's Executive Director and Commission Counsel have determined that the RFO was properly filed on the appropriate form with sufficient evidence<sup>1</sup> and that the Commission, based on the facts and circumstances presented in the RFO, has jurisdiction to investigate certain allegations in the RFO which implicate the following statutes:

- NRS 281A.400(2)** Using position to secure or grant unwarranted privileges, preferences, exemptions or advantages for self, any business entity in which there is a significant pecuniary interest, or any person to whom there is a commitment in a private capacity to the interests of that person.
- NRS 281A.400(7)** Using governmental time, property, equipment or other facility to benefit personal or financial interest.
- NRS 281A.520** Requesting or otherwise causing a governmental entity to incur an expense or make and expenditure to support or oppose a ballot question or candidate during the relevant timeframe.

A copy of the RFO is attached. You may also find the relevant provisions of NRS and NAC, and a searchable database of Commission Opinions on the Commission's website at [ethics.nv.gov](http://ethics.nv.gov).

You are entitled to be represented by an attorney of your selection and 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.

<sup>1</sup> Under NRS 281A.280 and 281A.440 and NAC 281A.400, the Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of NRS Chapter 281A by a public officer or employee if the allegations are filed on the appropriate form with sufficient evidence to support the allegations, which includes "any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof."

## DEADLINES

Please note the following important deadlines applicable to this RFO:

- **Thursday, June 30, 2016**: deadline for you to submit a written request, or appeal, for the Commission to review this jurisdictional determination. Any appeal should highlight facts demonstrating that the statutory jurisdictional requirements set forth in NRS 281A.280 and 281A.440 have not been met. If no appeal is submitted, jurisdiction is deemed accepted and the Commission will proceed with its investigation of this matter without further notice.
- **Wednesday, July 20, 2016**: deadline for you to submit a written response to the allegations. A response is not required and lack of response on your part is not deemed an admission that the allegations are true. Extensions for time to file a response may be granted for good cause, subject to statutory deadlines.

## COMMISSION PROCESS AND WAIVERS

The following process is used by the Commission to resolve RFOs:

- Within 70 days after the Commission accepts jurisdiction, the Executive Director will complete the investigation and present a written recommendation to an Investigatory Panel comprised of two Commission members who determine whether just and sufficient cause exists for the Commission to hold a public hearing and render an opinion. Proceedings of an Investigatory panel are confidential and closed to the public.
- Within 60 days after an Investigatory Panel determines that just and sufficient cause exists, the Commission will conduct an evidentiary hearing and render an opinion as to whether the public officer or employee's conduct violated provisions of the Ethics in Government Law.

You may waive the statutory time limits set forth above and a form for waiving the time limits is enclosed. Please return this form to the Commission's office as soon as possible.

Except as otherwise provided in NRS 281A.440, the Commission and Commission staff will hold its activities in response to this RFO (and even the fact that it received the RFO) confidential until an Investigatory Panel determines whether just and sufficient cause exists for the Commission 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 or [ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov).

Dated this 17<sup>th</sup> day of June, 2016.

/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 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 of RFO No. 16-54C** addressed as follows:

Gerald Antinoro  
205 S. C Street  
P.O. Box 205  
Virginia City, NV 89440

Cert. Mail No.: 9171 9690 0935 0037 6422 70

Dated: 6/17/16

  
Employee, Nevada Commission on Ethics

This Page Intentionally Left Blank





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,

Request for Opinion No. **16-54C**

**CONFIDENTIAL**  
Pursuant to NRS 281A.440(8)

Subject. /

**NOTICE OF ADDITIONAL ISSUES AND FACTS**

Pursuant to NRS 281A.440(2), NAC 281A.410 and NAC 281A.415

In addition to the *Notice to Subject* provided to Subject Gerald Antinoro on June 17, 2016, NOTICE IS HEREBY GIVEN that the Nevada Commission on Ethics ("Commission") has identified relevant issues and facts beyond those presented in the original Third-Party Request for Opinion ("RFO"). Accordingly, Subject is hereby notified that the Commission's investigation has identified evidence that Subject appeared in a video endorsement for Michele Fiore wearing his Sheriff's uniform, which may implicate conduct contrary to NRS 281A.400(2) and (7) and NRS 281A.520.

Pursuant to NAC 281A.415 and NRS 281A.440(3), Subject may respond to these additional issues and facts in writing to the Commission addressed to 704 W. Nye Lane, Suite 204, Carson City, NV 89704, or via Email to my attention at [ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov), not later than 30 days after receipt of this notice. Accordingly, the deadline to submit a written response to the additional allegations is September 7, 2016. A lack of response is not deemed an admission that the allegations are true.

Except as otherwise provided in NRS 281A.440, the Commission will hold its activities in response to this 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. The Commission will not be the source of any public information until the investigatory panel has completed its review and has rendered its determination. Subject will be provided notice of the Panel Determination.

Please contact me at (775) 687-5469 with any questions.

Dated this 2<sup>nd</sup> day of August, 2016.

/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, via Email, a true and correct copy of the **Notice of Additional Issues and Facts** regarding **RFO No. 16-54C** addressed as follows:

Katherine F. Parks, Esq.  
Thorndal Armstrong et al  
6590 S. McCarran Blvd., #B  
Reno, Nevada 89509

Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)

Dated: August 2, 2016.



\_\_\_\_\_  
Employee, 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, Storey  
County, State of Nevada,

Request for Opinion No. **16-54C**

Subject. /

**PANEL DETERMINATION**  
NRS 281A.440(5); NAC 281A.440

The Nevada Commission on Ethics (“Commission”) received Third-Party Request for Opinion (“RFO”) No. 16-54C regarding the alleged conduct of Storey County Sheriff Gerald Antinoro (“Subject”) in violation of the Ethics in Government Law set forth in NRS Chapter 281A (“Ethics Law”), specifically, alleged violations implicate NRS 281A.400(2) and (7) and NRS 281A.520(1) and (3).<sup>1</sup> The RFO alleges that Subject used his official position and government time and resources to secure unwarranted advantages or preferences when he provided a letter using official letterhead to endorse a political candidate. The endorsement and a related video also appeared on the candidate’s Facebook page with a photo of the Subject in his Sheriff’s uniform.

As the elected Sheriff of Storey County, Subject serves as a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers and public employees pursuant to NRS 281A.280.

On October 19, 2016, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Magdalena Groover and Barbara Gruenewald, Esq., reviewed the following: 1) RFO; 2) Subject’s Response to the RFO; 3) Notice of Additional Issues and Facts; 4) Subject’s Response to the Additional Issues and Facts; 5) Investigator’s Report to Associate Counsel; and 6) Executive Director’s Recommendation to the Investigatory Panel.

Under NAC 281A.435, the Panel unanimously finds and concludes that the facts establish credible evidence to substantiate just and sufficient cause for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(7) with regard to Subject’s use of official letterhead to make a political endorsement. Therefore, the Investigatory Panel refers the alleged violation of NRS 281A.400(7) 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.

///

///

---

<sup>1</sup> Pursuant to NRS 281A.440(2), NAC 281A.410 and NAC 281A.415, the Commission identified relevant issues and facts supporting the allegations beyond those presented in the original RFO and notified Subject accordingly.

However, under NAC 281A.435, the Panel unanimously finds and concludes that the facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to consider the alleged violations pertaining to NRS 281A.400(2), NRS 281A.400(7) (regarding use of badge and uniform) and NRS 281A.520. The Commission's investigation revealed that Subject did not grant an advantage to himself or have a commitment in a private capacity to the interests of the candidate (NRS 281A.400(2)), or use government resources or cause a governmental entity to incur any expense to support the candidate with respect to the video and the photo of the Subject in uniform, which photo was used without Subject's permission (NRS 281A.400(7) and NRS 281A.520)). Therefore, these allegations are dismissed.

Dated: October 27, 2016

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

## 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 through the State of Nevada mailroom, and via Email, a true and correct copy of the **PANEL DETERMINATION** regarding **RFO No. 16-54C** addressed as follows:

Yvonne M. Nevarez-Goodson, Esq.      Email: [ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov)

Executive Director

Judy A. Prutzman, Esq.                      Email: [jprutzman@ethics.nv.gov](mailto:jprutzman@ethics.nv.gov)

Associate Counsel

Nevada Commission on Ethics

704 W. Nye Lane, Suite 204

Carson City, NV 89703

Katherine F. Parks, Esq.                      Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)

Thorndal Armstrong et al

6590 S. McCarran Blvd., #B

Reno, NV 89509

*Attorney for Subject*

Gerald Antinoro                                      Certified Mail: 9171 9690 0935 0037 6423 55

Sheriff

Storey County                                      Email: [gantinatoro@storeycounty.org](mailto:gantinoro@storeycounty.org)

205 S. C. Street

P.O. Box 498

Virginia City, NV 89440

Rick R. Hsu, Esq.                                      Email: [rhsu@mcllawfirm.com](mailto:rhsu@mcllawfirm.com)

Maupin Cox Legoy,

Attorneys at Law

P.O. Box 30000

Reno, NV 89520

*Attorney for Requester*

Dated: October 27, 2016.



\_\_\_\_\_  
Employee, Nevada Commission on Ethics

This Page Intentionally Left Blank







**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,

Request for Opinion No. **16-54C**

Subject. /

**FIRST-AMENDED NOTICE OF HEARING AND SCHEDULING ORDER**

**Notice of Hearing**

**PLEASE TAKE NOTICE**, the Nevada Commission on Ethics ("Commission") has duly scheduled a hearing for oral argument on **Wednesday, April 19, 2017** to consider any stipulations or dispositive motions presented by the Parties.

Parties' have the right to appear, be represented by legal counsel, and present motion-related arguments and stipulations. If the dispositive motions or stipulations do not fully adjudicate the merits of the case, the Commission will issue an amended Notice of Hearing and Scheduling Order to schedule an evidentiary hearing on the merits. Other rights afforded the Subject are found in NRS Chapter 281A, NRS Chapter 233B and NAC Chapter 281A. The Commission must support any finding of a violation of the Ethics Law by a preponderance of the evidence.

Accordingly, this Notice of Hearing and Scheduling Order ("Scheduling Order") serves to vacate the evidentiary hearing on the merits and set the hearing for dispositive motions or stipulations to be presented to the Commission and to establish certain deadlines as indicated. The hearing will assist the Commission to determine whether or not violations of the Nevada Ethics in Government Law have occurred and, if violations are found, whether such violations are willful and whether any penalties will be imposed by the Commission pursuant to NRS 281A.480.

**THE HEARING WILL TAKE PLACE:**

**Wednesday, April 19, 2017 at 9:00 a.m.,**  
**or as soon thereafter as the Commission is able to hear the matter,**  
**at a location to be determined and noticed separately at a later date.**

Subject must be present at the hearing location when this matter is called. 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](mailto:tchase@ethics.nv.gov). Although the hearing is exempt from Nevada's Open Meeting Law pursuant to NRS 281A.440(16), the Commission makes every effort to open the hearing to the public. A record will be made by a certified court reporter.

///

///

## **Procedural Schedule**

On or about October 27, 2016, the Commission served Subject with a Panel Determination, which determination forwarded allegations to be considered by the Commission in accordance with the Ethics Law and Chapter 281A of the Nevada Administrative Code ("NAC"). Pursuant to NRS 281A.440(6), the Subject has waived the statutory time limits for a hearing in this matter. Further, the Parties have stipulated to electronic service in these proceedings.

On or about November 11, 2016, the Commission issued a *Notice of Hearing and Scheduling Order* setting the matter for hearing on February 15, 2017. On or about December 1, 2016, Commission Counsel issued a notice accepting the Parties' stipulation which requested that the Commission extend the deadline for discovery to Thursday, December 15, 2016, and the associated deadline to file Discovery Motions was also extended to Thursday, December 22, 2016. All other dates set forth in the *Notice of Hearing and Scheduling Order* remained as noticed.

On December 15, 2016, the Parties filed an executed *Stipulated Facts* and requested the Commission set aside the scheduled evidentiary hearing scheduled for February 15, 2017, and instead hold a hearing to consider dispositive motions or stipulations. On December 28, 2016, the Parties stipulated to a further extension of the hearing to April 19, 2017, which extension was granted by Chair for good cause shown.

## **Scheduling Order**

The Parties shall comply with this amended Scheduling Order:

### **1. APPEARANCE**

Subject has confirmed his appearance at the **April 19, 2017 hearing**.

### **2. DISCOVERY/INVESTIGATION**

Pursuant to NRS 281A.290 and 281A.440 and NAC 281A.270, the Parties were permitted to engage in the continued investigation of facts or discovery, which was limited to the exchange of written interrogatories, requests for admission and requests for production which are issued in compliance with this Scheduling Order. Depositions were permitted by stipulation and could have been taken by telephone as agreed by counsel. The deadline to complete discovery, including responses and depositions, was established as not later than Thursday, December 15, 2016.

### **3. MOTIONS**

#### **a) Discovery Motions**

The deadline to submit discovery motions was established as not later than Thursday, December 22, 2016. No discovery motions have been filed by either Party.

///

///

///

**b) Procedural and Dispositive Motions**

On or before **Wednesday, March 1, 2017**, the Parties shall file any written non-discovery-related and/or substantive-dispositive motions with the Commission. The opposing Party shall file a written response to any such motion not later than 5 business days after service of the motion. A reply to any responsive pleading is permitted by the Chair and the deadline to file the reply shall be not later than 5 business days after service of the response.

**c) Motion Format Requirements**

All motions shall be in writing and in compliance with the requirements of NAC 281A.265. Further, since the Parties have agreed to electronic service, any pleading and related exhibits must also include a caption and page numbers and be filed in PDF format. 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 cover sheet.

**4. ORAL ARGUMENT**

A 15 minute oral argument presentation before the Commission with respect to the dispositive motions is provided to the each of the parties. The moving party may reserve any portion of the 15 minute oral argument to present any reply argument.

**5. FILING, SUBMISSION AND SERVICE REQUIREMENTS**

The Parties shall file or submit all documents not later than 5:30 p.m. on the respective dates and in the respective formats 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., which may be delivered electronically to [tchase@ethics.nv.gov](mailto:tchase@ethics.nv.gov), with a copy to [dhayden@ethics.nv.gov](mailto:dhayden@ethics.nv.gov). **Electronic service is deemed complete on the date served and electronic submission does not eliminate the parties' obligations to provide physical copies of relevant documents to the Commission if otherwise required by this Scheduling Order.**

Each Party shall serve the other Party via electronic mail **not later than 5:30 p.m.** on the respective dates outlined herein as follows:

<p>Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, NV 89703 <a href="mailto:ynevarez@ethics.nv.gov">ynevarez@ethics.nv.gov</a></p> <p>Judy A. Prutzman, Esq. Associate Counsel Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, NV 89703 <a href="mailto:jprutzman@ethics.nv.gov">jprutzman@ethics.nv.gov</a></p>	<p>Katherine F. Parks, Esq. Thorndal Armstrong et al 6590 S. McCarran Blvd., #B Reno, NV 89509 <a href="mailto:kfp@thorndal.com">kfp@thorndal.com</a></p> <p>with copy to: <a href="mailto:psb@thorndal.com">psb@thorndal.com</a> <a href="mailto:gantinoro@storeycounty.org">gantinoro@storeycounty.org</a></p>
---	--

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

**6. EXTENSIONS AND CONTINUANCE**

The Parties may not agree to continue the hearing or extend the deadlines included herein without the written consent of the Commission. Extensions or continuances will not be granted except in the case of good cause shown, which may be presented for consideration by filing of a written motion or by a written stipulation executed by the Parties.

DATED: January 5, 2017

/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 **FIRST-AMENDED NOTICE OF HEARING AND SCHEDULING ORDER** in Request for Opinion No. 16-54C, via email, to the Parties and interested persons 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](mailto:ynevarez@ethics.nv.gov)

Judy A. Prutzman, Esq.  
Associate Counsel  
Nevada Commission on Ethics  
704 W. Nye Lane, Suite 204  
Carson City, Nevada 89703

Email: [jprutzman@ethics.nv.gov](mailto:jprutzman@ethics.nv.gov)

Katherine F. Parks, Esq.  
Thorndal Armstrong et al  
6590 S. McCarran Blvd., #B  
Reno, NV 8950

Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)  
Cc: [psb@thorndal.com](mailto:psb@thorndal.com)  
Cc: [gantinoro@storeycounty.org](mailto:gantinoro@storeycounty.org)

*Attorney for Subject*  
*Gerald Antinoro*

Rick R. Hsu, Esq.  
Maupin Cox Legoy, Attorneys at Law  
P.O. Box 30000  
Reno, NV 89520

Email: [rhsu@mcclrenolaw.com](mailto:rhsu@mcclrenolaw.com)

*Attorney for Requester*  
*Kris Thompson*

DATED: January 5, 2017

  
\_\_\_\_\_  
An employee, Nevada Commission on Ethics

This Page Intentionally Left Blank



**STATE OF NEVADA**

**BEFORE THE 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,

Request for Opinion No. 16-54C

Subject. /

**EXECUTIVE DIRECTOR'S**

**MOTION FOR SUMMARY JUDGMENT**

1 Judy A. Prutzman, Esq. (#6078)  
2 Associate Counsel  
3 Nevada Commission on Ethics  
4 704 West Nye Lane, Suite 204  
5 Carson City, Nevada 89703  
6 (775) 687-5469  
7 Fax: (775) 687-1279  
8 Email: [judyprutzman@ethics.nv.gov](mailto:judyprutzman@ethics.nv.gov)

9 **STATE OF NEVADA**

10 **BEFORE THE COMMISSION ON ETHICS**

11 In the Matter of the Third-Party Request  
12 for Opinion Concerning the Conduct Request for Opinion No. 16-54C  
13 of **Gerald Antinoro**, Sheriff, Storey  
14 County, State of Nevada,

15 Subject. /

16 **MOTION FOR SUMMARY JUDGMENT**

17 Yvonne M. Nevarez-Goodson, Esq., Executive Director of the Nevada  
18 Commission on Ethics (“Commission”), through the Commission’s Associate Counsel,  
19 Judy A. Prutzman, Esq., submits this Motion for Summary Judgment pursuant to NAC  
20 281A.265.

21 **POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 This Third-Party Request for Opinion (“RFO”) involves the alleged conduct of  
24 Gerald Antinoro (“Antinoro”), Sheriff of Storey County, Nevada. The RFO alleges that  
25 Antinoro violated the Ethics in Government Law set forth in NRS Chapter 281A  
26 (“Ethics Law”) when he provided a letter to endorse former State Assemblywoman  
27 Michelle Fiore (“Fiore”) as a candidate for United States Congress. Antinoro printed  
28 and signed the endorsement letter on the official letterhead of the Storey County  
Sheriff’s Office, which includes an accurate depiction of the Storey County Sheriff’s  
Office badge and Antinoro’s official title as Sheriff. See Exhibit 6, Exhibit 1 to



1 *Stipulated Facts.* Antinoro’s endorsement letter was included in a YouTube video  
2 entitled “Sheriff Gerald Antinoro Endorsement” that was posted to Fiore’s campaign  
3 Facebook page and Twitter account (@VoteFiore) on May 27, 2016.

4 Antinoro used government resources to benefit his personal interest in  
5 supporting a candidate in a political campaign. While Antinoro’s conduct did not cause  
6 the sheriff’s office to incur any costs, his use of official government letterhead for  
7 personal purposes unrelated to official business of the sheriff’s office created an  
8 appearance of impropriety that implicates NRS 281A.400(7). The Ethics Law exists to  
9 confront circumstances such as this that interfere with Antinoro’s duty to protect the  
10 public trust and separate his private interests from those of the public he serves as the  
11 Sheriff of Storey County. The use of a government resource not otherwise available to  
12 private citizens for a political endorsement is the type of harm to the public that the  
13 Ethics Law is designed to prohibit, as it creates a conflict of interest and an  
14 appearance of impropriety.

15 The relevant facts in this matter are not disputed and the parties have  
16 submitted Stipulated Facts to the Commission. The Commission should grant  
17 summary judgment in favor of the Executive Director because the undisputed facts  
18 show that Antinoro’s use of the Storey County Sheriff’s Office letterhead violated NRS  
19 281A.400(7).

20 **II. PROCEDURAL HISTORY AND STIPULATED FACTS**

21 **A. Procedural History**

22 On or about June 2, 2016, the Commission received the RFO from Requester  
23 Kris Thompson (“Requester”), by and through his legal representative Rick R. Hsu,  
24 Esq. with Maupin, Cox & Legoy. See Exhibit 1, RFO. The RFO alleges that Antinoro  
25 violated NRS Chapter 281A by engaging in the following conduct:

26 ///

27 ///

- 1 • Using his position in government to secure or grant unwarranted  
2 privileges, preferences, exemptions or advantages for himself or  
3 any person to whom he has a commitment in a private capacity to  
4 the interests of that person. (NRS 281A.400(2));
- 5 • Using governmental time, property, equipment or other facility to  
6 benefit his personal or financial interest (NRS 281A.400(7)); and
- 7 • Causing a governmental entity to incur an expense or make an  
8 expenditure to support or oppose a ballot question or candidate.  
9 (NRS 281A.520)).

10 On or about June 17, 2016, the Commission served Antinoro via certified mail  
11 with a *Notice to Subject* advising him of the alleged violations set forth in the RFO.  
12 Antinoro was provided an opportunity to respond to the RFO and requested an  
13 extension of time to submit a response through his attorney, Katherine F. Parks, Esq.  
14 (“Parks”) of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, which response was  
15 filed on or about July 26, 2016. See Exhibit 2, Response to RFO. On or about August  
16 2, 2016, a *Notice of Additional Issues and Facts* was served on Antinoro. See Exhibit  
17 3, *Notice of Additional Issues and Facts*. Antinoro, through Parks, filed a response to  
18 the *Notice of Additional Issues and Facts* on September 6, 2016.<sup>1</sup> See Exhibit 4,  
19 Response to Notice of Additional Issues/Facts.

20 On or about October 27, 2016, a *Panel Determination* was issued, finding just  
21 and sufficient cause for the Commission to conduct a public hearing and render an  
22 opinion regarding whether Antinoro violated NRS 281A.400(7). See Exhibit 5, *Panel*  
23 *Determination*.<sup>2</sup> Thereafter, the Commission issued a *Notice of Hearing and*  
24

---

25 <sup>1</sup> The *Notice of Additional Facts and Issues* was issued regarding Antinoro’s appearance in Fiore’s  
26 YouTube endorsement video wearing his Sheriff’s uniform.

27 <sup>2</sup> The *Panel Determination* found that credible evidence did not substantiate just and sufficient cause for  
28 the Commission to conduct a public hearing and render an opinion regarding the alleged violations of  
NRS 281A.400(2), NRS 281A.400(7) (regarding Antinoro’s use of his badge and uniform) and NRS  
281A.520. Accordingly, these allegations were dismissed.

1 *Scheduling Order*, setting this matter for a hearing on February 15, 2017. The parties  
2 filed an executed *Stipulated Facts* (Exhibit 6) on December 15, 2016 and requested  
3 the Commission set aside the February 15, 2017 evidentiary hearing and instead hold  
4 a hearing to consider dispositive motions or stipulations. A *First-Amended Notice of*  
5 *Hearing and Scheduling Order* was issued on January 5, 2017 to reschedule the  
6 hearing to April 19, 2017.

## 7 **B. STIPULATED FACTS**

8 Pursuant to the *Stipulated Facts* submitted to the Commission, the parties have  
9 agreed to submit as evidence in this matter the following facts:

- 10 1. Gerald Antinoro (“Antinoro”) is the elected Sheriff of Storey County, a public  
11 officer as defined in NRS 281A.160.
- 12 2. Storey County is a political subdivision as defined in NRS 281A.145.
- 13 3. The Storey County Sheriff’s Office is a local agency as defined in NRS  
14 281A.119.
- 15 4. During the relevant time period, Nevada State Assemblywoman Michelle Fiore  
16 (“Fiore”) was a United States Congressional candidate for Nevada’s Third  
17 Congressional District in Clark County.
- 18 5. On May 27, 2016, Fiore contacted Sheriff Antinoro by phone to request his  
19 endorsement of her candidacy for U.S. Congress.
- 20 6. Sheriff Antinoro prepared a three-paragraph statement endorsing Fiore’s  
21 candidacy (Exhibit 1), dated May 27, 2016, on his personal computer at his  
22 home during his lunch hour.
- 23 7. The statement was typed on the official Storey County Sheriff’s Office  
24 letterhead and emailed to Fiore from Sheriff Antinoro’s personal computer and  
25 email account.
- 26 8. On May 27, 2016, Sheriff Antinoro’s statement appeared in a YouTube video  
27 that was tweeted on Fiore’s Twitter account, @VoteFiore.
- 28 9. The YouTube video containing Sheriff Antinoro’s statement was also posted  
on Fiore’s Facebook page on May 27, 2016.

1 10. Sheriff Antinoro did not produce the YouTube video or supply any of the other  
2 images used in the video. Fiore did not contact Sheriff Antinoro to inform him  
3 about the endorsement video.

4 11. Fiore was defeated in her campaign for U.S. Congress in the primary election  
5 held on June 15, 2016.

6 12. Policy Number 213 of the Storey County Administrative Policies and  
7 Procedures ("Storey County Policies") addresses political activity by  
8 employees:

9 213: Political Activity

10 Employees shall not engage in political activity of any kind during  
11 working hours. This includes, but is not limited to: soliciting money,  
12 influence, service, or any other valuable thing to aid, promote, or  
13 defeat any political committee or the nomination or election of any  
14 person to public office. Wearing or displaying of apparel, buttons,  
15 insignia, or other items which advocate for or against a political  
16 candidate or a political cause is also an example of prohibited  
17 activity during working hours. Furthermore, no person shall attempt  
18 to coerce, commence, or require a person holding or applying for  
19 any position, office, or employment, including a citizen requesting  
20 service supplied by employer, to influence or to give money,  
21 service, or other valuable thing to aid, promote, or defeat any  
22 political committee, or to aid, promote, or defeat the nomination or  
23 election of any person to public office.

24 .....

25 Employees are expressly forbidden to use any employer  
26 resources, including but not limited to: interoffice mail, email,  
27 telephone, fax machines, the Internet, or copy machines to engage  
28 in any political activity outside the approved scope of the  
employees' official duties.

.....

Employees who are seeking, or who have been elected or  
appointed to public office, shall not conduct any business related  
to these activities while on duty. This includes all the items listed in  
the previous section, (i.e., political activity).

///

///

1 13. The Storey County Policies contain the following definition of “employee:”

2 **Employee:** A person employed in a budgeted position on a full- or  
3 part-time basis. For purposes of those sections of these policies  
4 covering discipline, layoff, and dispute resolution, the term  
5 employee excludes elected officials, department heads and casual  
6 workers.

7 14. The Storey County Sheriff’s Office has a policy regarding Employee  
8 Speech, Expression and Social Networking that addresses  
9 endorsements:

10 1060.4.1 UNAUTHORIZED ENDORSEMENTS,  
11 ADVERTISEMENTS, AND ACTIVITIES

12 While employees are not restricted from engaging in the following  
13 activities as private citizens or as authorized members of a  
14 recognized bargaining unit or deputy associations, employees may  
15 not represent the Storey County Sheriff’s Office or identify  
16 themselves in any way that could be reasonably perceived as  
17 representing the Storey County Sheriff’s Office in order to do any  
18 of the following, unless specifically authorized by the Sheriff:

- 19 (a) Endorse, support, oppose or contradict any political  
20 campaign or initiative.

21 . . .

22 Additionally, when it can reasonably be construed that an  
23 employee, acting in his/her individual capacity or through an  
24 outside group or organization (e.g., bargaining group), is affiliated  
25 with this office, the employee shall give a specific disclaiming  
26 statement that any such speech or expression is not  
27 representative of the Storey County Sheriff’s Office.

28 Employees retain their right to vote as they choose, to support  
candidates of their choice and to express their opinions as private  
citizens, including as authorized members of a recognized  
bargaining unit or deputy associations, on political subjects and  
candidates at all times while off-duty. Employees may not use their  
official authority or influence to interfere with or affect the result of  
an election or a nomination for office. Employees are also  
prohibited from directly or indirectly using their official authority to  
coerce, command or advise another employee to pay, lend or  
contribute anything of value to a party, committee, organization,  
agency or person for political purposes (5 USC § 1502).

1 **III. APPLICABLE LAW**

2 **A. Summary Judgment Standard of Review**

3 Summary judgment is appropriate when the record shows there is no genuine  
4 issue of material fact remaining and the moving party is entitled to judgment as a  
5 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)  
6 (citing NRCP 56(c)). Where, as in this case, a motion is submitted with stipulated  
7 facts, there is no material issue of fact and the case can be determined on a question  
8 of law. See *Sly v. Barnett*, 97 Nev. 587, 588, 637 P.2d 527, 527 (1981).

9 Because the parties have stipulated to the operative facts in this case, it is  
10 appropriate for the Commission to rule on this motion and resolve the RFO in its  
11 entirety. There are no factual disputes for the Commission to resolve. Accordingly, the  
12 relevant legal inquiry for the Commission is whether the undisputed facts of this case  
13 demonstrate that Antinoro violated NRS 281A.400(7). If the Commission concludes as  
14 a matter of law that a violation occurred, the Executive Director's summary judgment  
15 motion can be granted.

16 **B. Standard of Proof**

17 The standard of proof in an administrative proceeding before the Commission  
18 is a preponderance-of-the-evidence standard. NRS 281A.480(9). A preponderance of  
19 the evidence refers to "the greater weight of the evidence." *McClanahan v. Raley's,*  
20 *Inc.*, 117 Nev. 921, 925-26, 34 P.3d 573, 576 (2001) (quoting Black's Law Dictionary  
21 1201 (7th ed. 1999)). Thus, the factual findings of an administrative decision will only  
22 be overturned if they are not supported by substantial evidence, which is evidence  
23 that a reasonable mind could accept as adequate to support a conclusion. *Nassiri v.*  
24 *Chiropractic Physicians' Bd.*, 130 Nev., Adv. Op. 27, 327 P.3d 487, 489 (2014); NRS  
25 233B.135(4).

26 ///

27 ///

1 The Executive Director respectfully submits that she is entitled to summary  
2 judgment because the relevant facts of this case are not disputed and the  
3 preponderance of evidence shows that Antinoro violated NRS 281A.400(7) because  
4 his use of public property, the Storey County Sheriff's Office letterhead, for personal  
5 purposes created the appearance of impropriety.

### 6 **C. Nevada's Ethics in Government Law**

#### 7 **NRS 281A.400(7): Use of Government Resources for Private Benefit**

8  
9 7. Except for State Legislators who are subject to the restrictions set  
10 forth in subsection 8, a public officer or employee shall not use  
11 governmental time, property, equipment or other facility to benefit a  
12 significant personal or pecuniary interest of the public officer or employee.  
13 This subsection does not prohibit:

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

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

20 (2) The use does not interfere with the performance of the public  
21 officer's or employee's public duties;

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

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

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

27 (c) The use of telephones or other means of communication if there is  
28 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.

### IV. **LEGAL ANALYSIS**

The Ethics Law seeks to secure the public trust by promoting the appropriate  
separation between private interests and a public officer's public duties. To promote  
integrity in public service, the Ethics Law is concerned with situations involving public

1 officers that create the appearance of impropriety as well as actual impropriety and  
2 conflicts of interests. See *In re Wilson*, Comm'n Op. No. 13-81C (2014). As a public  
3 officer, Antinoro must commit himself to avoid both actual and perceived conflicts  
4 between his private interests and those of the public he serves, including a duty to  
5 avoid using his public office or position for personal benefit. NRS 281A.020(1).

6 Generally, NRS 281A.400(7) creates a strict prohibition against the use by a  
7 public officer of "governmental time, property, equipment or other facility to benefit a  
8 significant personal or financial interest." Accordingly, the Commission must first  
9 determine if Antinoro used governmental time, property, equipment or other facility to  
10 benefit his personal or pecuniary interest. If this question is answered in the  
11 affirmative, the Commission must next consider whether the "limited use" exception  
12 contained in NRS 281A.400(7)(a) applies to Antinoro's use of government property.  
13 Antinoro's conduct is not permissible under the "limited use" exception unless each of  
14 the following factors is satisfied:

- 15 (1) There is a policy authorizing Antinoro's use of the Storey  
16 County Sheriff's Office letterhead for a letter of endorsement for  
17 a political candidate;
- 18 (2) Use of the letterhead did not interfere in any way with the  
19 performance of Antinoro's public duties;
- 20 (3) The cost or value related to the use was nominal; and
- 21 (4) The use did not create the appearance of impropriety.

#### 22 **A. Antinoro Used Governmental Property**

23 The first question for the Commission to consider is whether Antinoro used any  
24 governmental resources when he produced the endorsement letter for Fiore. When  
25 the letter of endorsement was produced, Antinoro avoided using governmental time or  
26 equipment to work on his private endeavor. He typed the letter during his lunch hour  
27 at his home on his personal computer, then used his private email address to transmit  
28 an electronic copy of the letter to Fiore. Under these circumstances, had Antinoro



1 typed the letter on a blank piece of paper or on his personal letterhead or stationary,  
2 his conduct would not conflict with the requirements of NRS 281A.400(7) because  
3 there would be no use of governmental property. However, it is undisputed that  
4 Antinoro's letter of endorsement was typed on the Storey County Sheriff's Office  
5 letterhead. Thus, the governmental property at issue here is the official letterhead of  
6 the Storey County Sheriff's Office.

7 In prior Commission cases involving the use of official letterhead by public  
8 officials, the Commission has viewed the letterhead and stationary of public offices as  
9 governmental property. Thus, in *In re Hammargren*, Comm'n Op. No. 95-35A (1996),  
10 the Commission held that Lieutenant Governor Hammargren violated NRS 281.481(7)  
11 (the predecessor statute to NRS 281A.400(7)) when he prepared a letter to Nevada  
12 physicians on the official state letterhead of the Lieutenant Governor's Office,  
13 requesting support of a bill that would benefit Hammargren's private medical practice.  
14 See also *In re Tiffany*, Comm'n Op. No. 15-21C (2007) (concluding that Senator  
15 Tiffany's use of her Nevada State Senate letterhead stationary to promote her private  
16 business was improper use of government property and violated NRS 281.481(8)<sup>3</sup>); *In*  
17 *re Hettrick*, Comm'n Op. No. 01-10A (2001) (concluding that Assemblyman Hettrick's  
18 Nevada State Assembly letterhead was government property that could not be used  
19 for a political fundraising letter).

20 The public officers in *Hammargren*, *Tiffany* and *Hettrick* were entitled to use the  
21 official letterhead of their public office only for official business. Therefore, it logically  
22 follows that the official letterhead of the Storey County Sheriff's Office is also a  
23 government resource subject to the restrictions set forth in NRS 281A.400(7).  
24 Furthermore, the only reason Antinoro is entitled to use the letterhead is because of

---

25  
26  
27 <sup>3</sup> NRS 281.481(8), the predecessor statute to NRS 281A.400(8), prohibited members of the State  
28 Legislature from using "governmental time, property, equipment or other facility for a non-governmental  
purpose or for the private benefit of himself or any other person."

1 his public office. This is a privilege unavailable to individuals who are not the sheriff of  
2 Storey County.

3 **B. Antinoro’s Use of Governmental Property Benefited His Personal Interest**  
4 **in Supporting a Political Candidate**

5 It is not necessary to show that Antinoro realized any *pecuniary* benefit by  
6 using the Storey County Sheriff’s Office letterhead for the letter of endorsement. The  
7 legislature intended NRS 281A.400(7) to reach beyond financial interests by referring  
8 also to “personal” interests. See *In re Bowles*, Comm’n Op. No. 96-49 (1996)  
9 (discussing application of former NRS 281.481(7) to a public officer’s personal use of  
10 public money when he “borrowed” \$100 from a DMV cash drawer to pay for food at a  
11 Democratic Party picnic). The Commission has therefore acknowledged that the  
12 appropriate inquiry is “whether the public officer used the public’s resources to benefit  
13 himself *in any way*.” *Id.* (emphasis in original).

14 Quite simply, NRS 281A.400(7) draws a “clear and bright line”: public property  
15 belongs to the public and cannot be used for personal benefit or gain. See *id.* Thus,  
16 under the previous version of NRS 281A.400(7), the Commission has declared that  
17 the prohibition in NRS 281A.400(7) prohibits the use of governmental property for  
18 personal political or campaign purposes. See *In re Kirkland*, Comm’n Op. No. 98-41  
19 (1999) (citing *In re Bob Nolen*, Comm’n Op. No. 96-39 (1996) and *In re Lonnie*  
20 *Hammargren*, Comm’n Op. No. 95-35 (1995)). Accordingly, the Commission should  
21 find that Antinoro’s use of the letterhead for a political endorsement letter benefited his  
22 private interest in supporting Fiore in her Congressional campaign.

23 **C. Sheriff Antinoro’s Use of Official Government Letterhead Does Not**  
24 **Satisfy All Elements of the Limited Use Exception in NRS 281A.400(7)(a)**

25 In 1997, the Nevada Legislature passed Senate Bill 214 to add a limited use  
26 exception to the general prohibition contained in NRS 281A.400(7). The legislative  
27 history of SB 214 indicates that the exception was added in recognition that there are  
28 situations in which the “necessary use” of government property would be justified. See

1 Hearing on S.B. 214 Before Senate Comm. on Gov't Affairs, 69<sup>th</sup> Leg. (Nev., May 7,  
2 1997).

3 Antinoro's use of the Storey County Sheriff's Office letterhead for a letter of  
4 endorsement of a political candidate violated NRS 281A.400(7) unless all four of the  
5 factors enumerated in NRS 281A.400(7)(a)(1) through (4) apply:

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

10 (2) The use does not interfere with the performance of the  
11 public officer's or employee's public duties;

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

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

14 The Executive Director concedes that the factors set forth in NRS  
15 281A.400(7)(a)(2) and (3) have been met. First, Antinoro's use of the letterhead to  
16 produce the endorsement letter on May 27, 2016 did not "interfere with the  
17 performance of [his] public duties." Antinoro typed the letter on his personal computer  
18 at his home during his lunch hour. He subsequently emailed the letter to Fiore from his  
19 personal computer and email account. Second, the "cost or value related to the use  
20 was nominal." Antinoro prepared an electronic copy of the letter on the official  
21 letterhead on his personal computer. The letter was not printed or reproduced in hard  
22 copy, but was transmitted electronically to Fiore then embedded by Fiore in her  
23 YouTube video and posted to her Twitter account and Facebook page.

24 The decisive inquiry therefore focuses on whether the person who has authority  
25 to authorize use of the letterhead "has established a policy allowing the use" and  
26 whether Antinoro's use created "the appearance of impropriety." NRS  
27 281A.400(7)(a)(1) and (4).

28 ///

///

1           1.       Use of the Letterhead Was Prohibited by the Storey County Policies

2           The Commission must determine whether Antinoro’s use of the Storey County  
3 Sheriff’s Office letterhead for the endorsement letter was allowed pursuant to a policy  
4 established by the appropriate “authority to authorize the use of such property.” Storey  
5 County Policy Number 213 (“Policy 213”) relates to political activity by County  
6 employees and states that “[e]mployees<sup>4</sup> are expressly forbidden to use any employer  
7 resources . . . to engage in any political activity outside the approved scope of the  
8 employees’ official duties.” See Exhibit 6, *Stipulated Facts* ¶12 (emphasis added).  
9 Policy 213 applies to Antinoro and expressly prohibits the use of any County  
10 resources for political purposes. Thus, Antinoro’s use of the Storey County Sheriff’s  
11 Office letterhead for the endorsement letter constituted an unauthorized use of  
12 government resources pursuant to County policy.

13           As the Storey County Sheriff, it could be argued that Antinoro is the public  
14 officer who “is responsible for and has authority to authorize the use of” the letterhead  
15 of the sheriff’s office. Accordingly, Antinoro had the ability to and presumably did  
16 authorize his own use of the official letterhead for his private political interests.  
17 However, the Executive Director notes the inherent potential for abuse when the  
18 public officer is himself responsible for or has authority to approve his own use of  
19 government property. In any event, Antinoro did not actually establish any formal  
20 policy allowing the use of the sheriff’s office letterhead for personal purposes  
21 unrelated to official business of the sheriff’s office.

22           In the absence of any established policy that authorizes the use of official  
23 letterhead of the Storey County Sheriff’s Office for a letter of endorsement for a  
24 political candidate, the requirements of the limited use exception cannot be met and  
25 the Commission must find that Antinoro violated NRS 281A.400(7).

---

26  
27           <sup>4</sup> Antinoro is an “employee,” as that term is defined by the Storey County Policies, for purposes of the  
28 Storey County Policy regarding political activity by county employees. The term employee excludes  
elected officials only for sections of the Storey County Policies that are related to discipline, layoff and  
dispute resolution. See Exhibit 6, *Stipulated Facts* ¶13.

1           2.     Antinoro’s Use of the Letterhead Created the Appearance of Impropriety

2           Antinoro’s use of an official letterhead for political purposes also creates the  
3 appearance of impropriety under NRS 281A.400(7)(a)(4). In an advisory opinion  
4 involving a state legislator’s proposed use of his Nevada Assembly letterhead for a  
5 political fundraising letter, the Commission opined that such use would create an  
6 appearance of impropriety under NRS 281.481(8) (statute prohibiting use of  
7 government property by State Legislators) because there is a risk of creating the  
8 impression that the State Assembly and/or State Legislature endorses the content of  
9 the letter. *Hettrick*, Comm’n Op. No. 01-10 (2001). In reaching its decision in *Hettrick*,  
10 the Commission relied upon its “appearance of impropriety” analysis in *In re Kirkland*,  
11 Comm’n Op. No. 98-41 (1999) (“*Kirkland*”).

12           In *Kirkland*, which involved the endorsement of a district judge by the Washoe  
13 County Sheriff, the Commission found that the sheriff’s use of his uniform and badge  
14 created an improper appearance that his endorsement was an official endorsement by  
15 Washoe County or the Washoe County Sheriff’s Office. *Id.* Accordingly, Sheriff  
16 Kirkland was advised that use of his uniform, badge, employees or other “physical  
17 accouterments” of his office to endorse a person’s candidacy would create an  
18 appearance of impropriety under NRS 281.481(7)(a)(4) (the predecessor statute of  
19 NRS 281A.400(7)(a)(4)). *Id.* Likewise, in *In re Kuzanek*, Comm’n Op. No. 14-61A  
20 (2015), the Commission held:

21           The use of the Washoe County Sheriff Deputy uniform and  
22 undersheriff badge act as a visual endorsement,  
23 affirmation, and sanction of Kuzanek’s campaign for  
24 sheriff, and provide an unfair advantage to Kuzanek at  
25 government cost. This is the type of harm to the public  
26 that the Ethics Law is designed to prohibit. A public officer  
27 and/or employee cannot engage in any activity that  
28 involves the use of the public agency’s time, facilities,  
equipment and supplies or the use of state or political  
subdivision badge or uniform to give that person an  
advantage, and it creates the appearance of impropriety.

1 The Commission should find that the Storey County Sherriff's Office letterhead  
2 is similar to the physical accouterments of office discussed in *Kirkland* that should not  
3 be used for the personal purposes of endorsing a political candidate. The Commission  
4 cautioned in *Kirkland* that "it would never be proper for a governmental agency to  
5 endorse a political candidate." *Kirkland*, Comm'n Op. No. 98-41 (1999). Then, in  
6 *Hettrick*, the Commission acknowledged that use of an official letterhead for political  
7 purposes creates an appearance of impropriety and the impression of government  
8 approval of the contents of letter. See *Hettrick*, Comm'n Op. No. 01-10 (2001).  
9 Antinoro's endorsement letter printed on the official letterhead of the Storey County  
10 Sheriff's Office created the improper appearance that the sheriff's office or Storey  
11 County also endorses Fiore. This is precisely the type of impropriety the Ethics Law  
12 seeks to avoid through NRS 281A.400(7).<sup>5</sup>

13 Using the Storey County Sheriff's Office letterhead for a letter of endorsement  
14 creates the appearance of impropriety as it is tied to the authority of the sheriff's office.  
15 The letterhead, like any government letterhead, indicates that the person signing the  
16 letter is exercising authority that is not granted to private citizens. The letterhead  
17 represents the Storey County Sheriff's Office, not Antinoro as a private citizen. While  
18 Antinoro has earned the right to be sheriff through a vote of the citizens of Storey  
19 County, that right does not allow him to use the prestige or influence of his public  
20 office for his private or political interests. The letterhead belongs to the Storey County  
21 Sheriff's Office and should be used only for official business of the office.

22 **D. The Constitutional Protection of Political Speech Does Not Excuse Sheriff  
23 Antinoro's Conduct**

24 The Commission recognizes that individuals enjoy a constitutional right to  
25 speak out on political concerns. See *In re Hettrick*, Comm'n Op. No. 01-10 (2001).

---

26 <sup>5</sup> Similarly, NRS 281A.520 attempts to ensure public independence from government interference or  
27 influence during an election. The Commission has decided that public officers have an obligation to  
28 ensure that public resources remain neutral during the course of an election so that any question  
placed upon the ballot would not be supported at public expense. See, e.g., *In re Edwards*, Comm'n  
Op. No. 13-24C (2013).

1 However, a public officer's or public employee's right to participate in political activities  
2 is not absolute. See *U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S.  
3 548, 567 (1973) (citations omitted). Because the free speech of public officers and  
4 employees is not absolute, states may enact reasonable regulations limiting the  
5 political activities of public officers and employees without violating the First  
6 Amendment. *Clements v. Fashing*, 457 U.S. 957, 971-73 (1982). Accordingly,  
7 Nevada's Ethics Law appropriately prohibits an elected public officer from speaking  
8 out on political concerns in a way that establishes a conflict and/or creates the  
9 appearance of impropriety or the impression that the government sanctions the  
10 activity. See *Hettrick*, Comm'n Op. No. 01-10 (2001) (citing *In re Kirkland*, Comm'n  
11 Op. No. 98-41 (1998)).

12 In any event, resolution of this RFO does not require the Commission to  
13 determine whether Antinoro's decision to endorse a political candidate, in and of itself,  
14 was prohibited by the Ethics Law. The Commission need only address the *manner* in  
15 which Sheriff Antinoro engaged in his political activity through the use of government  
16 property. Specifically, this RFO focuses on whether Antinoro's use of government  
17 property for his political activity violated NRS 281A.400(7). Similarly, in *Kirkland*, the  
18 Commission appropriately examined the *manner* in which a political endorsement is  
19 provided by a public officer.

20 **E. Antinoro's Conduct Constitutes One Willful Violation of the Ethics Law**

21 Even if Antinoro did not actually intend to violate the Ethics Law, his use of the  
22 Storey County Sheriff's Office letterhead was willful, as defined in NRS 281A.170,  
23 because he acted intentionally and knowingly. For an act to be intentional, NRS  
24 281A.105 requires that Antinoro acted voluntarily or deliberately. The definition further  
25 states that proof of bad faith, ill will, evil or malice is not required. It is enough that  
26 Antinoro did not accidentally or inadvertently use the letterhead for personal purposes.

27 ///

28 ///

1 NRS 281A.115 defines “knowingly” as “import[ing] a knowledge that the facts exist  
2 which constitute the act or omission.” NRS 281A does not require that Antinoro had  
3 actual knowledge that his conduct violated NRS 281A, but it does impose constructive  
4 knowledge when other facts are present that should put an ordinarily prudent person  
5 upon inquiry. See *In re Stark*, Comm’n Op. No. 10-48C (2010). In light of the Storey  
6 County Policy regarding political activity by County employees, Antinoro should have  
7 known that it was not appropriate for him to place Fiore’s letter of endorsement on the  
8 Storey County Sheriff’s Office letterhead.

9 Antinoro’s actions in this matter were willful pursuant to NRS 281A.170 and  
10 there are no mitigating factors to justify a non-willful violation. In fact, this is Antinoro’s  
11 second Ethics violation. A prior RFO alleging that Antinoro used governmental time  
12 and resources to further his own campaign interests was resolved by stipulation,  
13 resulting in one non-willful violation implicating NRS 281A.020 and NRS 281A.400(2)  
14 and (9). *In re Antinoro*, Comm’n Op. No. 14-59C (2015).

15 Based on the undisputed facts and preponderance of evidence establishing  
16 Antinoro’s use of government property to benefit his personal interest as a matter of  
17 law, the Executive Director respectfully requests summary judgment for one willful  
18 violation of the Ethics in Government Law. For Antinoro’s first willful violation, the  
19 Commission may impose a civil penalty not to exceed \$5,000 pursuant to NRS  
20 281A.480(1)(a).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28



1 **V. CONCLUSION**

2 Summary judgment should be granted and the Commission should find that  
3 Antinoro willfully violated NRS 281A.400(7). The Commission should also impose a  
4 civil penalty against Antinoro in an amount not to exceed \$5,000.

5 DATED this 1<sup>st</sup> day of March, 2017.

6 NEVADA COMMISSION ON ETHICS

7  
8 /s/ Judy A. Prutzman  
9 Judy A. Prutzman, Esq.  
10 Associate Counsel  
11 Nevada Commission on Ethics  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



# **Exhibit #1**

  
**MAUPIN | COX | LEGOY**  
ATTORNEYS AT LAW

4785 Caughlin Parkway  
Reno, Nevada 89519

P.O. Box 30000  
Reno, Nevada 89520  
www.mcllawfirm.com

**RECEIVED**

JUN 02 2016

COMMISSION  
ON ETHICS  
Telephone  
(775) 827-2000

Facsimile  
(775) 827-2185

E-Mail:  
rhsu@mcllawfirm.com

**Rick R. Hsu, Esq.**

June 2, 2016

**Via Hand Delivery**

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

Re: Additional Third Party Request for Opinion  
Subject: Gerald Antinoro

Dear Yvonne:

I hereby enclose a second Third Party Request for Opinion against Gerald Antinoro, which has been signed by Kris Thompson, the project manager for my client. An additional copy of the RFO is enclosed for your staff to stamp "received."

Although I did not prepare this RFO, I have been requested that you direct any communications to the requester through me at this point in time. Kindest regards,

Sincerely,



Rick R. Hsu

RRH

Enclosure

c: client (w/enclosure via email)

**NEVADA ETHICS  
OPINION REQUEST**

**NEVADA COMMISSION ON ETHICS  
THIRD-PARTY REQUEST FOR OPINION**

NRS 281A.440(2)

**RECEIVED**  
JUN 02 2016  
COMMISSION  
ON ETHICS

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.)

<b>NAME:</b> <small>(Last, First)</small>	Antinoro Gerald		<b>TITLE OF PUBLIC OFFICE:</b> <small>(Position: e.g. city manager)</small>	Sheriff
<b>PUBLIC ENTITY:</b> <small>(Name of the entity employing this position: e.g. the City of XYZ)</small>	Storey County			
<b>ADDRESS:</b> <small>(Street number and name)</small>	206 N. Street		<b>CITY, STATE, ZIP CODE</b>	Virginia City 89440
<b>TELEPHONE:</b>	<b>Work:</b>	<b>Other: (Home, cell)</b>	<b>E-MAIL:</b>	gantinoro@storeycounty.nv.gov
	775-881-8196			

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

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

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

Statute	Essence of Statute:
<input type="checkbox"/> NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
<input type="checkbox"/> 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.
<input checked="" type="checkbox"/> 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.
<input type="checkbox"/> 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.

<input type="checkbox"/>	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.
<input type="checkbox"/>	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.
<input type="checkbox"/>	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
<input checked="" type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
<input type="checkbox"/>	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).
<input type="checkbox"/>	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
<input type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
<input type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
<input type="checkbox"/>	NRS 281A.430/530	Engaging in government contracts in which public officer or employee has a significant pecuniary interest.
<input type="checkbox"/>	NRS 281A.500	Failing to timely file an ethical acknowledgment.
<input type="checkbox"/>	NRS 281A.510	Accepting or receiving an improper honorarium.
<input checked="" type="checkbox"/>	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.
<input type="checkbox"/>	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.

<b>NAME and TITLE:</b> (Person #1)		KRIS THOMPSON	
<b>ADDRESS:</b>		<b>CITY, STATE, ZIP</b>	Sparks NV 89434
<b>TELEPHONE:</b>		<b>E-MAIL:</b>	kthompson2011@yahoo.com
<b>NATURE OF TESTIMONY:</b>		Work: 775-342-3856 Other: (Home, cell) / Witnessed the twitter page with the endorsement by Antonero on official letterhead and w/ a logo of his badge.	
<b>NAME and TITLE:</b> (Person #2)			
<b>ADDRESS:</b>		<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE:</b>		<b>E-MAIL:</b>	
<b>NATURE OF TESTIMONY:</b>			

**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.

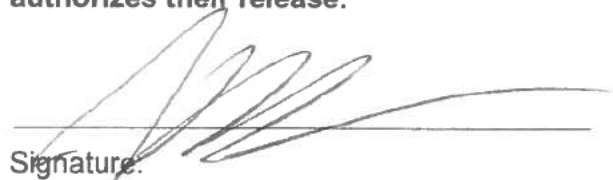
State the total number of additional pages attached (including evidence) 3.

**7. REQUESTER'S INFORMATION:**

YOUR NAME:	KRIS Thompson		
YOUR ADDRESS:	505 USA Parkway	CITY, STATE, ZIP:	Sparks NV 89434
YOUR TELEPHONE:	Day: 775-342-3856	Evening:	E-MAIL:

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:

6/1/18  
Date:

KRIS Thompson  
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.

**Charge #1 – Using Physical Accoutrements of his position to benefit or secure an advantage for a third party.**

The attached letter from Storey County Sheriff Gerald Antinoro endorsed a candidate for U.S. Congress. He prepared this letter endorsing the candidate on his official Sheriff's letterhead which includes a logo of his badge and a letterhead stating "STOREY COUNTY SHERIFF'S OFFICE.....Gerald Antinoro Sheriff."

This letter was transmitted to the endorsed candidate and published on her campaign twitter webpage.

[https://twitter.com/VoteFiore?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauth](https://twitter.com/VoteFiore?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauth)  
or

Pursuant to the Opinion by the Ethics Commission in 1999 re Richard Kirkland, government officials cannot "create the impression of government sanction." By issuing this endorsement on Sheriff's Office letterhead he communicates government sanction.

The Kirkland opinion creates a strict rule that an "appearance of impropriety" is created if in the course of endorsing a person's candidacy, a law enforcement official used the physical accoutrements of his office or position to bolster the endorsement. The physical accoutrements of office include uniforms and badges. The badge is prominent on the letterhead and in the endorsement.





## STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro  
Sheriff

May 27, 2016

---

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPSOC, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in cursive script, appearing to read "Gerald Antinoro".

Gerald Antinoro



Michelle Flores

Thank you for your support for the 2018 election!



### STORREY COUNTY SHERIFF'S OFFICE

Michelle Flores  
Sheriff

Michelle Flores, Sheriff of Storrey County, is pleased to announce that she will be starting her term on Saturday, November 3rd, 2018. She will be working with the Sheriff's Office staff to ensure a smooth transition and to provide the best possible service to the community. Michelle Flores is a dedicated public servant and is committed to the safety and well-being of the citizens of Storrey County. She will be working closely with the Sheriff's Office staff to ensure that the Sheriff's Office is able to provide the best possible service to the community. Michelle Flores is a member of the Sheriff's Association and is committed to the highest standards of professionalism and integrity. She will be working with the Sheriff's Office staff to ensure that the Sheriff's Office is able to provide the best possible service to the community. Michelle Flores is a member of the Sheriff's Association and is committed to the highest standards of professionalism and integrity. She will be working with the Sheriff's Office staff to ensure that the Sheriff's Office is able to provide the best possible service to the community.



Michelle Flores



Early voting starts this Saturday. Click here for campaign updates & to see the latest

# **Exhibit #2**

JOHN L. THORNDAL  
JAMES G. ARMSTRONG  
CRAIG R. DELK  
STEPHEN C. BALKENBUSH  
PAUL F. EISINGER  
CHARLES L. BURCHAM  
BRIAN K. TERRY  
ROBERT F. BALKENBUSH  
PHILIP GOODHART  
CHRISTOPHER J. CURTIS  
KATHERINE F. PARKS  
KEVIN R. DIAMOND  
BRIAN M. BROWN



LAW OFFICES  
**THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER**  
A PROFESSIONAL CORPORATION  
www.thorndal.com

BRENT T. KOLVET\*\*  
THIERRY V. BARKLEY\*  
JOHN D. HOOKS  
KEVIN A. PICK  
MEGHAN M. GOODWIN  
GREGORY M. SCHULMAN\*  
ALEXANDRA B. McLEOD  
JOSEPH E. BALKENBUSH  
DOUGLAS J. DUESMAN  
CURTIS R. RAWLINGS\*  
KIRBY R. WELLS\*  
HEATHER L. TRUJILLO  
SEAN D. COONEY  
MADISON N. GREGOR  
DANIEL J. McCAIN

Of Counsel\*  
Special Counsel\*\*

**KATHERINE F. PARKS, ESQ.**  
RENO OFFICE  
[kfp@thorndal.com](mailto:kfp@thorndal.com)

July 26, 2016

LAS VEGAS  
1100 E. BRIDGER AVENUE  
LAS VEGAS, NV 89101  
MAILING:  
P.O. BOX 2070  
LAS VEGAS, NV 89125-2070  
(702) 366-0622  
FAX: (702) 366-0327

RENO  
6590 S. MCCARRAN BLVD. #B  
RENO, NV 89509  
(775) 786-2882  
FAX: (775) 786-8804

ELKO  
919 IDAHO STREET  
ELKO, NV 89801  
(775) 777-3011  
FAX: (775) 786-8004

JAMES J. JACKSON  
(1958-2014)

**Via Electronic Mail**

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

**Re: Request for Opinion No. 16-54C**

Dear Ms. Nevarez-Goodson:

As you are aware, this office was retained to represent the interests of Storey County Sheriff Gerald Antinoro in connection with the above-entitled matter. Please allow the following to constitute our client's response to the Third Party Request for Opinion submitted by Kris Thompson.

Mr. Thompson contends that Sheriff Antinoro has violated several provisions of NRS 281A.400 by virtue of his actions in endorsing Assemblywoman Michele Fiori in her campaign for Congress. Specifically, Mr. Thompson asserts that Sheriff Antinoro's actions are in violation of NRS 281A.400(2) and NRS 281A.400(7). My client and I respectfully disagree.

As for the facts underlying this matter, on May 27, 2016, Michele Fiori, an Assemblywoman from District 4 in Clark County, asked Sheriff Antinoro to endorse her for Congress. In response, Sheriff Antinoro drafted the three paragraph statement attached hereto as Exhibit 1 and sent it to Ms. Fiori by email from his private email account. The statement was drafted by Sheriff Antinoro from his home and during his lunch hour.

Storey County has not formally adopted a “little Hatch Act.” However, Storey County Administrative Policies and Procedures §213 addresses employee’ political activity.<sup>1</sup> *See*, Exhibit 2.2 Policy and Procedure §213 prohibits employees from engaging in political activity during working hours and prohibits an employee from attempting to coerce, command or require a person holding or applying for any position, to aid, promote or defeat any political committee or candidate. The policy further regulates certain off duty conduct, including participation in political activity while in uniform and forbids the use of employer resources to engage in any political activity.

NRS 281A.400(2) provides as follows:

“A public officer or employee shall not use the public officer’s or employee’s position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person.”

NRS 281A.400(7) provides that, “a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer’s or employee’s personal or financial interests.” However, the statute does not prohibit a limited use of government 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 services; (2) the use does not interfere with the performance of the public officer’s or employee’s public duties; (3) the cost or value related to the use is nominal; and (4) the use does not create the appearance of impropriety. *Id.*

The First Amendment of the United States Constitution protects political speech. The Hatch Act (5 U.S.C. §1501-1508 and §7324 et seq.) prohibits all federal employees and some state and municipal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. *See*, 5 U.S.C. §1502(a)(1) and 5 U.S.C. §7324(a)(1).

Many states, counties and municipalities have adopted what are often described as “little Hatch Acts.” As noted above, Storey County has not adopted a version of the Hatch Act. However, the subject is addressed in Storey County Policy and Procedure §213. The question under consideration in this matter is whether Sheriff Antinoro’s actions in sending the endorsement at issue to Ms. Fiori on Storey County Sheriff’s Office letterhead and bearing a logo in the shape of a badge is in violation of NRS 281A.400.

---

<sup>1</sup> The position of Sheriff, as an elected position, falls outside of the definition of “employee” set forth in Storey County’s Administrative Policies and Procedures. *See*, Exhibit 3. However, §213 provides a good back drop for the analysis of Mr. Thompson’s complaint.

<sup>2</sup> The Storey County Sheriff’s Office also has a policy governing employee speech, expression and social networking. *See*, Exhibit 5, Policy 1060.

In February of 2012, the U.S. Office of Special Counsel reevaluated its position on whether the use by an elected official of his or her official title while participating in political activity violates the Hatch Act. *See*, Exhibit 4, February 29, 2012, advisory opinion from U.S. Office of Special Counsel. In its advisory opinion, the OSC specifically addressed whether a sheriff may use his title in political correspondence and whether a sheriff may wear his uniform to political events such as rallies and fundraising activities. *Id.* In addition, the OSC was asked for its opinion as to whether it makes a difference whether the sheriff engaged in such activities while running for reelection or while campaigning for another candidate altogether. *Id.*

The OSC concluded that an incumbent sheriff would not violate the Hatch Act by wearing their uniforms or using their titles while campaigning for reelection. *Id.* The OSC further concluded that its reasoning should properly be extended to an elected official's other political activities; i.e. those not in furtherance of their own reelection. In so concluding, the OSC stated as follows:

“If these elected officials are permitted to use their official titles in their own partisan campaigns, OSC can identify no unique harm that would result if they do the same when endorsing other partisan candidates. Arguably, an elected official's use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident of the elected official being permitted to run for partisan office. Therefore, it does not appear that an elected official's use of his title when endorsing a partisan candidate would violate the Hatch Act. In the case of a sheriff, wearing his uniform while campaigning for another candidate would also be permissible. *Id.*”

This Commission addressed similar issues in *In Re: Kirkland*, Opinion No. 98-41. In that case, the Commission addressed questions regarding the involvement of then Washoe County Sheriff Richard Kirkland in his political endorsement of Judge James Hardesty, including his appearance in a televised political advertisement in uniform. In analyzing the issue of whether such conduct violated NRS 281.481(2), the Commission determined that Mr. Kirkland's endorsement of Judge Hardesty while in uniform resulted in an “advantage” to another person. However, the Commission further determined that Mr. Kirkland's actions were not “unwarranted” within the meaning of NRS 281A.400(2). While noting that the term “unwarranted” is not defined in the Ethics in Government Law, the Commission concluded that, if Mr. Kirkland's actions were in violation of the Hatch Act (or the Washoe County Code provision also at issue), his conduct would be tantamount to the conferral of an unwarranted advantage.

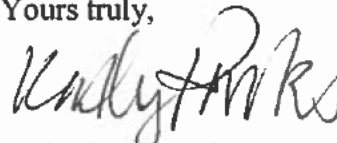
Clearly, the actions of Sheriff Antinoro in sending the three paragraph communication at issue, which he prepared at home over the lunch hour, on his own computer and which he transmitted to Ms. Fiori via his private email, fall far short of the type of conduct at issue in *In re: Kirkland* which was found *not* to have violated NRS 281A.400(2). Further, based upon the February, 2012 advisory opinion of the OSC, Sheriff Antinoro's conduct was not at all in violation of the Hatch Act.

With respect to the suggestion that Sheriff Antinoro's conduct constituted a violation of NRS 281A.481(7), such is simply not the case. Sheriff Antinoro drafted the communication at issue at his home, over the lunch hour, on his own computer. He then sent the communication to

Ms. Fiori using his private email. Thus, there was *no* use of governmental time, property, equipment or other facility by Sheriff Antinoro. Even if there were such a use, the exceptions set forth at NRS 281A.481(7)(a)(1)-(4) would apply. Nothing about the communication at issue can be interpreted as having created the appearance of impropriety and Sheriff Antinoro is permitted to use his name and official title in a political advertisement. While public officials must temper their constitutional right to speak out on matters of political concern, Sheriff Antinoro's actions did not constitute a violation of NRS 281A.400(2) or NRS 281A.400(7).

My client and I thank you for your consideration.

Yours truly,

A handwritten signature in black ink that reads "Katherine F. Parks". The signature is written in a cursive, flowing style.

Katherine F. Parks

KFP/psb

enclosures

cc: (Sheriff Gerald Antinoro via electronic mail)

# Exhibit 1





## STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro  
Sheriff

May 27, 2016

---

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPS, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro".

Gerald Antinoro

## Exhibit 2

**STOREY COUNTY ADMINISTRATIVE  
POLICIES AND PROCEDURES**

**NUMBER** 213  
**EFFECTIVE DATE:** 06/17/08  
**REVISED:**  
**AUTHORITY:** BOC  
**COUNTY MANAGER:** PAW

**SUBJECT: Political Activity**

---

**I POLICY:**

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.

Employees may not participate in any of the above-mentioned activities off duty while wearing a uniform, name tag, or any other item identifying them as a representative of the employer.

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.

**II Running for, or Holding, Political Office**

While employees are encouraged to participate in the political process, they must understand the employer also has an obligation to provide service to the public.

Employees who are seeking, or who have been elected or appointed to public office, shall not conduct any business related to these activities while on duty. This includes all the items listed in the previous section, (i.e., political activity.)

If there is a conflict with, or the activities hinder the performance of the duties with employer, the employee will comply with one of the following: (final approval is at the employer's sole discretion)

- The employee will be expected to resign their position;
- The employee may apply and seek approval for use of accrued annual leave time,  
or;
- The employee may request unpaid leave.

The maximum duration of paid or unpaid leave time approved will be 30 days. Employers' leave policies addressing continuation of health insurance, retirement benefits, accrual of additional leave time, and job and seniority status will be applied in this situation.

If there is any question regarding this policy, employees should contact their supervisor for clarification.

**RESPONSIBILITY FOR REVIEW:** The County Personnel Director and/or Administrative Officer will review this policy every 5 years or sooner as necessary.

## Exhibit 3

**Date of Hire/Hire Date:** The actual date an employee first renders paid service in a regular position.

**Day:** Calendar days unless work days are specified.

**Demotion:** Involuntary movement of an employee from one job class to another job class having a lower maximum base rate of pay, as a result of disciplinary action.

**Department Head/Department Manager:** An elected official or appointed official who is directly responsible to the County Manager or to the Board or to a board established by the Board, for overall administration of an office or department of the employer.

**Disability-Related Inquiry:** A question (or series of questions) that is likely to elicit information about a disability. (See *Section 2.6.8.* of these policies for a more complete description.)

**Discharge:** Termination, separation, dismissal, or removal from employment for cause.

**Discipline:** A suspension (generally without pay), involuntary demotion, reduction in pay, discharge, or written reprimand or verbal warning.

**Discrimination:** Employment decisions or actions which are inappropriately taken because of the applicant's or employee's race, color, religion, age, gender, sexual orientation, national origin, ancestry, veteran status, disability, or union activity.

**Dispute:** Unresolved work-related problems identified by an employee or group of employees pertaining to work-related issues. Disputes may not be related to disciplinary action.

**Domestic Partner:** Persons who are registered as domestic partners with the state of Nevada per Senate Bill 283 of the 2009 Nevada Legislation.

**Drug Test:** A urinalysis (urine) test that includes specimen collection and testing by a Department of Health and Human Services (DHHS)-certified laboratory. Both a screening test and a confirmation test must be used to establish a positive test result.

**Eligible List:** A list of names of persons who have satisfactorily completed an examination for a position and have qualified; also includes **Reinstatement List** (see below). A list of names of persons who have been laid off and are available for reinstatement.

**Employee:** A person employed in a budgeted position on a full- or part-time basis. For purposes of those sections of these policies covering discipline, layoff, and dispute resolution, the term employee excludes elected officials, department heads and casual workers.

**Regular Full-time Employee:** A person who has successfully completed an initial introductory period in a regular budgeted position with a normally scheduled work week of at least forty (40) hours.

**Regular Part-Time Employee:** A person who has successfully completed an initial introductory period in a regular budgeted position which requires at least twenty (20) hours per week, but less than full-time employment.

**Introductory Employee:** A person who serves in an at-will status for a specified period of time during which s/he is evaluated by the employer to ensure that s/he has demonstrated fitness for a position by actually performing the duties of the position.

**Exempt Employee:** An employee who is exempt from the overtime provisions of the Fair Labor Standards Act. (Such determination is made on the basis of duties and responsibilities performed and the method of pay computation.)

**Non-Exempt Employee:** An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

**Employer Premises:** All employer property and facilities, the surrounding grounds and parking lots, leased space, employer motor-driven equipment/vehicles, offices, desks, cabinets, closets, etc.

## Exhibit 4



U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

February 29, 2012

XXXXXX XXXXXXXX  
Assistant XXXXXXXXX County Attorney  
XXXXX XXXXXXXX XXXX  
XXXXXXXX, XX XXXXXX

Re: OSC File No. AD-12-XXXX

Dear Xx. XXXXXXX:

This letter responds to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Act. Specifically, you ask whether an incumbent sheriff may wear his uniform to political events such as rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials. You also ask whether a sheriff may use his title in political correspondence or in connection with fundraising activities. Finally, you ask if it makes a difference whether the sheriff engages in these activities while running for reelection, running for another elected office, or while campaigning for another candidate altogether. For purposes of this opinion, you ask OSC to assume that the sheriff is subject to the Hatch Act's restrictions. As explained in more detail below, the Act generally would not prohibit any of the activities you enumerate in your request.

State and local employees who are covered by the Hatch Act are prohibited from using their official authority or influence to interfere with or affect the result of an election or a nomination for office.<sup>1</sup> 5 U.S.C. § 1502(a)(1). Federal employees are subject to the same restriction. See 5 U.S.C. § 7323(a)(1). The Hatch Act regulation that applies to federal employees states that an improper use of official authority or influence occurs when employees use their official titles while participating in political activity. 5 C.F.R. § 734.302(b)(1). In determining whether the use of official title by state and local employees violate the Hatch Act, OSC uses the aforementioned regulation for federal employees as guidance. Thus, OSC generally concludes that state and local employees violate the Hatch Act when they use their official titles, or otherwise trade on the influence of their positions by, for example, wearing their official uniforms, while engaged in political activity.

As you know, OSC recently reevaluated this conclusion as it applies to elected officials who are covered by the Hatch Act. Specifically, in recognition of the fact that they hold partisan political office, OSC reasoned that they would not violate the Hatch Act by wearing their uniforms or using their titles while campaigning for reelection. OSC took into account the fact that Congress gave greater latitude to individuals who are covered by the Hatch Act due to their

<sup>1</sup> In addition, state and local employees are prohibited from coercing other employees into making political contributions and from being candidates in partisan elections. 5 U.S.C. § 1502(a)(2)-(3).

elected positions when it exempted them from the candidacy prohibition to which other state and local employees are subject. See 5 U.S.C. § 1502(c). Moreover, the Hatch Act regulations that apply to federal employees do not contemplate a scenario where an employee would be covered by virtue of his elective office. Cf. 5 U.S.C. § 7322(1) (expressly excluding the President and Vice President from Hatch Act coverage). Thus, those regulations do not translate smoothly to the state and local arena, where many elected officials are covered by the Hatch Act.

We also note that the provision exempting individuals holding elected office from the candidacy prohibition is not limited to reelection bids. Thus, a sheriff who is covered by the Hatch Act would not be prohibited from running for another elected office. Accordingly, the rationale OSC has articulated with respect use of one's official title and uniform during a reelection campaign also applies when the official runs for some other partisan political office.

OSC's reasoning also extends to an elected official's other political activities, i.e., activities not in furtherance of his own reelection. Indeed, in allowing these elected officials to run as representatives of political parties, Congress presumably anticipated that they would endorse other candidates running under their political party's banner. If these elected officials are permitted to use their official titles in their own partisan campaigns, OSC can identify no unique harm that would result if they do the same when endorsing other partisan candidates. Arguably, an elected official's use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident of the elected official being permitted to run for partisan office. Therefore, it does not appear that an elected official's use of his title when endorsing a partisan candidate would violate the Hatch Act. In the case of a sheriff, wearing his uniform while campaigning for another candidate also would be permissible.

These principles apply to in-person campaign events, campaign advertisements, and political correspondence. Likewise, a sheriff could attend fundraisers and solicit contributions while wearing his uniform and identifying himself as the sheriff. We note, however, that a sheriff covered by the Hatch Act still is prohibited from coercing or attempting to coerce other employees into making political contributions. See 5 U.S.C. § 1502(a)(2). Asking a subordinate to make a political contribution or volunteer for a political campaign is considered inherently coercive. Special Counsel v. Acconcia, (CB-1216-06-0007-T-1, February 26, 2007 (Initial Decision at 9), rev'd on other grounds, 107 M.S.P.R. 60 (2007), citing Special Counsel v. Purcell, 37 M.S.P.R. 184, 195 (1988), aff'd sub nom. Fela v. Merit Sys. Prot. Bd., 730 F. Supp. 779 (N.D. Ohio 1989). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. Special Counsel v. Gallagher, 44 M.S.P.R. 57, 76 (1990). Thus, sheriffs should not ask their employees to contribute to political campaigns.

Similarly, while OSC concludes that the use of official authority prohibition would not preclude a sheriff from wearing his uniform and using his official title while campaigning, this provision of the Hatch Act would prohibit him from soliciting the uncompensated volunteer services of a subordinate employee. See 5 C.F.R. § 734.302. Therefore, he must not ask his employees to support his campaign or the campaign of another candidate.



**U.S. Office of Special Counsel**  
**Page 3**

We hope this opinion adequately addresses your questions. Please contact me at (202) 254-3642 if we can be of further assistance.

Sincerely,

*/s/*

**Carolyn S. Martorana**  
**Attorney, Hatch Act Unit**

# Exhibit 5

---

## Employee Speech, Expression and Social Networking

### 1060.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Office.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or deputy associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

#### 1060.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

### 1060.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this office. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this office be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Storey County Sheriff's Office will carefully balance the individual employee's rights against the Office's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

### 1060.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Storey County Sheriff's Office employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

# Storey County Sheriff's Office

## Policy Manual

### Employee Speech, Expression and Social Networking

---

- Disclosing a photograph and name or address of a deputy who is working undercover.
- Disclosing the address of a fellow deputy.
- Otherwise disclosing where another deputy can be located off-duty.

#### **1060.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet the office's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or deputy associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Storey County Sheriff's Office or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Storey County Sheriff's Office and tends to compromise or damage the mission, function, reputation or professionalism of the Storey County Sheriff's Office or its employees. Examples may include:
  1. Statements that indicate disregard for the law or the state or U.S. Constitution.
  2. Expression that demonstrates support for criminal activity.
  3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Office. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Storey County Sheriff's Office.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Office for financial or personal gain, or any disclosure of such materials without the express authorization of the Sheriff or the authorized designee (NRS 281A.400(5)).
- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of office logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Storey County Sheriff's Office

# Storey County Sheriff's Office

## Policy Manual

### Employee Speech, Expression and Social Networking

---

on any personal or social networking or other website or web page, without the express authorization of the Sheriff.

- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or office-owned, for personal purposes while on-duty, except in the following circumstances:
1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
  2. During authorized breaks; such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

#### 1060.4.1 UNAUTHORIZED ENDORSEMENTS, ADVERTISEMENTS, AND ACTIVITIES

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or deputy associations, employees may not represent the Storey County Sheriff's Office or identify themselves in any way that could be reasonably perceived as representing the Storey County Sheriff's Office in order to do any of the following, unless specifically authorized by the Sheriff:

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group), is affiliated with this office, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Storey County Sheriff's Office.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or deputy associations, on political subjects and candidates at all times while off-duty. Employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

# Storey County Sheriff's Office

## Policy Manual

### Employee Speech, Expression and Social Networking

---

Due to the need to secure discipline, mutual respect, trust, and efficiency among the ranks in the pursuit of the stated mission, any employee filing for candidacy of any local Storey County political office will be immediately placed on an unpaid leave of absence until the election.

If service by a member in any political office is or appears clearly inconsistent, incompatible, or in conflict with that person's duties as a member of the Sheriff's Office, as judged by the Sheriff, that employment must be terminated before the person assumes political office.

#### **1060.5 PRIVACY EXPECTATION**

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any office technology system.

The Office reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Office, including the office e-mail system, computer network or any information placed into storage on any office system or device.

This includes records of all key strokes or web-browsing history made at any office computer or over any office network. The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through office computers or networks.

#### **1060.6 CONSIDERATIONS**

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Sheriff or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Office or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Office.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Office.

#### **1060.7 TRAINING**

Subject to available resources, the Office should provide training regarding employee speech and the use of social networking to all members of the Office.

# **Exhibit #3**



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,

Request for Opinion No. **16-54C**

**CONFIDENTIAL**  
Pursuant to NRS 281A.440(8)

Subject. /

**NOTICE OF ADDITIONAL ISSUES AND FACTS**

Pursuant to NRS 281A.440(2), NAC 281A.410 and NAC 281A.415

In addition to the *Notice to Subject* provided to Subject Gerald Antinoro on June 17, 2016, NOTICE IS HEREBY GIVEN that the Nevada Commission on Ethics ("Commission") has identified relevant issues and facts beyond those presented in the original Third-Party Request for Opinion ("RFO"). Accordingly, Subject is hereby notified that the Commission's investigation has identified evidence that Subject appeared in a video endorsement for Michele Fiore wearing his Sheriff's uniform, which may implicate conduct contrary to NRS 281A.400(2) and (7) and NRS 281A.520.

Pursuant to NAC 281A.415 and NRS 281A.440(3), Subject may respond to these additional issues and facts in writing to the Commission addressed to 704 W. Nye Lane, Suite 204, Carson City, NV 89704, or via Email to my attention at [ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov), not later than 30 days after receipt of this notice. Accordingly, the deadline to submit a written response to the additional allegations is September 7, 2016. A lack of response is not deemed an admission that the allegations are true.

Except as otherwise provided in NRS 281A.440, the Commission will hold its activities in response to this 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. The Commission will not be the source of any public information until the investigatory panel has completed its review and has rendered its determination. Subject will be provided notice of the Panel Determination.

Please contact me at (775) 687-5469 with any questions.

Dated this 2<sup>nd</sup> day of August, 2016.

/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, via Email, a true and correct copy of the **Notice of Additional Issues and Facts** regarding **RFO No. 16-54C** addressed as follows:

Katherine F. Parks, Esq.  
Thorndal Armstrong et al  
6590 S. McCarran Blvd., #B  
Reno, Nevada 89509

Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)

Dated: August 2, 2016.



\_\_\_\_\_  
Employee, Nevada Commission on Ethics

# **Exhibit #4**

JOHN L. THORNDAL  
JAMES G. ARMSTRONG  
CRAIG R. DELK  
STEPHEN C. BALKENBUSH  
PAUL F. EISINGER  
CHARLES L. BURCHAM  
BRIAN K. TERRY  
ROBERT F. BALKENBUSH  
PHILIP GOODHART  
CHRISTOPHER J. CURTIS  
KATHERINE F. PARKS  
KEVIN R. DIAMOND  
BRIAN M. BROWN

BRENT T. KOLVET\*\*  
THIERRY V. BARKLEY\*  
JOHN D. HOOKS  
KEVIN A. PICK  
MEGHAN M. GOODWIN  
GREGORY M. SCHULMAN\*  
ALEXANDRA B. McLEOD  
JOSEPH E. BALKENBUSH  
DOUGLAS J. DUESMAN  
CURTIS R. RAWLINGS\*  
KIRBY R. WELLS\*  
HEATHER L. TRUJILLO  
SEAN D. COONEY  
MADISON N. GREGOR  
DANIEL J. McCAIN

Of Counsel\*  
Special Counsel\*\*

Via Electronic Mail

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

**Re: Request for Opinion No. 16-54C**

Dear Ms. Nevarez-Goodson:

Please allow this letter to serve as my client's response to your request for additional information in this matter.

At no time did my client participate in any videotaped endorsement of Michele Fiori. In the event Ms. Fiori used the likeness of Sheriff Antinoro in uniform in some form of video endorsement, it was done without the prior knowledge of my client. As such, there are no additional facts which implicate conduct prohibited by NRS 281A.400(2) and NRS 281A.520.

If you need any additional information, please do not hesitate to contact me.

Yours truly,



Katherine F. Parks

KFP/psb

cc: (Sheriff Gerald Antinoro via electronic mail)

RECEIVED

SEP 06 2016

COMMISSION  
ON ETHICS



LAW OFFICES  
**THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER**  
A PROFESSIONAL CORPORATION  
[www.thorndal.com](http://www.thorndal.com)

**KATHERINE F. PARKS, ESQ.**  
RENO OFFICE  
[kfp@thorndal.com](mailto:kfp@thorndal.com)

September 6, 2016

LAS VEGAS

1100 E. BRIDGER AVENUE  
LAS VEGAS, NV 89101  
MAILING:  
P O BOX 2070  
LAS VEGAS, NV 89125-2070  
(702) 366-0622  
FAX (702) 366-0327

RENO

6590 S. MCCARRAN BLVD. #B  
RENO, NV 89509  
(775) 786-2882  
FAX: (775) 786-8004

ELKO

919 IDAHO STREET  
ELKO, NV 89801  
(775) 777-3011  
FAX (775) 786-8004

JAMES J. JACKSON  
(1958-2014)

# **Exhibit #5**



**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,

Request for Opinion No. **16-54C**

Subject. /

**PANEL DETERMINATION**  
NRS 281A.440(5); NAC 281A.440

The Nevada Commission on Ethics (“Commission”) received Third-Party Request for Opinion (“RFO”) No. 16-54C regarding the alleged conduct of Storey County Sheriff Gerald Antinoro (“Subject”) in violation of the Ethics in Government Law set forth in NRS Chapter 281A (“Ethics Law”), specifically, alleged violations implicate NRS 281A.400(2) and (7) and NRS 281A.520(1) and (3).<sup>1</sup> The RFO alleges that Subject used his official position and government time and resources to secure unwarranted advantages or preferences when he provided a letter using official letterhead to endorse a political candidate. The endorsement and a related video also appeared on the candidate’s Facebook page with a photo of the Subject in his Sheriff’s uniform.

As the elected Sheriff of Storey County, Subject serves as a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers and public employees pursuant to NRS 281A.280.

On October 19, 2016, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Magdalena Groover and Barbara Gruenewald, Esq., reviewed the following: 1) RFO; 2) Subject’s Response to the RFO; 3) Notice of Additional Issues and Facts; 4) Subject’s Response to the Additional Issues and Facts; 5) Investigator’s Report to Associate Counsel; and 6) Executive Director’s Recommendation to the Investigatory Panel.

Under NAC 281A.435, the Panel unanimously finds and concludes that the facts establish credible evidence to substantiate just and sufficient cause for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(7) with regard to Subject’s use of official letterhead to make a political endorsement. Therefore, the Investigatory Panel refers the alleged violation of NRS 281A.400(7) 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.

///

///

<sup>1</sup> Pursuant to NRS 281A.440(2), NAC 281A.410 and NAC 281A.415, the Commission identified relevant issues and facts supporting the allegations beyond those presented in the original RFO and notified Subject accordingly.

However, under NAC 281A.435, the Panel unanimously finds and concludes that the facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to consider the alleged violations pertaining to NRS 281A.400(2), NRS 281A.400(7) (regarding use of badge and uniform) and NRS 281A.520. The Commission's investigation revealed that Subject did not grant an advantage to himself or have a commitment in a private capacity to the interests of the candidate (NRS 281A.400(2)), or use government resources or cause a governmental entity to incur any expense to support the candidate with respect to the video and the photo of the Subject in uniform, which photo was used without Subject's permission (NRS 281A.400(7) and NRS 281A.520)). Therefore, these allegations are dismissed.

Dated: October 27, 2016

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

## 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 through the State of Nevada mailroom, and via Email, a true and correct copy of the **PANEL DETERMINATION** regarding **RFO No. 16-54C** addressed as follows:

Yvonne M. Nevarez-Goodson, Esq.      Email: [ynevarez@ethics.nv.gov](mailto:ynevarez@ethics.nv.gov)  
Executive Director

Judy A. Prutzman, Esq.                      Email: [jprutzman@ethics.nv.gov](mailto:jprutzman@ethics.nv.gov)  
Associate Counsel

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

Katherine F. Parks, Esq.                      Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)  
Thorndal Armstrong et al  
6590 S. McCarran Blvd., #B  
Reno, NV 89509  
*Attorney for Subject*

Gerald Antinoro                                      Certified Mail: 9171 9690 0935 0037 6423 55

Sheriff    Email: [gantinatoro@storeycounty.org](mailto:gantinoro@storeycounty.org)  
Storey County

205 S. C. Street  
P.O. Box 498

Virginia City, NV 89440

Rick R. Hsu, Esq.                                      Email: [rhsu@mcllawfirm.com](mailto:rhsu@mcllawfirm.com)

Maupin Cox Legoy,  
Attorneys at Law

P.O. Box 30000  
Reno, NV 89520

*Attorney for Requester*

Dated: October 27, 2016.



\_\_\_\_\_  
Employee, Nevada Commission on Ethics

# **Exhibit #6**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATE OF NEVADA**  
**COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of **Gerald Antinoro**, Sheriff of Storey  
County, Nevada, Request for Opinion No. 16-54C

Subject. /

**STIPULATED FACTS**

The Executive Director, through Associate Counsel Judy A. Prutzman, Esq., and the Subject, through his counsel, Katherine F. Parks, Esq., have stipulated to the following facts in Third-Party Request for Opinion ("RFO") No. 16-54C before the Nevada Commission on Ethics ("Commission") concerning Gerald Antinoro ("Antinoro"), Sheriff of Storey County.

The parties agree to submit as evidence in this matter the following stipulated facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

**STIPULATED FACTS**

1. Gerald Antinoro ("Antinoro") is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
2. Storey County is a political subdivision as defined in NRS 281A.145.
3. The Storey County Sheriff's Office is a local agency as defined in NRS 281A.119.
4. During the relevant time period, Nevada State Assemblywoman Michelle Fiore ("Fiore") was a United States Congressional candidate for Nevada's Third Congressional District in Clark County.
5. On May 27, 2016, Fiore contacted Sheriff Antinoro by phone to request his endorsement of her candidacy for U.S. Congress.

- 1 6. Sheriff Antinoro prepared a three-paragraph statement endorsing Fiore's  
2 candidacy (Exhibit 1), dated May 27, 2016, on his personal computer at his  
3 home during his lunch hour.
- 4 7. The statement was typed on the official Storey County Sheriff's Office  
5 letterhead and emailed to Fiore from Sheriff Antinoro's personal computer and  
6 email account.
- 7 8. On May 27, 2016, Sheriff Antinoro's statement appeared in a YouTube video  
8 that was tweeted on Fiore's Twitter account, @VoteFiore.
- 9 9. The YouTube video containing Sheriff Antinoro's statement was also posted  
10 on Fiore's Facebook page on May 27, 2016.
- 11 10. Sheriff Antinoro did not produce the YouTube video or supply any of the other  
12 images used in the video. Fiore did not contact Sheriff Antinoro to inform him  
13 about the endorsement video.
- 14 11. Fiore was defeated in her campaign for U.S. Congress in the primary election  
15 held on June 15, 2016.
- 16 12. Policy Number 213 of the Storey County Administrative Policies and  
17 Procedures ("Storey County Policies") addresses political activity by  
18 employees:

19 **213: Political Activity**

20 Employees shall not engage in political activity of any kind during  
21 working hours. This includes, but is not limited to: soliciting money,  
22 influence, service, or any other valuable thing to aid, promote, or  
23 defeat any political committee or the nomination or election of any  
24 person to public office. Wearing or displaying of apparel, buttons,  
25 insignia, or other items which advocate for or against a political  
26 candidate or a political cause is also an example of prohibited  
27 activity during working hours. Furthermore, no person shall attempt  
28 to coerce, commence, 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.

.....

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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.

....  
Employees who are seeking, or who have been elected or appointed to public office, shall not conduct any business related to these activities while on duty. This includes all the items listed in the previous section, (i.e., political activity).

13. The Storey County Policies contain the following definition of "employee:"

**Employee:** A person employed in a budgeted position on a full- or part-time basis. For purposes of those section of these policies covering discipline, layoff, and dispute resolution, the term employee excludes elected officials, department heads and casual workers.

14. The Storey County Sheriff's Office has a policy regarding Employee Speech, Expression and Social Networking that addresses endorsements:

1060.4.1 UNAUTHORIZED ENDORSEMENTS, ADVERTISEMENTS, AND ACTIVITIES

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or deputy associations, employees may not represent the Storey County Sheriff's Office or identify themselves in any way that could be reasonably perceived as representing the Storey County Sheriff's Office in order to do any of the following, unless specifically authorized by the Sheriff:

- (a) Endorse, support, oppose or contradict any political campaign or initiative.

...

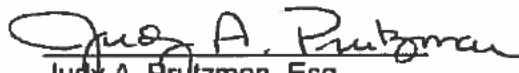
Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group), is affiliated with this office, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Storey County Sheriff's Office.

///

1 Employees retain their right to vote as they choose, to support  
2 candidates of their choice and to express their opinions as private  
3 citizens, including as authorized members of a recognized  
4 bargaining unit or deputy associations, on political subjects and  
5 candidates at all times while off-duty. Employees may not use their  
6 official authority or influence to interfere with or affect the result of  
7 an election or a nomination for office. Employees are also  
8 prohibited from directly or indirectly using their official authority to  
9 coerce, command or advise another employee to pay, lend or  
10 contribute anything of value to a party, committee, organization,  
11 agency or person for political purposes (5 USC § 1502).

DATED this 15<sup>th</sup> day of December, 2016.

12 FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
13 Executive Director, Commission on Ethics

14   
15 Judy A. Prutzman, Esq.  
16 Associate Counsel

17 FOR GERALD ANTINORO  
18 Subject

19   
20 Katherine F. Parks, Esq.

## **EXHIBIT 1**



## STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro  
Sheriff

May 27, 2016

---

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPS0, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro", written in a cursive style.

Gerald Antinoro

**STATE OF NEVADA**  
**BEFORE THE 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,

Request for Opinion No. 16-54C

Subject.

---

**GERALD ANTINORO'S OPPOSITION TO MOTION**  
**FOR SUMMARY JUDGMENT AND**  
**CROSS-MOTION FOR SUMMARY JUDGMENT**

1 Katherine F. Parks, Esq. - State Bar No. 6227  
2 Thorndal Armstrong Delk Balkenbush & Eisinger  
3 6590 S. McCarran Blvd., Suite B  
4 Reno, Nevada 89509  
5 (775) 786-2882  
6 [kfp@thorndal.com](mailto:kfp@thorndal.com)  
7 ATTORNEYS FOR GERALD ANTINORO

8 **STATE OF NEVADA**  
9 **COMMISSION ON ETHICS**

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

14 Subject.

Request for Opinion No. 16-54C

**GERALD ANTINORO'S OPPOSITION**  
**TO MOTION FOR SUMMARY**  
**JUDGMENT AND CROSS-MOTION**  
**FOR SUMMARY JUDGMENT**

15 COMES NOW Subject, Gerald Antinoro, by and through his attorneys of record,  
16 Thorndal Armstrong Delk Balkenbush & Eisinger, and pursuant to NAC 281A.265, hereby  
17 submits his opposition to the Executive Director's Motion for Summary Judgment and Cross-  
18 Motion for Summary Judgment.

19 **I**

20 **INTRODUCTION**

21 As noted by the Executive Director in her Motion for Summary Judgment, this matter  
22 comes before the Commission on stipulated facts entered into between the parties on December  
23 15, 2016. *See*, Exhibit "A," stipulated facts. The only issue to be decided by the Commission is  
24 whether Sheriff Gerald Antinoro committed a violation of NRS 281A.400(7) when he endorsed  
25 Michele Fiore in her candidacy for U.S. Congress on May 27, 2016. Ms. Fiore was, at that time,  
26 a candidate for Nevada's Third Congressional District in Clark County, Nevada. Sheriff  
27 Antinoro prepared a three paragraph statement in support of Ms. Fiore on his personal computer,  
28



1 during his lunch hour. *See*, Exhibit “B,” written statement. The statement was typed on  
2 letterhead bearing a logo of the Storey County Sheriff’s Office and identifies the Subject by his  
3 title. *Id.* Sheriff Antinoro did not print out the statement but, rather, emailed the statement to  
4 Ms. Fiore from his personal computer and email account. *See*, Exhibit “A,” stipulated facts.  
5 This conduct is the only basis for the claim that Sheriff Antinoro violated NRS 281A.400(7).  
6

7 The Executive Director filed her Motion for Summary Judgment on March 1, 2017. As  
8 the facts in this case are undisputed, the issues which remain for decision by the Commission are  
9 questions of law and Sheriff Antinoro submits that the Executive Director’s motion should be  
10 denied and that judgment should be entered in his favor pursuant to NAC 281A.265.  
11

## 12 II

### 13 PROCEDURAL FACTS

14 This case arises out of a third party Request for Opinion filed by Kris Thompson through  
15 his attorney on June 2, 2016. *See*, Executive Director’s Motion for Summary Judgment, Exhibit  
16 “1.” In same, the Requestor alleged that Sheriff Antinoro had engaged in conduct which violated  
17 several provisions of Chapter 281A, including NRS 281A.400(2), NRS 281A.400(7), and NRS  
18 281A.520 in endorsing Michele Fiore for U.S. Congress. *Id.* Sheriff Antinoro was notified of  
19 the alleged violations and the undersigned responded to the RFO on behalf of Sheriff Antinoro  
20 on July 26, 2016. *See*, Executive Director’s Motion for Summary Judgment, Exhibit “2.”  
21

22 Thereafter, on August 2, 2016, Sheriff Antinoro was served with a Notice of Additional  
23 Issues and Facts. *See*, Executive Director’s Motion for Summary Judgment, Exhibit “3.” This  
24 notice related to the issue of Ms. Fiore’s use of the above-described statement on YouTube and  
25 Twitter and on Ms. Fiore’s use of a YouTube video depicting the Sheriff wearing his uniform.  
26 Sheriff Antinoro did not produce the YouTube video or supply any of the other images used in  
27  
28

1 the video nor did Ms. Fiore contact Sheriff Antinoro to inform him about the endorsement video.  
2 *See*, Exhibit "A," stipulated facts.

3 On October 27, 2016, a Panel Determination was issued on the grounds that just and  
4 sufficient cause allegedly exists for the Commission to conduct a public hearing and render an  
5 opinion on one claim only; that being whether Sheriff Antinoro violated NRS 281A.400(7) when  
6 he authored and emailed the endorsement letter described above to Fiore. The Panel  
7 Determination did not find credible evidence to substantiate just and sufficient cause to find, or  
8 conduct a hearing on, the alleged violations of NRS 281A.400(2), NRS 281A.400(7)(regarding  
9 use of a badge and uniform) and NRSA.520. These allegations were dismissed and one single  
10 charge remains for the Commission's consideration.  
11  
12

### 13 III

#### 14 LEGAL ANALYSIS

##### 15 I. Standard of Review

16 Summary judgment is proper under NRCP 56 when, based upon the pleadings,  
17 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly  
18 before the court, no genuine issue of material fact exists, and the moving party is entitled to  
19 judgment as a matter of law. *See, Wood v. Safeway, Inc.*, 121 Nev. 724,731, 121 P.3d 1026,  
20 1031 (2005). Here, the parties have stipulated to the operative facts in this case and no genuine  
21 issues exist as to same.  
22

23 Further, in accordance with NRS 281A.480(9), the standard of proof to be applied to this  
24 administrative proceeding is that of a preponderance of the evidence. A preponderance of the  
25 evidence means such evidence as, when considered and compared with that opposed to it, has  
26 more convincing force and the greater probability of truth. *See, Corbin v. State*, 111 Nev. 378,  
27 380, 892 P.2d 580 (1995).  
28

1 As shall be discussed in detail herein, the preponderance of the evidence in this matter,  
2 which is undisputed, compels the denial of the Executive Director's Motion for Summary  
3 Judgment and an order of the Commission granting judgment in favor of Gerald Antinoro as a  
4 matter of law.

5 **II. Sheriff Antinoro's Actions did not Violate NRS 281A.400(7)**

6 The only issue which requires the attention of the Commission is whether Sheriff  
7 Antinoro violated NRS 281A.400(7) in preparing the three paragraph endorsement statement and  
8 emailing the same to Ms. Fiore. The statute at issue provides, in pertinent part, as follows:  
9

10 7. Except for State Legislators who are subject to the restrictions set forth in subsection  
11 8, a public officer or employee shall not use governmental time, property, equipment or  
12 other facility to benefit a significant personal or pecuniary interest of the public officer or  
13 employee. This section does not prohibit:

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

- 16 (1) The public officer or employee who is responsible for and has  
17 authority to authorize the use of such property, equipment or other facility  
18 has established a policy allowing the use or the use is necessary as a result  
19 of emergency circumstances;  
20 (2) The use does not interfere with the performance of the public officer's  
21 or employee's public duties;  
22 (3) The cost or value related to the use is nominal; and  
23 (4) The use does not create the appearance of impropriety.

24 Nowhere in NRS 281A.400(7), nor anywhere else in Chapter 281A, does the Legislature  
25 state that conduct of the type at issue in this case constitutes a violation of any ethical rules.  
26 More specifically, nothing in Chapter 281A states that an elected official such as Sheriff  
27 Antinoro may not engage in political speech of the type at issue here. The constitutional  
28 ramifications of the Commission's decision to read such a prohibition into Chapter 281A will be  
discussed in greater detail below. Irrespective of First Amendment considerations, Sheriff  
Antinoro is entitled to judgment in his favor as a matter of law, as the stipulated facts and  
evidence in this matter does not support a violation of NRS 281A.400.

1           A.     *Sheriff Antinoro did not use "governmental time, property, equipment or other*  
2                                   *facility" so as to implicate NRS 281A.400.*

3           First, there is no evidence here, let alone a preponderance of the evidence, which supports  
4 the conclusion that Sheriff Antinoro used "governmental time, property, equipment or other  
5 facility" when he prepared the statement at issue and emailed the same to Fiore.<sup>1</sup> It is undisputed  
6 that Sheriff Antinoro prepared the statement over his lunch hour and on his personal computer.  
7 *See, Exhibit "A."* The statement was not printed onto a single piece of paper but was emailed to  
8 Fiore using Sheriff Antinoro's private email account. *Id.* The contention that the Sheriff's use of  
9 letterhead bearing the name of the Storey County Sheriff's Office with a likeness of a badge  
10 constituted use of "government property" is not supported by the prior decisions of the  
11 Commission on which the Executive Director relies.  
12

13           The Commission's decision in the *Matter of the Request for Opinion concerning the*  
14 *conduct of Lonnie Hammargren* is illustrative on this point. *See, Comm'n Op. No. 95-35 (1995).*  
15 In that case, prior to his election as the Lieutenant Governor of the State of Nevada in 1994,  
16 Lonnie Hammargren was a licensed neurosurgeon. He was sued for medical malpractice in  
17 1986. While the district court initially granted summary judgment in his favor in that  
18 malpractice action, the Nevada Supreme Court reversed in *Hoopes v. Hammargren*, 102 Nev.  
19 425, 725 P.2d 238 (1986). Hammargren continued to conduct his private medical practice even  
20 after he took office.  
21

22           On April 25, 1995, Assembly Bill 520 was referred to the Assembly Committee on  
23 Judiciary. As introduced, the bill advocated for sweeping changes to Nevada's medical  
24 malpractice statutes. Among other things, the bill provided for attorney disclosures regarding  
25 fees and caps on attorney's fees, revised the immunity from liability for civil damages for  
26  
27  
28

---

<sup>1</sup>The term "facility, as is true with a number of critical terms set forth in Chapter 281A, is nowhere defined in Chapter 281A and appears to be so vague as to render this section constitutionally deficient.

1 persons who provide emergency obstetrical care and care to indigent persons, provided that any  
2 punitive damages awarded to a plaintiff in a medical malpractice case would be paid to the State  
3 for the benefit of the medically indigent, and capped the amount of damages recoverable for non-  
4 economic losses. Advocates of the bill argued that its passage would have benefit to medical  
5 malpractice insurance carriers by setting limits on their liability, thereby providing for decreased  
6 malpractice insurance premiums.  
7

8         On May 11<sup>th</sup>, 1995, Hammargren wrote and mailed a letter *to all Nevada licensed*  
9 *physicians* on the official state letterhead of the Lieutenant Governor's office with  
10 Hammargren's public offices as the lieutenant governor of the state and president of the senate.  
11 The letter included his address at both the Capitol Building in Carson City and the Grant Sawyer  
12 Building in Las Vegas. The letter was produced by Hammargren's state-employed staff and he  
13 signed the letter using his official title as Lieutenant Governor. The letter advocated to its  
14 recipients that they "ACT NOW," and urged them to "phone, write and FAX your Assemblyman  
15 and your Senator, asking them to vote "yes" on AB 520. *Hammargren, supra.* at p. 2/5.  
16 Hammargren went on to provide additional instructions as to where these particular constituents  
17 should send their correspondence in support of the bill and commented that "we" have a good  
18 chance to enact tort reform only if Nevada doctors were to "act now." *Id.* He also asked those in  
19 receipt of his letter to copy him on their correspondence on the bill. As noted above, the letter  
20 was signed by "LT GOVERNOR LONNIE HAMMARGREN." *Id.*  
21  
22  
23

24         Hammargren went on to testify before the Assembly Judiciary Committee on the subject  
25 of AB 520. During his testimony, Hammargren declared that he was "emotionally involved"  
26 with the issues addressed in AB 520 and commented that he was, "mad as Hell and was not  
27 going to take it anymore." He also gave testimony about his own medical insurance premiums.  
28

1 At the time of his testimony before the Judiciary Committee, Hammargren was a defendant in a  
2 pending medical malpractice lawsuit.

3 The issue presented to the Commission in *Hammargren* was whether Hammargren  
4 violated the Nevada Ethics in Government Law by using state resources, including state  
5 stationary, state-paid employees, and the title of Lieutenant Governor, in preparing and sending  
6 the May 11<sup>th</sup>, 1995, letter to all physicians in Nevada. The Commission decided in the  
7 affirmative. The Commission made note of the fact that Hammargren wrote the letter on state  
8 letterhead and that his title was plainly displayed “and over which he signed his name.” The  
9 Commission further found that Hammargren had both a pecuniary and personal interest in the  
10 passage of AB 520.  
11  
12

13 The digitally produced statement prepared by Sheriff Antinoro in this matter is in no way  
14 comparable to the actions of Hammargren as described above.

15 The statement in question, while bearing the Sheriff’s title and depicting a logo of the  
16 Storey County Sheriff’s Office, does not include the address of the Storey County Sheriff’s  
17 Office, in contrast to the letter sent to all physicians in Nevada by Hammargren. The statement  
18 in question in this case was signed by “Gerald Antinoro,” not by Gerald Antinoro, “Storey  
19 County Sheriff.” The statement in this case was digitally produced and emailed using Sheriff  
20 Antinoro’s private email address. It was not even reproduced on a piece of paper. The statement  
21 in question is simply not akin to that at issue in Opinion No. 95-35 in which Hammargren’s title  
22 of Lieutenant Governor was “plainly displayed” and over which he signed his name. Under such  
23 circumstances, it cannot be found that Sheriff Antinoro used government property in violation of  
24 NRS 281A.400(7).  
25  
26

27 Nor is the matter of *In re: Kuzanek*, RFO 14-61C supportive of the finding of a willful  
28 violation in this case. In that matter, Tim Kuzanek, Undersheriff of Washoe County and a

1 candidate for Sheriff, had an official campaign website and a Facebook page which displayed a  
2 picture of him in full sheriff's office dress uniform, along with a picture of his badge.<sup>2</sup> The  
3 Commission made note of the fact that the Washoe County Sheriff's Office had a policy  
4 prohibiting members of the Sheriff's Office from using County property as an endorsement for  
5 political activity and County property as defined as including uniforms furnished by the Sheriff's  
6 Office. Ultimately, it was determined (in a stipulated agreement), that Kuzanek had used the  
7 physical accouterments of his office to bolster his own political campaign by displaying himself  
8 in full dress uniform, along with his Undersheriff's badge.

10 As is true with respect to the facts presented by *Kirkland*, the facts before the  
11 Commission in *Kuzanek* are simply not similar to those at issue in this matter and these decisions  
12 demonstrate that Sheriff Antinoro did not violate NRS 281A.400(7) with respect to the  
13 endorsement statement at issue.

15 ***B. Sheriff Antinoro's actions were not undertaken to benefit a "significant  
16 personal or pecuniary interest" within the meaning of NRS 281A.400(7).***

17 In her motion for summary judgment, the Executive Director argues that Sheriff  
18 Antinoro's use of a digital image of the Storey County Sheriff's Office's letterhead compels a  
19 finding that the Sheriff used governmental property in violation of NRS 281A.400(7). She then  
20 turns to the limited exceptions set forth at NRS 281A.400(7)(a)(1)-(4). She does not address,  
21 however, another condition precedent to finding a violation of the statute at issue; namely, that  
22 the public officer or employee in question used such government property "to benefit a  
23 significant personal or pecuniary interest." The Executive Director concedes that Sheriff  
24 Antinoro's actions do not involve any pecuniary interest whatsoever. She does not address the  
25  
26  
27  
28

---

<sup>2</sup>As is discussed herein, based upon recent advisory opinion from the U.S. Office of Special Counsel, Kuzanek's conduct was not in violation of the Hatch Act and was fully permissible under federal law.

1 fact that there is no evidence that the actions at issue were done to further a *significant personal*  
2 *interest* of Sheriff Antinoro.

3 As with numerous other terms within Chapter 281A, the terms “significant” and  
4 “personal” are not defined in the statute rendering them constitutionally deficient as vague. *See,*  
5 *Dehne v. Avaino*, 219 F. Supp.2d 1096 (D. Nev. 2001). Notwithstanding, there is simply no  
6 evidence, let alone a preponderance of the evidence, to suggest that Sheriff Antinoro’s single act  
7 of emailing a three paragraph statement to Ms. Fiore, a candidate for Nevada’s Third  
8 Congressional District in Clark County (at the other end of the state from Storey County) was  
9 done to further a “significant personal interest.” The comparison between the actions of Dr.  
10 Hammagren, who used his title and official stationary to advocate for a bill in which he had a  
11 stated personal (and pecuniary) interest, is stark. NRS 281A400(7) requires that the actions of  
12 the public officer or employee be done in furtherance of a *significant personal interest*. The  
13 Executive Director provides no evidence on this required element, nor is there any such  
14 evidence, so as to support a violation of NRS 281A.400(7). Given that the Legislature saw fit to  
15 qualify the terms “personal” and “pecuniary” with the term “significant,” one cannot simply  
16 presume the existence of such an interest without evidence. Accordingly, summary judgment  
17 must be entered in favor of Sheriff Antinoro.

18  
19  
20  
21 **C. *Sheriff Antinoro’s actions do not create the appearance of impropriety and are***  
22 ***not in violation of NRS 281A.400(7) under legal precedent established by the***  
23 ***Commission.***

24 Rather than support the Executive Director’s position, the Commission’s decision in the  
25 *Matter of the Request for Opinion Concerning Richard Kirkland*, Comm’n Op. No. 95-41, cited  
26 by the Executive Director in her motion, actually compels entry of summary judgment in favor  
27 of Sheriff Antinoro. *Kirkland* involved the issue of then-Washoe County Sheriff Richard  
28 Kirkland’s endorsement of Justice James Hardesty for district court judge. Sheriff Kirkland’s



1 endorsement included participation in an advertisement which showed him in uniform with his  
2 name and title mentioned, as well as other sheriffs' employees working with county jail inmates  
3 in their black and white striped jail uniforms while Sheriff Kirkland described programs he and  
4 his department had instituted with a brief endorsement of Justice Hardesty at the end of the  
5 advertisement. Sheriff Kirkland made two commercials on behalf of Justice Hardesty, one  
6 during his lunch hour and one prior to the time Sheriff Kirkland began his shift. The  
7 Commission found that Sheriff Kirkland had been very careful in how and when he filmed his  
8 portion of the advertisements at issue and that there was no cost to the public for either his  
9 participation or the filming of his deputies.

11 The Commission then turned to an analysis of whether the facts supported a violation of  
12 NRS 281.481(7), the predecessor of the statute at issue in this case, and whether Sheriff Kirkland  
13 used governmental time, property, equipment or other facility to benefit his personal or financial  
14 interests. In so doing, and as is the case here, the Commission focused on whether the sheriff's  
15 actions created the appearance of impropriety.

17 In addressing this question, the Commission recognized the fundamental principle that  
18 the First Amendment of the United States Constitution protects political speech but noted that  
19 such First Amendment rights are not absolute when it comes to federal, and some state and  
20 municipal employees. In that regard, the Commission cited to the Hatch Act and its prohibition  
21 against federal, and some state and municipal, employees from using their official authority or  
22 influence for the purpose of interfering with or affecting the result of an election. *See*, 5 U.S.C.  
23 §1502(a)(1); *see also*, 5 U.S.C. §7324(a)(1). The Hatch Act commonly refers to two laws passed  
24 in 1939 and 1940 which restrict the political activities of public employees.<sup>3</sup> *See*, *Bauers v.*  
25 *Cornett*, 865 F.2d 1517, 1521 (8<sup>th</sup> Cir. 1989). "The Hatch Act was passed by Congress to  
26  
27  
28

<sup>3</sup>Subsequent statutory changes have narrowed the reach of the Hatch Act as it applies to state and local employees and 1974 amendments to the Act removed the prohibition against allowing state and local employees to take an active part in a campaign. *Broderick, supra.* at 1523.

1 address particular forms of political party corruption and coercion perpetrated by, and  
2 victimizing federal, state and local employees.” *Id.* at 1520-21.

3 The Commission further noted that Washoe County had adopted its own version of the  
4 Hatch Act, as have many states, counties and municipalities. These regulations, often called  
5 “little Hatch Acts,” also seek to prohibit or limit the political activities of its employees.  
6 Although Storey County has not adopted such a prohibition in the form of an ordinance, the  
7 personnel policies of Storey County and the Storey County Sheriff’s Office do address political  
8 speech of its covered employees.<sup>4</sup>

9  
10 In Kirkland, the Commission determined that its analysis turned on whether Sheriff  
11 Kirkland’s “use of his title, position, uniform, badge, or employees in his endorsement  
12 advertisements created the ‘appearance of impropriety.’” *Kirkland, supra.* at p. 4. The  
13 Commission concluded that it was incontrovertible that it would never be proper for a  
14 government agency to endorse a candidate and, as such, it followed that its elected officials  
15 could not create the impression of government sanction. “It is for this reason that the Hatch Act  
16 and the little Hatch Acts . . . prohibit or limit certain political activities for government actors.”  
17  
18  
19 *Id.* The Commission then found as follow:

20 “We find that some aspects of Mr. Kirkland’s endorsement advertisements could create  
21 such an appearance of impropriety. In particular, we find that the use of his uniform,  
22 badge, and his uniformed deputies creates an improper appearance that his endorsement  
23 was an official endorsement by Washoe County or the Washoe County Sheriff’s Office.  
24 This is especially problematic where the office for which Mr. Kirkland’s endorsement  
25 was district judge.”

24 *Id.*

25 The Commission went on to state that the use by Sheriff Kirkland of his “uniform and  
26 badge” were the “critical difference.” Had Sheriff Kirkland used only his name and official title  
27

28  

---

<sup>4</sup>Storey County’s definition of “employee” excludes elected officials, department heads and causal workers from its definition for purposes of certain sections. Sheriff Antinoro, as an elected official, is responsible for enacting policy at the Sheriff’s Office.

1 in the advertisement he would not, in the opinion of the Commission, have run afoul of NRS  
2 281A.400(7) and would not have created the appearance of impropriety. Thus, the Commission  
3 cautioned that a public officer should not use “his uniform, badge, employees, private office, or  
4 other non-public facilities for the purposes of making an endorsement advertisement.” *Id.*

5  
6 The actions of Sheriff Antinoro in sending the statement in question do not, under the  
7 Commission’s own precedent, constitute actions which create the appearance of impropriety in  
8 violation of NRS 281A400(7)(a)(4). To the contrary, Sheriff Antinoro’s conduct falls within that  
9 which was held to be permissible by this Commission in that he used his name and official title  
10 in his endorsement of Ms. Fiore.

11  
12 Further, while certainly thorough, the Commission’s decision in *Kirkland* was rendered  
13 in 1998. More recent guidance from the U.S. Office of Special Counsel (OSC), the agency  
14 charged with interpreting the Hatch Act, suggests that Sheriff Antinoro acted well within his  
15 First Amendment rights in engaging in the conduct at issue and in accordance with the  
16 requirements of the Hatch Act. The OSC was formed in 1979 as the investigative and  
17 prosecutorial arm of the Merit Systems Protection Board (MSPB). The OSC, now an  
18 independent agency, is the entity authorized to issue advisory opinions and investigate violations  
19 of the Hatch Act pursuant to 5 U.S.C. §1216(a)(2).

20  
21 On February 29, 2012, the OSC issued a response to a request for an advisory opinion on  
22 the issue of whether an incumbent sheriff may wear his uniform to political events such as  
23 rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials.  
24 *See*, Exhibit “C,” February 29, 2012, advisory opinion. In its opinion, the OSC began by noting  
25 that it had recently reevaluated issues associated with participation by elected officials in such  
26 conduct as it relates to the Hatch Act. *Id.* at p. 1. Specifically, the OSC stated that elected  
27 officials such as a sitting sheriff would not violate the Hatch Act by wearing their uniforms or  
28

1 using their titles while campaigning for reelection. *Id.* The OSC extended this reasoning to the  
2 actions of an elected sheriff while participating in campaign activities on behalf of other  
3 candidates running for office. Specifically, the OCS stated that an elected official who used his  
4 title when endorsing a partisan candidate and/or wore his or her uniform while campaigning for  
5 another candidate would not be in violation of the Hatch Act. *Id.* at p. 2. The OSC further  
6 extended this reasoning to apply to in-person campaign events, campaign advertisements, and  
7 political correspondence and concluded that a sheriff could attend fundraisers and solicit  
8 contributions while wearing his or her uniform and identifying himself or herself as the sheriff.  
9 *Id.* While noting that a sheriff covered by the Hatch Act is still prohibited from “coercing or  
10 attempting to coerce other employees into making political contributions,” the OSC concluded  
11 that an elected sheriff could participate in campaign activities of others without running afoul of  
12 federal law.  
13  
14

15 As noted above, Storey County has not enacted a “little Hatch Act.” However, to the  
16 extent the personnel policies of the County and the Sheriff’s Office resemble little Hatch Acts, as  
17 they restrict political activity of County employees, the conduct at issue in this case would not  
18 violate them. Given the OSC’s reevaluation of this issue, and its conclusion that a sitting sheriff  
19 may actually campaign, in uniform and using his official title, both at in-person campaign events  
20 and in campaign advertisements and political correspondence, it simply cannot be found that  
21 Sheriff Antinoro acted improperly under the circumstances or in such a manner as would create  
22 the appearance of impropriety. As such, Sheriff Antinoro, and not the Executive Director, is  
23 entitled to summary judgment in this matter.  
24  
25

26 **III. Any Determination that the Conduct at Issue was in Violation of NRS 281A.400(7)**  
27 **would be in Violation of the First Amendment of the United States Constitution.**

28 The First Amendment of the United States Constitution provides that Congress “shall  
make no law . . . abridging the freedom of speech” and this prohibition is applicable to the states

1 by virtue of the Fourteenth Amendment.<sup>5</sup> See, *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1658  
2 (2015). The United States Supreme Court has repeatedly held that, “[t]he First Amendment has  
3 its fullest and most urgent application to speech uttered during a campaign for political office.”  
4 *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2009). “As we have long recognized, speech  
5 about public issues and the qualifications of candidates for elected office commands the highest  
6 level of First Amendment protection.” See, *Eu v. San Francisco County Democratic Cent.*  
7 *Comm.*, 489 U.S. 214, 282 (1989). The Courts have cautioned that this principle requires them  
8 to “err on the side of protecting political speech rather than suppressing it.” *FEC v. Wis. Right to*  
9 *Life, Inc.*, 551 U.S. 449, 457 (2007). The United States Supreme Court has further held that an  
10 “exacting scrutiny” must be applied to laws restricting such speech. *Williams-Yulee, supra.* at  
11 1664. As such, in order for NRS 281A.400(7) to be used in such a way as to prohibit the  
12 political speech at issue, it must be shown that the statute is narrowly tailored to serve a  
13 compelling government interest. *Id.* at 1665. While the United States Supreme Court has held  
14 that the government has an interest in regulating the conduct and speech of its employees, in this  
15 case, that interest is not outweighed by the wholesale infringement on the First Amendment  
16 rights of the Subject.

17  
18  
19  
20 ***A. NRS 281A.400(7) is unconstitutionally vague.***

21 First, to the extent the Commission decides to impose such an enormous restriction on  
22 core First Amendment rights by application of NRS 281A.400(7), that statute is  
23 unconstitutionally vague. NRS 281A.480 permits the Commission to assess civil penalties  
24 against a subject of up to \$5,000.00 for a single willful violation of Chapter 281A. See, NRS  
25 281A.480(1)(a). That statute provides further punitive powers to the Commission, including the  
26 power to file a complaint in court for the removal of a public officer if he or she is found to have  
27  
28

---

<sup>5</sup>See also, Article 1, Section 9 of the Nevada Constitution.

1 committed "fewer than three willful violations" of Chapter 281A. *See*, NRS 281A.480(4)(c)(1).  
2 These punitive powers of the Commission are significant yet NRS 281A.400(7) gives no  
3 guidance to public officials as to *what conduct* is prohibited under the statute. While the term  
4 "pecuniary interest" is defined in Chapter 281A, the terms "significant" and "personal" are not.  
5 *See*, NRS 281A.139 and Chapter 281A generally. Nor is there guidance in the statute in terms of  
6 a definition for "appearance of impropriety." *See*, NRS 281A.400(7) and Chapter 281A  
7 generally.

8  
9       Nowhere in Chapter 281A did the Legislature see fit to include a prohibition against  
10 political speech by public officials. Further, the terms set forth in NRS 281A.400(7) discussed  
11 above are not defined and are vague as a matter of law. The vagueness doctrine requires  
12 legislatures to set reasonably clear guidelines for enforcement officials in order to prevent  
13 arbitrary and discriminatory enforcement of the law. *See, Smith v. Goguen*, 415 U.S. 566, 572-  
14 73 (1974). A vague statute is one which operates to hinder free speech through the use of  
15 language so vague as to allow the inclusion of protected speech in its prohibition or to leave the  
16 individual with no clear guidance as to the nature of the acts which are subject to punishment.  
17 "Where First Amendment rights are involved, an even greater degree of specificity is required."  
18 *Id.* at 573.

19  
20  
21       In this case, the Commission seeks to impose a tremendous burden on the Subject's First  
22 Amendment rights using statutory language which falls well short of providing fair notice as to  
23 the conduct it punishes. As such, NRS 281A.400(7) is unconstitutionally vague.

24  
25       ***B. NRS 281A.400(7) is unconstitutional as applied to Sheriff Antinoro under the***  
26 ***circumstances of this case.***

27       Further, the use of NRS 281A.400(7) to punish the conduct at issue in this case is  
28 unconstitutional and in violation of the First Amendment of the United States Constitution as  
applied to Sheriff Antinoro. While the government may regulate speech of public employees to

1 a greater extent than that of citizens at large, in this case, punishment of the core political speech  
2 of the subject under the circumstances goes much too far. Sheriff Antinoro's three paragraph  
3 endorsement of Michele Fiore is unquestionably core political speech entitled to the highest level  
4 of First Amendment protection. *See, Eu, supra.* at 282. The endorsement goes no further than to  
5 identify the Subject as the Sheriff of Storey County, an action which is permissible even under  
6 the prior decisions of this Commission. The fact that the endorsement was typed on letterhead  
7 bearing the logo of the Storey County Sheriff's Office cannot be used by the Commission as a  
8 means of punishing Sheriff Antinoro's core First Amendment right to engage in speech on  
9 political issues and matters of public concern. To punish the conduct at issue here would be in  
10 gross violation of the First Amendment.  
11

12  
13 ***C. NRS 481A.400(7) is unconstitutionally overbroad.***

14 NRS 281A.400(7) also fails from a constitutional standpoint because it is  
15 unconstitutionally overbroad. A statute is overbroad when its language, given its normal  
16 meaning, is so sweeping that its sanctions may be applied to constitutionally protected conduct  
17 which the state is not permitted to regulate. *See, Dehne, supra.* at 1102. The danger inherent in  
18 overbroad statutes is that such statutes provide the government with practically unbridled  
19 administrative and prosecutorial discretion that may result in selective prosecution. Thus,  
20 overbroad statutes may undesirably dissuade persons from exercising their rights by chilling  
21 protected speech or expression. *See, Bates v. State Bar of Arizona, 433 U.S. 350, 380 (1977).*  
22  
23 As the courts have recognized, the threat to free expression created by overbroad statutes is that,  
24 by potentially sweeping in constitutionally protected activity, individuals and groups may self-  
25 censor out of fear of vindictive or selective prosecution. *Id.*  
26

27 Use of NRS 281A.400(7)(a)(4)'s prohibition against a public employee engaging in  
28 conduct which might "create an appearance of impropriety" simply cannot be used in such a

1 sweeping fashion so as to foreclose Sheriff Antinoro's core political speech. Such a result  
2 compels the conclusion that NRS 281A.400(7) is unconstitutionally overbroad. Certainly,  
3 application of NRS 281A.400(7) to Sheriff Antinoro under the circumstances at bar acts in such  
4 a manner as to dissuade those subject to the Act, including Sheriff Antinoro, from exercising  
5 their core First Amendment rights. Such an application is not constitutionally permitted and  
6 NRS 281A.400(7) fails under the overbreadth doctrine.  
7

8 IV

9 CONCLUSION

10 Based on all of the following, Sheriff Antinoro respectfully requests that the Executive  
11 Director's motion for summary judgment be denied. Further, Sheriff Antinoro submits that the  
12 undisputed facts in this matter, when weighed under the preponderance of the evidence standard,  
13 compel the issuance of an order granting judgment in his favor as a matter of law.  
14

15  
16 DATED this 13<sup>th</sup> day of March, 2017.

17 THORNDAL ARMSTRONG  
18 DELK BALKENBUSH & EISINGER

19 By: 

20 Katherine F. Parks, Esq.  
21 State Bar No. 6227  
22 6590 S. McCarran Blvd., Suite B  
23 Reno, Nevada 89509  
24 (775) 786-2882  
25 kfp@thorndal.com  
26 ATTORNEYS FOR GERALD ANTINORO  
27  
28



**CERTIFICATE OF SERVICE**

I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **GERALD ANTINORO'S OPPOSITION AND CROSS-MOTION FOR SUMMARY JUDGMENT** to be served on all parties to this action by:

\_\_\_\_\_ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

electronic mail

\_\_\_\_\_ personal delivery

\_\_\_\_\_ facsimile (fax)

\_\_\_\_\_ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 <a href="mailto:ynevarez@ethics.nv.gov">ynevarez@ethics.nv.gov</a>	Judy A. Prutzman, Esq. Associate Counsel Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 <a href="mailto:jprutzman@ethics.nv.gov">jprutzman@ethics.nv.gov</a>
---	---

DATED this 13 day of March, 2017.



An employee of THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER

**EXHIBIT "A"**

**EXHIBIT "A"**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATE OF NEVADA**  
**COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct                      Request for Opinion No. 16-54C  
of Gerald Antinoro, Sheriff of Storey  
County, Nevada,

Subject. /

**STIPULATED FACTS**

The Executive Director, through Associate Counsel Judy A. Prutzman, Esq., and the Subject, through his counsel, Katherine F. Parks, Esq., have stipulated to the following facts in Third-Party Request for Opinion ("RFO") No. 16-54C before the Nevada Commission on Ethics ("Commission") concerning Gerald Antinoro ("Antinoro"), Sheriff of Storey County.

The parties agree to submit as evidence in this matter the following stipulated facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

**STIPULATED FACTS**

1. Gerald Antinoro ("Antinoro") is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
2. Storey County is a political subdivision as defined in NRS 281A.145.
3. The Storey County Sheriff's Office is a local agency as defined in NRS 281A.119.
4. During the relevant time period, Nevada State Assemblywoman Michelle Fiore ("Fiore") was a United States Congressional candidate for Nevada's Third Congressional District in Clark County.
5. On May 27, 2016, Fiore contacted Sheriff Antinoro by phone to request his endorsement of her candidacy for U.S. Congress.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 6. Sheriff Antinoro prepared a three-paragraph statement endorsing Fiore's candidacy (Exhibit 1), dated May 27, 2016, on his personal computer at his home during his lunch hour.
- 7. The statement was typed on the official Storey County Sheriff's Office letterhead and emailed to Fiore from Sheriff Antinoro's personal computer and email account.
- 8. On May 27, 2016, Sheriff Antinoro's statement appeared in a YouTube video that was tweeted on Fiore's Twitter account, @VoteFiore.
- 9. The YouTube video containing Sheriff Antinoro's statement was also posted on Fiore's Facebook page on May 27, 2016.
- 10. Sheriff Antinoro did not produce the YouTube video or supply any of the other images used in the video. Fiore did not contact Sheriff Antinoro to inform him about the endorsement video.
- 11. Fiore was defeated in her campaign for U.S. Congress in the primary election held on June 15, 2016.
- 12. Policy Number 213 of the Storey County Administrative Policies and Procedures ("Storey County Policies") addresses political activity by employees:

**213: Political Activity**

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 activity during working hours. Furthermore, no person shall attempt to coerce, commence, 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.

.....

///

1 Employees are expressly forbidden to use any employer  
2 resources, including but not limited to: Interoffice mail, email,  
3 telephone, fax machines, the Internet, or copy machines to engage  
4 in any political activity outside the approved scope of the  
5 employees' official duties.

6 \*\*\*\*

7 Employees who are seeking, or who have been elected or  
8 appointed to public office, shall not conduct any business related  
9 to these activities while on duty. This includes all the items listed in  
10 the previous section, (i.e., political activity).

11 13. The Storey County Policies contain the following definition of "employee:"

12 **Employee:** A person employed in a budgeted position on a full- or  
13 part-time basis. For purposes of those section of these policies  
14 covering discipline, layoff, and dispute resolution, the term  
15 employee excludes elected officials, department heads and casual  
16 workers.

17 14. The Storey County Sheriff's Office has a policy regarding Employee Speech,  
18 Expression and Social Networking that addresses endorsements:

19 **1060.4.1 UNAUTHORIZED ENDORSEMENTS,**  
20 **ADVERTISEMENTS, AND ACTIVITIES**

21 While employees are not restricted from engaging in the following  
22 activities as private citizens or as authorized members of a  
23 recognized bargaining unit or deputy associations, employees may  
24 not represent the Storey County Sheriff's Office or identify  
25 themselves in any way that could be reasonably perceived as  
26 representing the Storey County Sheriff's Office in order to do any  
27 of the following, unless specifically authorized by the Sheriff:

- 28 (a) Endorse, support, oppose or contradict any political  
campaign or initiative.

...

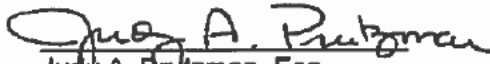
Additionally, when it can reasonably be construed that an  
employee, acting in his/her individual capacity or through an  
outside group or organization (e.g., bargaining group), is affiliated  
with this office, the employee shall give a specific disclaiming  
statement that any such speech or expression is not  
representative of the Storey County Sheriff's Office.

///

1 Employees retain their right to vote as they choose, to support  
2 candidates of their choice and to express their opinions as private  
3 citizens, including as authorized members of a recognized  
4 bargaining unit or deputy associations, on political subjects and  
5 candidates at all times while off-duty. Employees may not use their  
6 official authority or influence to interfere with or affect the result of  
7 an election or a nomination for office. Employees are also  
8 prohibited from directly or indirectly using their official authority to  
9 coerce, command or advise another employee to pay, lend or  
10 contribute anything of value to a party, committee, organization,  
11 agency or person for political purposes (5 USC § 1502).

12 DATED this 15<sup>th</sup> day of December, 2016.

13 FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
14 Executive Director, Commission on Ethics

15   
16 Judy A. Pritzman, Esq.  
17 Associate Counsel

18 FOR GERALD ANTINORO  
19 Subject

20   
21 Katherine F. Parks, Esq.

**EXHIBIT “B”**

**EXHIBIT “B”**



## STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro  
Sheriff

May 27, 2016

---

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPSU, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro", written in a cursive style.

Gerald Antinoro



**EXHIBIT “C”**

**EXHIBIT “C”**



U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

February 29, 2012

XXXXXX XXXXXXXX  
Assistant XXXXXXXXX County Attorney  
XXXXX XXXXXXXX XXXX  
XXXXXXXX, XX XXXXXX

Re: OSC File No. AD-12-XXXX

Dear Xx. XXXXXXXX:

This letter responds to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Act. Specifically, you ask whether an incumbent sheriff may wear his uniform to political events such as rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials. You also ask whether a sheriff may use his title in political correspondence or in connection with fundraising activities. Finally, you ask if it makes a difference whether the sheriff engages in these activities while running for reelection, running for another elected office, or while campaigning for another candidate altogether. For purposes of this opinion, you ask OSC to assume that the sheriff is subject to the Hatch Act's restrictions. As explained in more detail below, the Act generally would not prohibit any of the activities you enumerate in your request.

State and local employees who are covered by the Hatch Act are prohibited from using their official authority or influence to interfere with or affect the result of an election or a nomination for office.<sup>1</sup> 5 U.S.C. § 1502(a)(1). Federal employees are subject to the same restriction. See 5 U.S.C. § 7323(a)(1). The Hatch Act regulation that applies to federal employees states that an improper use of official authority or influence occurs when employees use their official titles while participating in political activity. 5 C.F.R. § 734.302(b)(1). In determining whether the use of official title by state and local employees violate the Hatch Act, OSC uses the aforementioned regulation for federal employees as guidance. Thus, OSC generally concludes that state and local employees violate the Hatch Act when they use their official titles, or otherwise trade on the influence of their positions by, for example, wearing their official uniforms, while engaged in political activity.

As you know, OSC recently reevaluated this conclusion as it applies to elected officials who are covered by the Hatch Act. Specifically, in recognition of the fact that they hold partisan political office, OSC reasoned that they would not violate the Hatch Act by wearing their uniforms or using their titles while campaigning for reelection. OSC took into account the fact that Congress gave greater latitude to individuals who are covered by the Hatch Act due to their

<sup>1</sup> In addition, state and local employees are prohibited from coercing other employees into making political contributions and from being candidates in partisan elections. 5 U.S.C. § 1502(a)(2)-(3).

elected positions when it exempted them from the candidacy prohibition to which other state and local employees are subject. See 5 U.S.C. § 1502(c). Moreover, the Hatch Act regulations that apply to federal employees do not contemplate a scenario where an employee would be covered by virtue of his elective office. Cf. 5 U.S.C. § 7322(1) (expressly excluding the President and Vice President from Hatch Act coverage). Thus, those regulations do not translate smoothly to the state and local arena, where many elected officials are covered by the Hatch Act.

We also note that the provision exempting individuals holding elected office from the candidacy prohibition is not limited to reelection bids. Thus, a sheriff who is covered by the Hatch Act would not be prohibited from running for another elected office. Accordingly, the rationale OSC has articulated with respect use of one's official title and uniform during a reelection campaign also applies when the official runs for some other partisan political office.

OSC's reasoning also extends to an elected official's other political activities, i.e., activities not in furtherance of his own reelection. Indeed, in allowing these elected officials to run as representatives of political parties, Congress presumably anticipated that they would endorse other candidates running under their political party's banner. If these elected officials are permitted to use their official titles in their own partisan campaigns, OSC can identify no unique harm that would result if they do the same when endorsing other partisan candidates. Arguably, an elected official's use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident of the elected official being permitted to run for partisan office. Therefore, it does not appear that an elected official's use of his title when endorsing a partisan candidate would violate the Hatch Act. In the case of a sheriff, wearing his uniform while campaigning for another candidate also would be permissible.

These principles apply to in-person campaign events, campaign advertisements, and political correspondence. Likewise, a sheriff could attend fundraisers and solicit contributions while wearing his uniform and identifying himself as the sheriff. We note, however, that a sheriff covered by the Hatch Act still is prohibited from coercing or attempting to coerce other employees into making political contributions. See 5 U.S.C. § 1502(a)(2). Asking a subordinate to make a political contribution or volunteer for a political campaign is considered inherently coercive. Special Counsel v. Acconcia, (CB-1216-06-0007-T-1, February 26, 2007 (Initial Decision at 9), rev'd on other grounds, 107 M.S.P.R. 60 (2007), citing Special Counsel v. Purnell, 37 M.S.P.R. 184, 195 (1988), aff'd sub nom. Fela v. Merit Sys. Prot. Bd., 730 F. Supp. 779 (N.D. Ohio 1989). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. Special Counsel v. Gallagher, 44 M.S.P.R. 57, 76 (1990). Thus, sheriffs should not ask their employees to contribute to political campaigns.

Similarly, while OSC concludes that the use of official authority prohibition would not preclude a sheriff from wearing his uniform and using his official title while campaigning, this provision of the Hatch Act would prohibit him from soliciting the uncompensated volunteer services of a subordinate employee. See 5 C.F.R. § 734.302. Therefore, he must not ask his employees to support his campaign or the campaign of another candidate.

**U.S. Office of Special Counsel**  
Page 3

We hope this opinion adequately addresses your questions. Please contact me at (202) 254-3642 if we can be of further assistance.

Sincerely,

/s/

Carolyn S. Martorana  
Attorney, Hatch Act Unit

---

**STATE OF NEVADA**

**BEFORE THE 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,

Request for Opinion No. 16-54C

\_\_\_\_\_  
Subject. /

**EXECUTIVE DIRECTOR'S**

**OPPOSITION TO ANTINORO'S CROSS-MOTION FOR SUMMARY JUDGMENT**

**AND**

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

1 Judy A. Prutzman, Esq. (#6078)  
2 Associate Counsel  
3 Nevada Commission on Ethics  
4 704 West Nye Lane, Suite 204  
5 Carson City, Nevada 89703  
6 (775) 687-5469  
7 Fax: (775) 687-1279  
8 Email: [judyprutzman@ethics.nv.gov](mailto:judyprutzman@ethics.nv.gov)

9 **STATE OF NEVADA**

10 **BEFORE THE COMMISSION ON ETHICS**

11 In the Matter of the Third-Party Request  
12 for Opinion Concerning the Conduct Request for Opinion No. 16-54C  
13 of **Gerald Antinoro**, Sheriff, Storey  
14 County, State of Nevada,

15 Subject. /

16 **OPPOSITION TO ANTINORO’S CROSS-MOTION FOR SUMMARY JUDGMENT**  
17 **AND**  
18 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

19 Yvonne M. Nevarez-Goodson, Esq., Executive Director of the Nevada  
20 Commission on Ethics (“Commission”), by and through the Commission’s Associate  
21 Counsel, Judy A. Prutzman, Esq., hereby submits her Opposition to Antinoro’s Cross-  
22 Motion for Summary Judgment and a Reply in Support of the Motion for Summary  
23 Judgment submitted on March 9, 2017.

24 **INTRODUCTION**

25 Sheriff Antinoro violated the Ethics in Government Law when he produced a  
26 letter of endorsement for Michelle Fiore, a candidate for U.S. Congress, on the official  
27 letterhead of the Storey County Sheriff’s Office. The letter was electronically  
28 transmitted to Fiore, who included the letter in a video that was posted on her social  
media sites and viewable by more than 7,000 individuals. If the Commission does not  
conclude that Antinoro’s conduct violated Ethics Law, it will erode the Legislature’s

1 directive for an appropriate separation between the roles of persons who are both  
2 public servants and private citizens.

3 This is not a complicated case. This RFO presents clear, undisputed facts and  
4 requires the Commission to examine one simple question: “Does a public officer  
5 violate NRS 281A.400(7) when he digitally produces a letter of endorsement for a  
6 political candidate on the official letterhead of his public office?” In opposing the  
7 Executive Director’s Motion for Summary Judgment, Antinoro asks the Commission to  
8 determine that he did not use government property because his endorsement letter  
9 was digitally produced and not printed on a single piece of paper. Antinoro also asks  
10 the Commission to find that his endorsement of Fiore cannot be considered a  
11 “significant personal interest” within the meaning of NRS 281A.400(7). Remarkably,  
12 Antinoro characterizes his political interests as insignificant, despite his position that  
13 his endorsement letter amounts to political speech entitled to the highest level of  
14 constitutional protection.

15 If the Commission accepts Antinoro’s position, the official letterheads of all  
16 public agencies could be digitally reproduced and widely distributed electronically by  
17 any public officer or employee who wishes to use the letterhead for political purposes.  
18 This is an absurd result that the Commission should avoid. *See City Plan Dev. v.*  
19 *State, Labor Comm’r*, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005) (When  
20 interpreting a statute, a court should look to the policy and spirit of the law and will  
21 seek to avoid an interpretation that leads to an absurd result).

22 Finally, Antinoro asks the Commission to apply non-binding federal law and  
23 guidance to Nevada’s Ethics Law to conclude that Nevada’s elected sheriffs may use  
24 the official letterhead of their agencies for political endorsements without creating an  
25 appearance of impropriety. This result is also absurd and effectively establishes a “law  
26 enforcement exception” to NRS 281A.400(7) that does not exist. The Commission  
27 should not interpret the Ethics Law in a way that creates a narrow exception for only  
28 one class of public officers.

1 The preponderance of evidence, supported by undisputed facts, indicates that  
2 Antinoro used government property to benefit his significant personal interest in  
3 supporting a candidate in a political campaign. Antinoro's use of a government  
4 resource for a political endorsement created an appearance of impropriety because it  
5 may indicate to the public that Fiore is endorsed by the entire Storey County Sheriff's  
6 Office, not just Antinoro. This is the type of harm to the public that the Ethics Law is  
7 designed to prohibit, as it creates confusion about the nature of the political  
8 endorsement and blurs the line between Antinoro's personal interests and his public  
9 duties. Accordingly, the Commission should grant the Executive Director's Motion for  
10 Summary Judgment and deny Antinoro's Cross-Motion to find that Antinoro violated  
11 NRS 281A.400(7).

## 12 **LEGAL ANALYSIS**

### 13 **I. Antinoro's Use of the Storey County Letterhead for a Political** 14 **Endorsement Letter Violated NRS 281A.400(7)**

15 It is undisputed that Antinoro used the Storey County Sheriff's Office letterhead  
16 to produce a letter of endorsement for Fiore. NRS 281A.400(7) creates a strict  
17 prohibition against the use by a public officer of "governmental time, property,  
18 equipment or other facility to benefit a significant personal or financial interest."  
19 Antinoro's limited use of government property for an endorsement of a political  
20 candidate violated NRS 281A.400(7) because there was no policy authorizing such  
21 use of the letterhead and the use created the appearance of impropriety.

22 In an attempt to avoid the clear application of the Ethics Law to the facts of this  
23 case, Antinoro raises inapplicable constitutional challenges and relies upon irrelevant  
24 federal guidance related to an elected sheriff's ability to wear the sheriff's uniform and  
25 use the sheriff's title while participating in campaign activities. However, these  
26 arguments do not avoid the conclusion that Antinoro's conduct violated the Ethics  
27 Law. The Commission has acknowledged that the political process and an individual's  
28 right to freely participate in political activity are of extreme importance. *See In re*



1 *Barrett*, Comm'n Op. No. 01-08A (2002). Nevertheless, public officers are required to  
2 appropriately separate their private political interests and activities from their public  
3 duties. *Id.*

4 A. The Letterhead of the Storey County Sheriff's Office is Governmental  
5 Property Subject to the Prohibitions of NRS 281A.400(7)

6 In his Cross-Motion, Antinoro maintains that summary judgment must be  
7 entered in his favor because the Executive Director did not demonstrate, by a  
8 preponderance of evidence, that he used "governmental time, property, equipment or  
9 other facility" when he produced a letter of endorsement for Fiore utilizing the official  
10 letterhead of the Storey County Sheriff's Office. He attempts to characterize the  
11 letterhead of the Storey County Sheriff's Office as non-governmental property  
12 because it was reproduced only in electronic form, did not include the address of the  
13 Storey County Sheriff's Office and was not signed by Antinoro in his official capacity,  
14 using his Sheriff's title. Yet, it remains undisputed that the letterhead utilized by  
15 Antinoro was the official letterhead of the Storey County Sheriff's Office.

16 Antinoro asks the Commission to conclude that a digital reproduction of an  
17 official letterhead is not the type of governmental property contemplated by NRS  
18 281A.400(7). However, this conclusion contradicts the Commission's prior decisions  
19 and would lead to absurd results. The Commission has consistently viewed the official  
20 letterhead of a government office or agency as governmental property. See *In re*  
21 *Hammargren*, Comm'n Op. No. 95-35A (1996); *In re Tiffany*, Comm'n Op. No. 15-21C  
22 (2007); *In re Hettrick*, Comm'n Op. No. 01-10A (2001). The format of Antinoro's  
23 endorsement letter (digital versus hard copy) does not diminish or eliminate the  
24 governmental character of the property – the letterhead of the Storey County Sheriff's  
25 Office. Indeed, Antinoro has not and cannot claim that the endorsement letter for Fiore  
26 was produced under his personal letterhead, or some other letterhead that is not  
27 utilized for official business of the Storey County Sheriff's Office.  
28

1           The fact that Antinoro’s letter of endorsement was transmitted electronically  
2 and was not produced utilizing any other government resources (paper, time,  
3 computer or personnel) does not change the character of the letterhead from  
4 government to non-government. These facts merely allow the Commission to review  
5 Antinoro’s conduct under the limited use exception of NRS 281A.400(7)(a). Antinoro’s  
6 view of what constitutes “governmental property” would lead to absurd results. If the  
7 Commission decides that a digital letterhead utilized to produce an electronic copy of  
8 a letter is not “governmental property” within the meaning of NRS 281A.400(7), then a  
9 public officer or employee could use a government letterhead for personal purposes  
10 without violating the Ethics Law, so long as the letter was only emailed and no other  
11 government resources (paper, time or computers) were used to produce the letter.  
12 This is not a logical result that supports the clear intent of the Ethics Law.

13           B. Antinoro’s Interest in Endorsing a Political Candidate is a Significant  
14 Personal Interest Within the Meaning of NRS 281A.400(7)

15           Antinoro accuses the Executive Director of failing to address the “personal  
16 interest” requirement of NRS 281A.400(7) because she did not specify how Antinoro’s  
17 conduct furthered a *significant* personal interest. In so doing, Antinoro asserts that his  
18 interest in endorsing a political candidate cannot be considered a significant personal  
19 interest within the meaning of NRS 281A.400(7). However, this view contradicts  
20 Antinoro’s own position that his endorsement of a political candidate constitutes core  
21 political speech that is entitled to constitutional protection. Indeed, as argued by  
22 Antinoro in his Opposition and Cross-Motion, the constitution affords the broadest  
23 protection to political expression, including speech about candidates for elected office.  
24 *See Buckley v. Valeo*, 424 U.S. 1, 14, 96 S. Ct. 612, 632 (1976) (per curiam).<sup>1</sup>

---

25  
26  
27  
28 <sup>1</sup> Despite Antinoro’s arguments of constitutionally protected speech and association, the Executive Director maintains that these arguments lack merit, as described in this Opposition.

1 NRS 281A.400(7) states, in relevant part, that “a public officer or employee  
2 shall not use governmental time, property, equipment or other facility to benefit a  
3 significant personal or pecuniary interest of the public officer or employee.” The  
4 Commission recently examined NRS 281A.400(7) in *In re Matson*, Comm’n Op. No.  
5 14-70C (2016), which involved Shirley Matson, the elected Nye County Assessor. In  
6 granting a Motion for Summary Judgment submitted by the Executive Director, the  
7 Commission determined that Matson violated NRS 281A.020 and 281A.400(7) and (9)  
8 when she ordered a subordinate to reappraise property owned by two Nye County  
9 employees under circumstances demonstrating that the reappraisals were not  
10 properly conducted in accordance with applicable law. Matson ordered the  
11 reappraisals as revenge or retaliation against the two employees. Accordingly, the  
12 significant personal interest at issue was Matson’s personal animus against the  
13 employees and the Commission found that Matson misused government resources in  
14 violation of the Ethics Law.<sup>2</sup>

15 If the Commission found that a public officer’s personal animus towards co-  
16 workers is the type of “significant personal interest” contemplated by NRS  
17 281A.400(7), the Commission logically must conclude that Antinoro’s endorsement of  
18 a political candidate is also a significant personal interest within the meaning of NRS  
19 281A.400(7). This conclusion would fit squarely with the Commission’s decisions that  
20 an earlier version of NRS 281A.400(7) prohibits the use of governmental property for  
21 personal political or campaign purposes. See *In re Kirkland*, Comm’n Op. No. 98-41  
22 (1999) (citing *In re Bob Nolen*, Comm’n Op. No. 96-39 (1996) and *In re Lonnie*  
23 *Hammargren*, Comm’n Op. No. 95-35 (1995)).

---

24  
25 <sup>2</sup> One of the employees had drafted a Nye County Resolution condemning Matson’s racist remarks and  
26 signed a petition to recall Matson. The other employee had also signed the recall petition. The  
27 Commission concluded that actions of these employees against Matson created the personal animus  
28 which constitutes a personal interest implicating NRS 281A.400(7).

1 C. Sheriff Antinoro's Use of Official Government Letterhead Does Not Satisfy  
2 All Elements of the Limited Use Exception in NRS 281A.400(7)(a)

3 Antinoro's use of the Storey County Sheriff's Office letterhead for a letter of  
4 endorsement of a political candidate violated NRS 281A.400(7), unless all four of the  
5 following factors apply:

- 6 (1) The public officer or employee who is responsible for and  
7 has authority to authorize the use of such property, equipment  
8 or other facility has established a policy allowing the use or the  
9 use is necessary as a result of emergency circumstances;
- 10 (2) The use does not interfere with the performance of the  
11 public officer's or employee's public duties;
- 12 (3) The cost or value related to the use is nominal; and
- 13 (4) The use does not create the appearance of impropriety.

14 The Executive Director demonstrated in her motion that no established policy  
15 allowed Antinoro to use the Storey County Sheriff's Office letterhead for a political  
16 endorsement letter. The Executive Director also established that such use creates the  
17 appearance of impropriety. In response, Antinoro presents a confusing and irrelevant  
18 argument regarding the Commission's application of the Hatch Act in *In re Kirkland*,  
19 Comm'n Op. No. 98-41C (1999). Antinoro also relies upon a recent opinion issued by  
20 the U.S. Office of Special Counsel ("OSC") regarding certain campaign activities of an  
21 elected sheriff.

22 Antinoro's reliance on the OSC opinion is misplaced. The OSC opinion is not  
23 binding upon Nevada or the Commission. Even if the OSC opinion was controlling, it  
24 does not address the conduct at issue in this RFO – use of government letterhead for  
25 a political endorsement. The OSC opinion specifically addresses whether an  
26 incumbent sheriff violates the federal Hatch Act by wearing his uniform to political  
27 events or using his title in political correspondence. However, Antinoro's use of his title  
28

1 in the endorsement letter is not at issue in this RFO.<sup>3</sup> Antinoro's use of his sheriff's  
2 uniform is also not before the Commission.

3 Antinoro's reliance on the Hatch Act and the OSC opinion does not overcome  
4 the fact that Antinoro's use of the letterhead for a political endorsement was not  
5 authorized by any policy established by Storey County or Antinoro himself. The clear  
6 language of the limited use exception requires that such a policy exist. See NRS  
7 281A.400(7)(a)(1).<sup>4</sup> Without such a policy, the requirements of the limited use  
8 exception cannot be met and the Commission can conclude that Antinoro's use of the  
9 letterhead violated NRS 281A.400(7).

10 Antinoro also cannot rely upon the Hatch Act and the OSC opinion to avoid a  
11 finding that his use of an official letterhead for political purposes created the  
12 appearance of impropriety under NRS 281A.400(7)(a)(4). The Commission's clear  
13 precedent, set forth in *In re Hettrick*, Comm'n Op. No. 01-10 (2001), demonstrates that  
14 the use of an official letterhead for political purposes creates an appearance of  
15 impropriety and the impression of government approval of the contents of letter.  
16 Likewise, Antinoro's endorsement letter printed on the official letterhead of the Storey  
17 County Sheriff's Office created the improper appearance that the sheriff's office or  
18 Storey County also endorses Fiore.

19 Antinoro's use of government letterhead for a political endorsement is precisely  
20 the type of impropriety the Ethics Law seeks to avoid through NRS 281A.400(7).  
21 Without a clear line drawn with respect to this conduct, the Commission opens the  
22 door to a multitude of other limited uses of government resources for political  
23

---

24  
25 <sup>3</sup> Indeed, the Commission decided in *Kirkland* that a public officer will **not** create an appearance of  
26 impropriety under former NRS 281A.400(7)(a)(4) by endorsing a political candidate if he or she uses his  
or her official title.

27 <sup>4</sup> Even if such a policy did exist, the Executive Director maintains that a policy which would have  
28 singled out Antinoro's conduct separate and distinct from that of other employees may have triggered  
other concerns under NRS 281A.400, as described in the Executive Director's Motion for Summary  
Judgment.

1 purposes, particularly uses that involve government email and other electronic  
2 medium.

## 3 **II. NRS 281A.400(7) is Neither Unconstitutionally Vague Nor Overboard**

4 Antinoro challenges the constitutionality of NRS 281A.400(7), arguing that the  
5 statute is both vague and overbroad. The determination of constitutionality is generally  
6 an issue for the courts. See *Malecon Tobacco, LLC v. State ex rel. Dep't of Taxation*,  
7 118 Nev. 837, 59 P.3d 474 (2002). Nevertheless, the Executive Director addresses  
8 Antinoro's constitutional challenges for the Commission's consideration.

9 Antinoro focuses on the words "significant" and "personal" contained in NRS  
10 281A.400(7), complaining that these terms are vague because they are not defined in  
11 NRS Chapter 281A and therefore provide no guidance to public officers as to what  
12 conduct is prohibited. He also asserts that NRS 281A.400(7) is overbroad because its  
13 prohibition of conduct that creates an "appearance of impropriety" deters him and  
14 other public officers from engaging in constitutionally protected political speech.

15 When reviewing the constitutionality of a statute, the statute is presumed to be  
16 valid and the burden falls on the challenger to demonstrate that a statute is  
17 unconstitutional. *State v. Eighth Judicial Dist. Court*, 129 Nev., Adv. Op. 52, 306 P.3d  
18 369, 375 (2013). The burden therefore falls on Antinoro to make a "clear showing of  
19 invalidity." *Pitmon v. State*, 131 Nev., Adv. Op. 16, \_\_\_ P.3d \_\_\_ (2015) (citing *Silvar*  
20 *v. Eighth Judicial Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

21 The first step in both a vagueness and overbreadth analysis is to construe the  
22 challenged statute. See *United States v. Williams*, 553 U.S. 285, 304 (2008) ("it is  
23 impossible to determine whether a statute reaches too far without first knowing what  
24 the statute covers"); *State v. Castaneda*, 126 Nev. 478, 483, 245 P.3d 550, 553-54  
25 (2010) ("Enough clarity to defeat a vagueness challenge may be supplied by judicial  
26 gloss on an otherwise uncertain statute, by giving a statute's words their well-settled  
27 and ordinarily understood meaning, and by looking to the common law definitions of  
28 the related term or offense." (citations and quotations omitted)).

1 NRS 281A.400(7) states that a public officer or employee shall not use  
2 governmental property to benefit a “significant personal or pecuniary interest” of the  
3 public officer or employee. The plain meaning of “significant” is “meaningful” or  
4 “important.” *The American Heritage College Dictionary* 1268 (3<sup>rd</sup> ed. 1997). The  
5 statute, as originally enacted, did not contain the word “significant.” The term was  
6 added by the Nevada Legislature in 2013 with the enactment of Senate Bill (“SB”)  
7 228. The Commission’s Executive Director at the time testified that “significant” was  
8 being added to several subsections of the Ethics Law, including NRS 281A.400(7), to  
9 eliminate a *de minimis* interest from being seen as a true conflict. See Exhibit C  
10 submitted at Hearing on SB 228 Before the Assembly Legislative Operations &  
11 Elections Comm., 77<sup>th</sup> Leg. (Nev. May 14, 2013). Thus, NRS 281A.400(7) does not  
12 contemplate the use of governmental property that benefits an unimportant, incidental  
13 or trivial personal interest.

14 The plain meaning of “personal” is “relating to a particular person” or “private.”  
15 *The American Heritage College Dictionary* 1019 (3<sup>rd</sup> ed. 1997). In the context of the  
16 Ethics Law, the term clearly intends to distinguish personal interests as those related  
17 to one’s private life and not related to one’s public life as a public officer or employee.

18 A. NRS 281A.400(7) is Not Unconstitutionally Vague

19 A statute may be challenged as unconstitutional either because it is vague on  
20 its face, or because it is vague as applied only to the particular challenger. *Pitmon*,  
21 131 Nev., Adv. Op. 16 at 4 (citation omitted). Antinoro appears to argue both. A  
22 statute is unconstitutionally vague if it (1) “fails to provide a person of ordinary  
23 intelligence fair notice of what is prohibited” or (2) “is so standardless that it authorizes  
24 or encourages seriously discriminatory enforcement.” *Carrigan v. Nev. Comm’n on*  
25 *Ethics*, 129 Nev., Adv. Op. 95, 5, 313 P.3d 880 (2013) (citation omitted). Civil laws,  
26 such as the Ethics Law, are held to a less strict vagueness standard than criminal  
27 laws because the consequences are less severe. *Id.*

1           Considering the plain meanings of terms like “significant” and “personal  
2 contained in NRS 281A.400(7), there is nothing vague about the statute. Furthermore,  
3 Antinoro’s claim that he did not have fair notice that he might violate NRS 281A.400(7)  
4 if he used government letterhead for personal purposes ignores the Ethics Law’s  
5 advisory opinion option.<sup>5</sup> See *Carrigan*, 129 Nev., Adv. Op. 95 at 8 (citation omitted)  
6 (“When a statute is accompanied by an administrative system that can flesh out  
7 details, the due process clause permits those details to be left to that system”). In fact,  
8 the Commission has previously issued an advisory opinion to a public officer seeking  
9 advice on whether his use of government letterhead would violate the Ethics Law. See  
10 *In re Hettrick*, Comm’n Op. No. 01-10A (2001). Additionally, the Commission’s  
11 advisory opinion in *In re Kirkland*, Comm’n Op. No. 98-41 (1999) provided guidance  
12 on the type of conduct that creates an “appearance of impropriety” under NRS  
13 281A.400(7). There are no facts in this matter to indicate that Antinoro did not have  
14 any time or opportunity to request an opinion from the Commission before he provided  
15 his endorsement letter to Fiore.

16           Analyzed on an as-applied basis, Antinoro’s claim that NRS 281A.400(7) is  
17 unconstitutional because it punishes his core political speech also fails. The statute  
18 Antinoro challenges does not prohibit public officers from endorsing political  
19 candidates; rather, it prohibits public officers and employees from using government  
20 resources to do so. Moreover, Antinoro’s use of government letterhead signifies that  
21 his political endorsement was offered in his official, representative capacity, and the  
22 United States Supreme Court “has rejected the notion that the First Amendment  
23 confers a right to use governmental mechanics to convey a message.” *Nevada*  
24 *Comm’n on Ethics. v. Carrigan*, 131 S.Ct. 2343, 2346 (2011).

25 ///

---

26  
27 <sup>5</sup> NRS 281A.440(1) allows the Commission to issue an advisory opinion within 45 days after receiving  
28 a request.



1           B. NRS 281A.400(7) is Not Unconstitutionally Overbroad

2           Antinoro asserts that NRS 281A.400(7) is unconstitutionally overbroad.  
3 Specifically, Antinoro claims that “appearance of impropriety” contained in the limited  
4 use exception of NRS 281A.400(7)(a) impermissibly reaches constitutionally protected  
5 core political speech and therefore deters him and other public officers from exercising  
6 their First Amendment rights by chilling political speech. Once again, it is the use of  
7 government letterhead that indicates Antinoro engaged in conduct in his  
8 representative capacity, to which no First Amendment rights attach. Antinoro’s political  
9 endorsement performed in his private capacity may enjoy constitutional protection as  
10 protected speech, but his use of official government letterhead divests Antinoro of his  
11 constitutional claims.

12           Even accepting, arguendo, that Antinoro’s conduct constituted protected  
13 speech or that NRS 281A.400(7) somehow burdens or chills Antinoro’s core political  
14 speech, the burden is minimal when compared to Nevada’s compelling state interest  
15 in promoting ethical government and ensuring that public officers avoid conflicts of  
16 interest. See *Carrigan*, 129 Nev. Adv. Op. 95 at 10 (citing *Clingman v. Beaver*, 544  
17 U.S. 581, 586-87 (2005) (a reasonable, nondiscriminatory regulation that imposes an  
18 incidental burden on First Amendment rights is acceptable when justified by a state's  
19 important regulatory concerns). Additionally, the statute is narrowly tailored to further  
20 the state’s compelling interest. NRS 281A.400(7) is content-neutral and restricts the  
21 use of government property to benefit any significant personal interest, regardless of  
22 the nature or character of the interest or content of the message.

23           **III. Conclusion**

24           This case provides the Commission with an opportunity to restate and clarify  
25 the ethical boundaries applicable to the use of a government letterhead for personal  
26 purposes.

27           ///

28           ///

1 The undisputed facts in this matter support a finding that Antinoro willfully  
2 violated NRS 281A.400(7) and the Executive Director's Motion for Summary  
3 Judgment must therefore be granted. Accordingly, the Executive Director requests the  
4 imposition of a civil penalty not to exceed \$5,000 pursuant to NRS 281A.480(1)(a).

5 DATED this 21<sup>st</sup> day of March, 2017.

6 NEVADA COMMISSION ON ETHICS

7  
8 /s/ Judy A. Prutzman  
9 Judy A. Prutzman, Esq.  
10 Associate Counsel  
11 Nevada Commission on Ethics  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Nevada Commission on Ethics and that  
3 on this day in Carson City, Nevada, I transmitted via email, a true and correct copy of  
4 the **Opposition to Antinoro’s Cross-Motion for Summary Judgment and Reply in**  
5 **Support of Motion for Summary Judgment** in Third-Party Request for Opinion No.  
6 16-54C to the following parties:

7 Katherine F. Parks, Esq.  
8 Thorndal Armstrong, et al.  
9 6590 S. McCarran Blvd., #B  
Reno, NV 8950

Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)  
[psb@thorndal.com](mailto:psb@thorndal.com)  
[gantino@storeycounty.org](mailto:gantinoro@storeycounty.org)

10 *Attorney for Subject*

11  
12 Dated: March 21, 2017           /s/ Valerie M. Carter            
13 Employee, Nevada Commission on Ethics  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This Page Intentionally Left Blank



**STATE OF NEVADA**  
**BEFORE THE 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,

Request for Opinion No. 16-54C

Subject.

---

**GERALD ANTINORO'S REPLY IN SUPPORT OF HIS**  
**CROSS-MOTION FOR SUMMARY JUDGMENT**

1 Katherine F. Parks, Esq. - State Bar No. 6227  
2 Thorndal Armstrong Delk Balkenbush & Eisinger  
3 6590 S. McCarran Blvd., Suite B  
4 Reno, Nevada 89509  
5 (775) 786-2882  
6 [kfp@thorndal.com](mailto:kfp@thorndal.com)  
7 ATTORNEYS FOR GERALD ANTINORO

8 **STATE OF NEVADA**  
9 **COMMISSION ON ETHICS**

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

14 Subject.

Request for Opinion No. 16-54C

15 **GERALD ANTINORO'S REPLY IN**  
16 **SUPPORT OF CROSS-MOTION FOR**  
17 **SUMMARY JUDGMENT**

18 COMES NOW Subject, Gerald Antinoro, by and through his attorneys of record,  
19 Thorndal Armstrong Delk Balkenbush & Eisinger, and pursuant to NAC 281A.265, hereby  
20 submits his reply in support of his Cross-Motion for Summary Judgment.

21 **I**

22 **INTRODUCTION**

23 As the Commission is well aware, this matter arises out of one discreet action of Storey  
24 County Sheriff Gerald Antinoro that occurred on May 27, 2016. On that date, and in response to  
25 her request, Sheriff Antinoro prepared a three paragraph statement in support of Michele Fiori's  
26 unsuccessful bid for Clark County's Third Congressional District seat. Under the stipulated facts  
27 which govern this case, Ms. Fiori contacted Sheriff Antinoro by phone and requested his  
28 endorsement. *See*, Exhibit "A," to Antinoro's Opposition to Motion for Summary Judgment and  
Cross-Motion for Summary Judgment. Sheriff Antinoro prepared the three-paragraph statement  
attached as Exhibit 1 to the Executive Director's Motion for Summary Judgment. *Id.* The

1 statement was typed on a template of the Storey County Sheriff's Office. *Id.* Sheriff Antinoro  
2 prepared the statement of his personal computer, over the lunch hour, while he was at home, and  
3 it was emailed to Ms. Fiori from Sheriff Antinoro's private email account. *Id.*

4 It is uncontroverted, under the stipulated facts agreed to by the Commission, that Ms.  
5 Fiori used Sheriff Antinoro's statement in a YouTube video that was tweeted on Fiori's Twitter  
6 account, and that the statement was posted on Fiori's Facebook page on May 27, 2016, *without*  
7 *Sheriff Antinoro's knowledge.* *Id.* In fact, issues associated with the use of Sheriff Antinoro's  
8 statement by Ms. Fiori on social media were brought to the Executive Director's attention and a  
9 Notice of Additional Facts and Issues was prepared and summarily rejected in a Panel Decision  
10 dated October 27, 2016. The Panel's decision was unanimous and the Panel specifically held as  
11 follows:  
12  
13

14 "The Commission's investigation revealed that the Subject did not grant an advantage to  
15 himself or have a commitment in a private capacity to the interests of the candidate (NRS  
16 281A.400(2)), or use government resources or cause a governmental entity to incur any  
17 expense to support the candidate with respect to the video and the photo of the Subject, in  
uniform, which photo was used without the Subject's permission (NRS 281A.400(&) and  
NRS 281A.520)). Therefore, these allegations are dismissed."

18 Despite the unanimity of the Panel's decision in that regard, the Executive Director, in her  
19 opposition/reply, makes the following unfounded and gratuitous statement in the very  
20 introductory portion of her brief:  
21

22 "Sheriff Antinoro violated the Ethics in Government Law when he produced a letter of  
23 endorsement for Michelle Fiori, a candidate for U.S. Congress, on the official letterhead  
24 of the Storey County Sheriff's Office. The letter was electronically transmitted to Fiori,  
25 who included the letter in a video that was posted on her social media sites and viewable  
26 by more than 7,000 individuals."

27 *See, Executive Director's Opposition and Reply, page 1, lines 21-25.*

28 The Executive Director makes this statement despite the fact that there are no facts before  
the Commission which relate to the number of persons who supposedly had access to Sheriff  
Antinoro's statement via Ms. Fiori's social media pages. More to the point, the Executive

1 Director makes this statement despite the fact that it has already been determined that Sheriff  
2 Antinoro gave no permission whatsoever for Ms. Fiori to use the statement at issue on social  
3 media. The sole question to be determined by the Commission is whether Sheriff Antinoro's use  
4 of letterhead in making the statement at issue was in violation of NRS 281A.400(7). The  
5 Executive Director's references to social media and the number of persons who supposedly had  
6 access to Sheriff Antinoro's statement on same is wholly irrelevant and appears to be an attempt  
7 to obfuscate the single issue before the Commission.  
8

9       As if reference to the social media issue was not enough, the Executive Director goes  
10 further and suggests that, unless the Commission grants her motion for summary judgment, "the  
11 official letterheads of all public agencies could be *digitally reproduced and widely distributed*  
12 *electronically by any public officer or employee who wishes to use the letterhead for political*  
13 *purposes."* *Id.* at page 2, lines 14-16 (*emphasis added*).  
14

15       As shall be discussed in greater detail below, the fact that the Executive Director has  
16 asked the Commission to punish the Subject here based upon potential, future abuses by others  
17 of Chapter 281A keenly demonstrates how, and why, NRS 281A.400(7) is unconstitutionally  
18 overbroad and unconstitutional as-applied to Sheriff Antinoro under the circumstances at issue.  
19 Further still, this comment misrepresents the stipulated facts at issue in this case. It is  
20 uncontroverted that Sheriff Antinoro sent the statement in question to one person, and one person  
21 only, Ms. Fiori. In other words, the Executive Director has stipulated to the fact that the  
22 statement in question was not *widely distributed* by Sheriff Antinoro. This Commission is not at  
23 liberty to exercise its significant punitive authority against the Subject based upon the potential  
24 abuse of Chapter 281A by some unknown and unnamed public official. To the contrary, this  
25 Commission must, in accordance with the stipulated facts, determine whether the actions of  
26 Sheriff Antinoro taken on May 27, 2016, constituted the use of governmental time, property,  
27  
28



1 equipment or other facility to benefit a significant personal or pecuniary interest of the public  
2 officer such that it created the appearance of impropriety. *See*, NRS 281A.400(7).

3 Perhaps recognizing that the facts presented in this matter do not, by a preponderance of  
4 the evidence or otherwise, make out such a violation, the Executive Director focuses not on the  
5 conduct of Sheriff Antinoro at issue, but on the use by Ms. Fiori of the statement on social media  
6 and on the future perceived abuse by others should the Commission not find in her favor.  
7  
8 Indeed, the Executive Director warns that a contrary decision “will erode the Legislature’s  
9 directive for an appropriate separation between the roles of persons who are both public servants  
10 and private citizens.”

11  
12 This Commission is tasked with determining whether the actions of Sheriff Antinoro as  
13 set forth in the Stipulated Facts constitute a violation of NRS 281A.400(7) by a preponderance of  
14 the evidence. *See*, NRS 281A.480(9). The Executive Director’s invitation to the Commission  
15 that he go well beyond the stipulated facts and concern itself with more egregious facts as related  
16 to potential future abuses of Chapter 281A does not comport with the authority given to this  
17 Commission by the Legislature and such a result would be grossly unfair to the Subject of this  
18 action.  
19

## 20 II

### 21 LEGAL ANALYSIS

#### 22 I. The Executive Director misconstrues Sheriff Antinoro’s argument as to why and 23 how there is no violation of NRS 281A.400(7) in this matter.

24 *A. The statement does not constitute the use of “governmental time, property,*  
25 *equipment or other facility in violation of NRS 281A.400.*

26 In her opposition/reply, the Executive Director suggests that Sheriff Antinoro has asked  
27 the Commission to grant summary judgment in his favor merely because the statement at issue  
28 here was “digital” and was not reproduced on a physical piece of paper. While the fact that

1 Sheriff Antinoro did not even use governmental resources in the form of a sheet of paper is  
2 certainly relevant, he did not ask the Commission to make an exception for any and all digital  
3 communications. Again citing *In re Hammargren*, Comm'n Op. No. 95-35A (1996), as well as  
4 several similar opinions, the Executive Director argues that Sheriff Antinoro violated NRS  
5 281A.400(7) solely based upon his use of a template for his statement which bears the logo of  
6 the Storey County Sheriff's Office.  
7

8 At no point has Sheriff Antinoro argued that the mere fact that his statement was "digital"  
9 renders NRS 281A.400(7) inapplicable. Rather, Sheriff Antinoro demonstrated that the conduct  
10 at issue in *this case* is fundamentally different than that involved in the opinions relied upon by  
11 the Executive Director.  
12

13 In *Hammargren*, the Commission easily concluded that the then Lieutenant Governor's  
14 letter to all Nevada licensed physicians on the official state letterhead of his office on a topic  
15 about which Hammargren had expressed a personal (and pecuniary) interest before the Assembly  
16 Judiciary Committee violated state ethics laws.<sup>1</sup> Hammargren's letter was written on the official  
17 letterhead of his office, bore the address of his offices in both Carson City and Las Vegas,  
18 identified him as the Lieutenant Governor and president of the senate and was signed by "LT  
19 GOVERNOR LONNIE HAMMARGREN." *Hammargren, supra.* at p. 2/5.  
20

21 At no point in his opposition and cross-motion did Sheriff Antinoro ever suggest that, had  
22 Hammargren's letter been in "digital" form, it would not have violated NRS 281A.400(7).  
23 Rather, Sheriff Antinoro demonstrated the significant differences between the circumstances at  
24 bar and conduct which has previously been found unlawful by the Commission. The statement  
25 in question, while bearing the Sheriff's title and depicting a logo of the Storey County Sheriff's  
26 Office, was signed as "Gerald Antinoro," not as Gerald Antinoro, "Storey County Sheriff." The  
27  
28

<sup>1</sup>Hammargren was a licensed neurosurgeon and the subject of his letter was his advocacy of Assembly Bill 520 which called for sweeping changes to Nevada's medical malpractice statutes. At the time of the events in that case, Hammargren was actually involved in an ongoing medical malpractice case.

1 statement does not contain the address or telephone number of the Sheriff's Office. The  
2 statement in question is simply not akin to that at issue in *Hammargren*.

3 Nor does the Commission's opinion in *In re Tiffany*, Comm'n Op. No. 05-21 (2005), also  
4 cited by the Executive Director, support her opinion. In that case, a sitting state senator, Sandra  
5 Tiffany, had several conversations with an official with the State of Pennsylvania's Bureau of  
6 Unclaimed Property in her official capacity during which she promoted her personal business, an  
7 online auction service. While the Commission referenced the fact that Tiffany followed up her  
8 calls with a letter on her official letterhead, it noted with significance that one of the intended  
9 purposes of the letter was to promote Tiffany as the owner of her private business, thereby  
10 creating an appearance of impropriety. Such is not the case here.

11  
12  
13 Simply put, Sheriff Antinoro has not argued to the Commission that his actions in  
14 *emailing* the statement, rather than printing it out and mailing it to Ms. Fiori, renders his actions  
15 lawful under Chapter 281A. Rather, Sheriff Antinoro has demonstrated, based on prior decisions  
16 of the Commission, that the statement in question does not violate NRS 281A.400(7).

17  
18 ***B. Sheriff Antinoro's actions were not undertaken to benefit a "significant personal or  
19 pecuniary interest" within the meaning of NRS 281A.400(7).***

20 The Executive Director has also misconstrued Sheriff Antinoro's argument which  
21 addresses that part of the statute which requires the Executive Director to prove, by a  
22 preponderance of the evidence, that his actions were taken to benefit a "significant personal  
23 interest" and she does so with reference to the First Amendment. Specifically, the Executive  
24 Director suggests that Sheriff Antinoro *must* have had a significant personal interest in the  
25 endorsement letter at issue because he has argued that NRS 281A.400(7) violates core First  
26 Amendment rights. This argument completely misstates the issue.

27  
28 One of the elements which the Executive Director must prove in this case is that Sheriff  
Antinoro's use of governmental time, property, equipment or other facility was done to benefit a

1 *significant personal interest.* See, NRS 281A.400(7). The Executive Director has provided no  
2 evidence on this element but has, instead, asked the Commission to *assume* that Sheriff Antinoro  
3 had some *significant personal interest* in the election of Ms. Fiori. This evidence does not exist  
4 and NRS 281A.400(7) does not permit the Commission to assume it.

5  
6 Reference back to the Commission's decision in *Hammargren* and *Tiffany* is illustrative  
7 of this point. In *Hammargren*, the then Lieutenant Governor testified before the Judiciary  
8 Committee on the subject of AB 520. During his testimony, Hammargren declared that he was  
9 "emotionally involved" with the issues associated with AB 520 and commented that he was,  
10 "mad as Hell and was not going to take it anymore." *Hammargren, supra.* at p. 2/5. He gave  
11 further testimony about his own medical malpractice insurance premiums at a time when he was  
12 a defendant in a pending malpractice case. *Id.* In *Tiffany*, the Subject was found to have used  
13 Nevada State Senate letterhead to promote herself as the owner of her own private business. *In*  
14 *re Tiffany, supra.* at p. 3.

15  
16 While Sheriff Antinoro does not suggest that a public officer's motives must be so  
17 blatantly on display as they were in *Hammargren*, the existence of a *significant personal*  
18 *interest* simply cannot be glossed over or *assumed* by the Commission. All the evidence in this  
19 case demonstrates is that Ms. Fiori called Sheriff Antinoro and requested his endorsement. The  
20 burden of proof rests with the Executive Director on this issue and there is nothing contained  
21 within the stipulated facts which even addresses it.

22  
23  
24 As to this issue of "significant personal interest," the Executive Director's citation to, and  
25 reliance on, the Commission's opinion in *In re: Matson*, Comm'n Op. No. 14-70C, is puzzling  
26 but exemplifies how and why there is no such evidence in this case. The *Matson* case involved  
27 the actions of then Nye County Assessor Shirley Matson towards numerous individuals in and  
28 after January of 2014, when one of her subordinates, Sheree Stringer, informed her that she was

1 going to run against her for County Assessor. *Id.* at p. 14. Thereafter, “tensions increased”  
2 between Matson and Stringer. In March or April of 2014, Stringer admitted that she had placed  
3 a hidden camera in Matson’s office. *Id.* Matson discovered the camera in mid-August of 2014.  
4 *Id.* at p. 4. Later in August, Matson reported the hidden camera to Detective Joseph McGill. *Id.*  
5 Detective McGill’s wife, Tammy, worked part-time in the Assessor’s Office, and Matson was  
6 aware of their relationship. *Id.* at p. 5. At the completion of Detective McGill’s investigation,  
7 the Nye County District Attorney’s Office decided against the filing of any criminal charges  
8 against Stringer, and Matson was advised of this fact by Detective McGill in September of 2014.  
9 *Id.* As Detective McGill was leaving the Assessor’s office, Matson called Stringer into her  
10 office and advised her she was going to be terminated. *Id.* An hour later, Matson terminated  
11 Tammy McGill. *Id.*

14 In addition to the above, the Commission found that Matson, in violation of applicable  
15 regulations, ordered out-of-cycle appraisals on property owned by a number of Nye County  
16 officials, including those who had signed a petition to recall Matson in 2010. *Id.* at p. 6.

18 Ultimately, and not surprisingly, this Commission concluded that Matson had committed  
19 several willful violations of Chapter 281A. In so doing, the Commission found ample evidence  
20 of documented tensions between Matson and the officials whose property she had ordered be re-  
21 appraised in violation of regulations. *Id.* The Commission further found ample evidence that  
22 Matson had used her position to intimidate and harass her subordinates in a personnel context  
23 while in the midst of a campaign. *Id.* The Commission noted that Matson’s conduct implicated  
24 the “very underpinnings of the Ethics Law within the context of employment and personnel  
25 issues” and found that she had engaged in a series of activities motivated by her bid for re-  
26 election and personal retaliation. *Id.* at p. 10.

1 At page 6 of her opposition/reply, the Executive Director, citing to *Matson*, states the  
2 following: “[i]f the Commission found that a public officer’s personal animus towards co-  
3 workers is the type of ‘significant personal interest’ contemplated by NRS 281A.400(7), the  
4 Commission logically must conclude that Antinoro’s endorsement of a political candidate is also  
5 a significant personal interest within the meaning of NRS 281A.400(7).” *See*, Opposition/Reply,  
6 p. 6, lines 15-19. With all due respect to the Executive Director, this statement, and her reliance  
7 on *Matson* on this point is puzzling as the conduct at issue in that case could not be more  
8 diametrically opposed from that set forth in the stipulated facts in the case at bar. *Matson*  
9 terminated her political rival after being informed that the District Attorney’s Office would not  
10 prosecute her for placing a camera in her office. She then terminated the wife of the police  
11 detective who delivered her the bad news. Not to be outdone, she also ordered re-appraisals to  
12 be performed, in violation of regulations, on property owned by public officials who had signed  
13 a recall petition against her. Under such circumstances, the Commission had little trouble with  
14 the “significant personal interest” requirement of NRS 281A.400(7).  
15  
16  
17

18 Again, while Sheriff Antinoro does not suggest that conduct must be *so* blatant to rise to  
19 the level of *significant personal interest*, here, the record is totally devoid of such evidence.<sup>2</sup> As  
20 such, the Executive Director’s motion fails and judgment must be entered in favor of Sheriff  
21 Antinoro as a matter of law before consideration is even given to the exceptions set forth at NRS  
22 281A.400(7)(a)(1) through (4).  
23

24 ***C. Sheriff Antinoro’s actions do not create the appearance of impropriety and are not***  
25 ***in violation of NRS 281A.400(7).***

26 Although the stipulated facts in this case do not support a conclusion that Sheriff  
27 Antinoro used governmental resources to benefit a significant personal interest in violation of  
28

---

<sup>2</sup> At all times during the pendency of RFO 16-54C, Sheriff Antinoro has cooperated with the Commission. He appeared for an interview with Commission counsel and its investigator and answered all questions posed to him.

1 NRS 281A.400(7), application of the exceptions set forth in NRS 281A.400(7)(a)(1) through (4)  
2 provides further justification for an order granting summary judgment in his favor.

3 The Executive Director has admitted that Sheriff Antinoro's actions did not interfere with  
4 the performance of his public duties and that the cost or value related to the use was nominal.  
5 Thus, the requirements of NRS 281A.400(7)(a)(2) and (3) are not at issue.

6  
7 First, as to NRS 281A.400(7)(a)(1), the policy of the Storey County Sheriff's Office *does*  
8 permit exceptions to be made to the general rule that employees are restricted from endorsing a  
9 political campaign or initiative. *See*, Exhibit 5 to Subject's opposition and cross-motion for  
10 summary judgment. While the Executive Director is quick to note that the policy authorizes the  
11 Sheriff to make such exceptions, the policy in question goes well further and sets forth a list of  
12 considerations to be undertaken by the Sheriff, or authorized designee of the Sheriff, in making  
13 such exceptions, including: (a) whether the speech or conduct would negatively affect the  
14 efficiency of delivering public services; (b) whether the speech or conduct would be contrary to  
15 the good order of the Office or the efficiency or morale of its members; (c) whether the speech or  
16 conduct would reflect unfavorably upon the office; (d) whether the speech or conduct would  
17 negatively affect the member's appearance of impartiality in the performance of his/her duties;  
18 (e) whether similar speech or conduct has been previously authorized; and (f) whether the speech  
19 or conduct may be protected and outweighs any interest of the Office. *Id.* at p. 5, Section  
20 1060.60, Storey County Sheriff's Office Policy Manual. Based on the uncontroverted evidence,  
21 the requirements of NRS 281A.400(7)(a)(1) are met.

22  
23  
24  
25 Second, the evidence presented by Sheriff Antinoro demonstrates that there was no  
26 appearance of impropriety with respect to the statement at issue. Remarkably, in her opposition  
27 and reply, the Executive Director suggests that the Hatch Act, and opinions and decisions which  
28 relate to same, are irrelevant to this proceeding. She does so despite the fact that this

1 Commission relied upon the Hatch Act in the *Kirkland* matter as the very justification for placing  
2 limitations on Richard Kirkland's First Amendment rights. Here, although Storey County has  
3 not adopted what are routinely referred to as "little Hatch Acts," the Storey County Sheriff's  
4 Office policy discussed in the Stipulated Facts is such a policy. While Sheriff Antinoro did not  
5 argue that decisions of the U.S. Office of Special Counsel are binding on this Commission, the  
6 suggestion that they are irrelevant is misguided.  
7

8 One need look no further than this Commission's decision in *Kirkland* to apprehend the  
9 importance of the Hatch Act and decisions and opinions interpreting same to the analysis of the  
10 issues in the matter at bar. At issue in *Kirkland* were the actions of former Sheriff Kirkland in  
11 endorsing Justice James Hardesty during his campaign for the Nevada Supreme Court. The  
12 Commission outlined the question in *Kirkland* as whether Sheriff Kirkland's use of "any or all of  
13 his position, title, badge, uniform, facilities, deputies, or other accouterments in political  
14 advertisements endorsing the candidates of individuals might violate either NRS 281.481(2) or  
15 (7). *In re Kirkland*, Comm'n Op. No. 98-41 p. 2/5. The Commission further noted that, in order  
16 to decide this question, a "careful analysis of the Ethics in Government Law, the federal  
17 Constitution, federal statutes, case law, and the WCC" was necessary. *Id.* The Washoe County  
18 Code section at issue was WCC §5.341, also described by the Commission as Washoe County's  
19 version of a "little Hatch Act." *Id.* The language of WCC §5.341 is similar to that set forth in  
20 Storey County Sheriff's Office Policy No. 1060.  
21  
22

23  
24 At the outset of its analysis of the issues in *Kirkland*, the Commission recognized the  
25 importance of political speech as protected by the First Amendment of the United States  
26 Constitution. *Id.* The Commission then noted, however, that First Amendment limitations on  
27 the speech of government employees is permitted under the Hatch Act. *Id.* Specifically, the  
28 Commission noted the following:



1 "Many states, counties, and municipalities have adopted 'little Hatch Acts' that similarly  
2 seek to prohibit or limit the political activities of their employees. These 'little Hatch  
3 Acts' have been upheld under a variety of constitutional challenges."

3 *Id.*

4 Thus, despite the Executive Director's suggestion to the contrary, the Hatch Act and  
5 opinions interpreting same are far from irrelevant here.

6  
7 The facts at issue in *Kirkland* were fully discussed in Sheriff Antinoro's opposition and  
8 cross-motion for summary judgment and will not be described at length herein. However, it is  
9 indisputable that the scope of Sheriff Kirkland's conduct in appearing in television  
10 advertisements went far beyond the conduct at issue herein. Ultimately, the Commission found  
11 that, if government itself cannot endorse candidacies, then its elected officials could not create  
12 the impression of government sanction by doing so. *Id.* at p. 4/5. In so finding, the Commission  
13 noted that it was *for this reason* that the Hatch Act and little Hatch Acts prohibit or limit certain  
14 political activities of government actors. *Id.*

15  
16 The Commission would go on to hold that a public officer will not create an appearance  
17 of impropriety under the precursor to NRS 281A.400(7) by endorsing a person's candidacy if he  
18 or she uses his or her name and official title in an advertisement but that he or she would do so if,  
19 in the course of endorsing a person's candidacy, he or she uses the physical accouterments of  
20 office to bolster the endorsement. *Id.* "So, for example, a public officer should not use his  
21 uniform, badge, employees, private office, or other non-public facilities for the purposes of  
22 making an endorsement advertisement." *Id.* The Commission described the use by Sheriff  
23 Kirkland of his "uniform and badge" as the "critical difference." *Id.* Sheriff Antinoro did none  
24 of these things with respect to the statement at issue. The Commission decided *Kirkland* in  
25 1999.  
26  
27  
28

1           The U.S. Office of Special Counsel (OSC) is responsible for interpreting the Hatch Act  
2 and is the entity authorized to issue advisory opinions and investigate violations of the Hatch  
3 Act. *See*, 5 U.S.C. §1216(a)(2). While perhaps not binding authority on the Commission, the  
4 interpretation of the Hatch Act and its limitations on the speech of elected officials by the agency  
5 tasked with interpreting it is certainly not irrelevant.

6  
7           On February 29, 2012, the OSC issued a response to a request for an advisory opinion on  
8 the issue of whether an incumbent sheriff may wear his uniform to political events such as  
9 rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials.  
10 *See*, Exhibit "C" to opposition and cross-motion for summary judgment. In its opinion, the OSC  
11 began by noting that it had recently *reevaluated* issues associated with participation by elected  
12 officials in such conduct as it relates to the Hatch Act. *Id.* at p. 1. Specifically, the OSC stated  
13 that elected officials such as a sitting sheriff would not violate the Hatch Act by wearing their  
14 uniforms or using their titles while campaigning for reelection. *Id.* The OSC extended this  
15 reasoning to the actions of an elected sheriff while participating in campaign activities on behalf  
16 of other candidates running for office. Specifically, the OCS stated that an elected official who  
17 used his title when endorsing a partisan candidate and/or wore his or her uniform while  
18 campaigning for another candidate would not be in violation of the Hatch Act. *Id.* at p. 2.

19  
20  
21           In her opposition /reply, the Executive Director attempts to distinguish the OSC's opinion  
22 on a very similar subject by suggesting that it was limited to the question of whether an  
23 incumbent sheriff violates the Hatch Act by wearing his uniform to political events. *See*,  
24 Executive Director's opposition and reply, p. 7, lines 23-24. This argument lends a far too  
25 narrow reading of that decision and the OSC extended its rationale concerning the rights of  
26 incumbent sheriffs' to participate in the political process not only to in-person campaign events,  
27 but to campaign advertisements, and *political correspondence*.  
28

1 While the Commission is not bound to follow an advisory opinion of the OSC, when  
2 dealing with the issue of core political speech, it would certainly be appropriate to consider  
3 changing views of the permissible scope of the Hatch Act and, in turn, “little Hatch Acts”  
4 modeled after federal law.

5 Given all of the foregoing and, most notably, this Commission’s prior opinions, the  
6 Executive Director simply cannot demonstrate, by a preponderance of the evidence or otherwise,  
7 that the actions of Sheriff Antinoro in emailing the three paragraph statement to Ms. Fiori, a  
8 candidate running for office in Clark County, created the appearance of impropriety. Certainly,  
9 the evidence does not suggest that the statement in question in any way created an appearance  
10 that the Storey County Sheriff’s Office or Storey County endorsed Ms. Fiori. In fact, the  
11 Executive Director acknowledged as much in her opposition/reply when she argued that Sheriff  
12 Antinoro’s “use of a government resource for a political endorsement created an impropriety  
13 because it *may* indicate to the public that Fiore is endorsed by the entire Storey County Sheriff’s  
14 Office, not just Antinoro.” *See*, Executive Director’s opposition and reply, p. 3, lines 3-6.  
15  
16  
17  
18 (*Emphasis added*).

19 That an action *may* violate NRS 281A.400(7) is insufficient, as a matter of law, and the  
20 Commission must grant summary judgment in favor of Sheriff Antinoro in this matter.

21 **II. NRS 281A.400(7) is Unconstitutional**

22 The First Amendment of the United States Constitution provides that Congress “shall  
23 make no law . . . abridging the freedom of speech” and this prohibition is applicable to the states  
24 by virtue of the Fourteenth Amendment.<sup>3</sup> *See, Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1658  
25 (2015). The United States Supreme Court has repeatedly held that, “[t]he First Amendment has  
26 its fullest and most urgent application to speech uttered during a campaign for political office.”  
27  
28

---

<sup>3</sup>*See also*, Article 1, Section 9 of the Nevada Constitution.

1 *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2009). “As we have long recognized, speech  
2 about public issues and the qualifications of candidates for elected office commands the highest  
3 level of First Amendment protection.” *See, Eu v. San Francisco County Democratic Cent.*  
4 *Comm.*, 489 U.S. 214, 282 (1989). The Courts have cautioned that this principle requires them  
5 to “err on the side of protecting political speech rather than suppressing it.” *FEC v. Wis. Right to*  
6 *Life, Inc.*, 551 U.S. 449, 457 (2007). The United States Supreme Court has further held that an  
7 “exacting scrutiny” must be applied to laws restricting such speech. *Williams-Yulee, supra.* at  
8 1664. As such, in order for NRS 281A.400(7) to be used in such a way as to prohibit the  
9 political speech at issue, it must be shown that the statute is narrowly tailored to serve a  
10 compelling government interest. *Id.* at 1665. While the United States Supreme Court has held  
11 that the government has an interest in regulating the conduct and speech of its employees, in this  
12 case, that interest is outweighed by the wholesale infringement on the First Amendment rights of  
13 the Subject.

14  
15  
16 ***A. NRS 281A.400(7) is Unconstitutionally Vague***

17  
18 Chapter 281A does not contain any language prohibiting a public official from exercising  
19 his or her First Amendment right to free speech. Thus, the Executive Director asks the  
20 Commission to impose a tremendous burden on core First Amendment rights by application of  
21 NRS 281A.400(7). In her opposition/reply, the Executive Director, citing to the Nevada  
22 Supreme Court’s decision in *Carrigan v. Nev. Comm’n on Ethics*, suggests that the Commission  
23 need not give much credence to Sheriff Antinoro’s constitutional arguments in this matter  
24 because this case involves an ethics law, versus a criminal one. This commentary ignores the  
25 tremendous punitive power enjoyed by the Commission when it comes to its oversight of public  
26 officials. NRS 281A.480(1)(a) authorizes the Commission to impose on a public officer or  
27  
28

1 employee, or former public officer or employee, civil penalties of up to \$5,000.00 for a *first*  
2 willful violation of Chapter 281A.

3 Further, and significantly, NRS 281A.480(4)(c) provides as follows:

4 “*One or more* willful violations of this chapter have been committed by a public officer  
5 other than a public officer described in paragraphs (a) and (b), the willful violations shall  
6 be deemed malfeasance in office for the purpose of NRS 283.440 and the Commission:

7 (1) May file a complaint in the appropriate court for removal of the public officer  
8 pursuant to NRS 283.440 when the public officer is found in the opinion to have  
9 committed fewer than three willful violations of this chapter.

10 (2) Shall file a complaint in the appropriate court for removal of the public officer  
11 pursuant to NRS 283.440 when the public officer is found in the opinion to have  
12 committed three or more willful violations of this chapter.”

13 (*Emphasis added*).

14 Thus, while Chapter 281A is “civil” in nature, this Commission wields enormous power  
15 over those subject to it, including the power to seek the removal of the public official from  
16 office.

17 The vagueness doctrine requires legislatures to set reasonably clear guidelines for  
18 enforcement officials in order to prevent arbitrary and discriminatory enforcement of the law.  
19 *See, Smith v. Goguen*, 415 U.S. 566, 572-73 (1974). A vague statute is one which operates to  
20 hinder free speech through the use of language so vague as to allow the inclusion of protected  
21 speech in its prohibition or to leave the individual with no clear guidance as to the nature of the  
22 acts which are subject to punishment. “Where First Amendment rights are involved, an even  
23 greater degree of specificity is required.” *Id.* at 573. As discussed in Sheriff Antinoro’s  
24 opposition and cross-motion for summary judgment, nowhere in Chapter 281A are the terms  
25 “significant” or “personal” defined, nor is there guidance in the statute in terms of a definition  
26 for “appearance of impropriety.” *See*, NRS 281A.400(7) and Chapter 281A generally.  
27  
28

1 In her opposition/reply, the Executive Director cites to the Third Edition of the American  
2 Heritage College Dictionary and suggests that its definitions of these terms provides sufficient  
3 guidance to those covered by Chapter 281A to resolve any vagueness issue. However,  
4 substituting synonyms such as “meaningful” and “important” does nothing to place a Subject  
5 such as Sheriff Antinoro on notice that his conduct was unlawful nor do they offer any protection  
6 against arbitrary and discriminatory application of NRS 281A.400(7). The same is true of the  
7 dictionary definition of “personal” as cited by the Executive Director in her moving papers.  
8

9 The United States District Court has previously found that the terms “false,” “deceptive,”  
10 “misleading,” and “bad faith” as set forth within Nevada’s Ethics laws were so vague as to  
11 render NRS 281.525(1) and 281.551(2)(2) unconstitutional in violation of the First Amendment.  
12 *See, Dehne v. Avaino*, 219 F. Supp.2d 1096, 1102 (D. Nev. 2001). In her Report and  
13 Recommendation which was adopted on this issue by Judge David Hagen, United States  
14 Magistrate Judge Valerie Cooke pointed out that the terms described above were not clearly  
15 drawn and, that, “[i]f the Legislature wishes to trod on First Amendment ground and regulate  
16 speech, it must do so with the utmost specificity and clarity.” *See*, Exhibit “D,” Report and  
17 Recommendation of U.S. Magistrate Judge, August 6, 2001. The terms “significant personal  
18 interest” and “appearance of impropriety” are equally as vague as those discussed by the Court in  
19 *Dehne*. As such, NRS 281A.400(7) does not pass constitutional muster.  
20  
21

22 The Executive Director goes on to suggest that the vagueness problem incumbent in NRS  
23 281A.400(7) may be solved by reference to prior opinions of the Commission. Respectfully, the  
24 prior opinions of the Commission do not make clear that the conduct of Sheriff Antinoro would  
25 be in violation of the statute at issue. In fact, the Executive Director appears to recognize that  
26 such is the case when she invites the Commission to “restate and *clarify* the ethical boundaries  
27  
28

1 applicable to the use of government letterhead for personal purposes. *See*, Executive Director's  
2 opposition and reply, p. 12, lines 23-25. (*Emphasis added*).

3 ***B. NRS 281A.400(7) is unconstitutional as applied.***

4 Further, the use of NRS 281A.400(7) to punish the conduct at issue in this case is  
5 unconstitutional and in violation of the First Amendment of the United States Constitution as  
6 applied to Sheriff Antinoro. While the government may regulate speech of public employees to  
7 a greater extent than that of citizens at large, in this case, punishment of the core political speech  
8 of the Subject under the circumstances goes much too far. Sheriff Antinoro's three paragraph  
9 endorsement of Michele Fiore is unquestionably core political speech entitled to the highest level  
10 of First Amendment protection. *See, Eu, supra.* at 282. The endorsement goes no further than to  
11 identify the Subject as the Sheriff of Storey County, an action which is permissible even under  
12 the prior decisions of this Commission. The fact that the endorsement was typed on letterhead  
13 bearing the logo of the Storey County Sheriff's Office cannot be used by the Commission as a  
14 means of punishing Sheriff Antinoro's core First Amendment right to engage in speech on  
15 political issues and matters of public concern. To punish the conduct at issue here would be in  
16 gross violation of the First Amendment.  
17  
18  
19

20 ***C. NRS 281A.400(7) is unconstitutionally overbroad.***

21 NRS 281A.400(7) is further unconstitutional here under the overbreadth doctrine. A  
22 statute is overbroad when its language, given its normal meaning, is so sweeping that its  
23 sanctions may be applied to constitutionally protected conduct which the state is not permitted to  
24 regulate. *See, Dehne v. Avaino*, 219 F. Supp.2d 1096, 1102 (D. Nev. 2001). As the courts have  
25 recognized, the threat to free expression created by overbroad statutes is that, by potentially  
26 sweeping in constitutionally protected activity, individuals and groups may self-censor out of  
27  
28

1 fear of vindictive or selective protection. *See, Bates v. State Bar of Arizona*, 433 U.S. 350, 380  
2 (1977).

3 That NRS 281A.400(7) is constitutionally overbroad is apparent from even a cursory  
4 reading of the Executive Director's opposition and reply. Far from demonstrating that Sheriff  
5 Antinoro's conduct in this case was in violation of NRS 281A.400(7), the Executive Director  
6 points to the potential evils which would result from a finding in favor of the Subject *based upon*  
7 *future conduct of other persons*. The Executive Director suggests that, if the Commission does  
8 not find in her favor, it would allow the official letterhead of *all public officers* to be *digitally*  
9 *reproduced* and *widely distributed* electronically. *See*, Executive Director's opposition/reply, p.  
10 2, lines 14-16. She further argues that, "[w]ithout a clear line drawn with respect to this conduct,  
11 the Commission opens the door to a multitude of other limited uses of government resources for  
12 political purposes, particularly uses that involve government email and other electronic  
13 medium." *Id.* a p. 8, lines 19-22 and p. 9, lines 1-2.

14 Thus, the Executive Director asks the Commission not to focus on the conduct of the  
15 Subject in this case, but to render a decision to avoid purported future abuses by other public  
16 officials. There can be no clearer evidence that NRS 281A.400(7) is unconstitutionally  
17 overbroad in that the constitutionally protected activity of Sheriff Antinoro is being swept up in  
18 conduct which the Commission *may* regulate depending upon the circumstances. Such a result is  
19 not permissible under the First Amendment of the United States Constitution.  
20  
21  
22

#### 23 IV

#### 24 CONCLUSION

25 Based upon all of the foregoing, it is clear that (1) Sheriff Antinoro's actions were not in  
26 violation of NRS 281A.400(7) and (2) any attempt to apply NRS 281A.400(7) to the conduct at  
27 issue would violate the First Amendment of the United States Constitution. Certainly, there is  
28



1 insufficient evidence for the Commission to conclude that the actions at issue constitute a *willful*  
2 violation of NRS 281A.400(7). In that regard, there is one, single violation before the  
3 Commission in this case, the costs of the investigation are nominal (the only interview of which  
4 the undersigned is aware is that of the Subject), the parties agreed to brief the legal issues  
5 presented in this matter to the Commission, thereby avoiding any costs associated with a hearing,  
6 Sheriff Antinoro has cooperated fully with the investigation, the Executive Director concluded  
7 that there was no financial gain associated with the actions at issue, and there are no affected  
8 parties to whom restitution would be made. *See*, NRS 281A.475.  
9

10 Based on all of the following, Sheriff Antinoro respectfully requests that the Executive  
11 Director's motion for summary judgment be denied. Further, Sheriff Antinoro submits that the  
12 undisputed facts in this matter, when weighed under the preponderance of the evidence standard,  
13 compel the issuance of an order granting judgment in his favor as a matter of law.  
14

15 DATED this 27<sup>th</sup> day of March, 2017.

16 THORNDAL ARMSTRONG  
17 DELK BALKENBUSH & EISINGER

18 By: Katherine F. Parks

19 Katherine F. Parks, Esq.  
20 State Bar No. 6227

21 6590 S. McCarran Blvd., Suite B

22 Reno, Nevada 89509

23 (775) 786-2882

24 kfp@thorndal.com

25 ATTORNEYS FOR GERALD ANTINORO  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **GERALD ANTINORO'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT** to be served on all parties to this action by:

placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

electronic mail

personal delivery


facsimile (fax)

Federal Express/UPS or other overnight delivery

fully addressed as follows:

Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 <a href="mailto:ynevarez@ethics.nv.gov">ynevarez@ethics.nv.gov</a>	Judy A. Prutzman, Esq. Associate Counsel Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 <a href="mailto:jprutzman@ethics.nv.gov">jprutzman@ethics.nv.gov</a>
---	---

DATED this 27 day of March, 2017.

  
An employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

**EXHIBIT “D”**

**EXHIBIT “D”**

U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
ENTERED & SERVED

AUG 7 2001

CLERK U.S. DISTRICT COURT

5 *[Signature]* DEPUTY

FILED

01 AUG -6 PM 12: 22

LARKE S. WILSON

BY *[Signature]*  
DEPUTY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

8 SAM DEHNE, et al.,

9 Plaintiff(s),

10 vs.

11 SKIP AVANINO, et al.,

12 Defendant(s).

CV-N-99-0642-DWH (VPC)

REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE

13  
14 This Report and Recommendation is made to the Honorable David W. Hagen, United States  
15 District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.  
16 § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4. Before the court is defendants' motion for  
17 judgment on the pleadings or, in the alternative, motion for summary judgment (#36) ("defendants'  
18 motion for summary judgment"). Plaintiffs filed papers in opposition (#38) and filed a counter-motion  
19 for partial summary judgment (#39) ("plaintiffs' cross-motion for summary judgment").<sup>1</sup> Defendants  
20 replied in support of their motion (#40) and filed an opposition to plaintiffs' cross-motion for partial  
21 summary judgment (#41). Plaintiffs replied in support of their cross-motion for partial summary  
22 judgment (#44). The court reviewed the submissions and held oral argument on May 23, 2001. For  
23 the reasons stated below, the undersigned magistrate judge recommends that the District Court rule that  
24 plaintiffs are entitled to summary judgment, and that the defendants are not entitled to summary  
25 judgment or judgment on the pleadings.

26  
27 <sup>1</sup>Although the title of plaintiffs' motion is styled as one for partial summary judgment, the text  
28 of the motion and reply states that plaintiffs seek summary judgment, not partial summary judgment.  
Therefore, the court construes plaintiffs' motion (#39) as one for full summary judgment.

47



1 Nevada Revised Statutes § 281.551(2)(a) states:

2 2. In addition to other penalties provided by law, the commission may  
3 impose a civil penalty not to exceed \$5,000 and assess an amount equal  
4 to the amount of attorney's fees and costs actually and reasonably incurred  
5 by the person about whom an opinion was requested pursuant to NRS  
6 281.511, against a person who:

7 (a) Submits to the commission, in bad faith or with a  
8 vexatious purpose, an accusation or information that is  
9 false; . . .

10 Plaintiffs' complaint (#1) originally consisted of five counts; however, on August 29, 2000, the  
11 District Court entered an order (#25) granting in part the Commission's motion to dismiss counts three  
12 through five. The Court denied defendants' motion as to counts one and two to the extent they requested  
13 declaratory and prospective injunctive relief, since the Commission may apply N.R.S. §§ 281.511 and  
14 281.525 in the future.<sup>2</sup>

15 In their first claim for relief, plaintiffs seek an order from the court declaring N.R.S. §§ 281.525(2)  
16 and 281.551(2)(a) unconstitutional and for injunctive relief because they violate the First Amendment  
17 of the United States Constitution. Plaintiffs challenge these statutes as facially unconstitutional and  
18 overbroad in that they prohibit speech on matters of public concern, namely the alleged misconduct of  
19 public officials. In the second claim for relief, plaintiffs contend that these statutes are facially  
20 unconstitutional and infringe on fundamental Fourteenth Amendment rights because they provide no  
21 notice or opportunity to be heard before the Commission may impose a fine of up to \$5,000.00 against  
22 citizens who are found in violation of N.R.S. § 281.525(1), as the Commission did against plaintiff Dehne.  
23 Plaintiffs seek an order declaring N.R.S. §§ 281.525(1) and 281.551(2) unconstitutional and for  
24 permanent injunctive relief.

25 **II. Analysis**

26 **A. Summary Judgment Standard**

27 Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to  
28 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

---

<sup>2</sup> The Court granted the Commission's motion in part as to counts one and two only to the extent plaintiffs sought an order from the Court striking the fine imposed against plaintiff by the Commission.

1 issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.  
2 R. Civ. P. 56(c). The burden of demonstrating the absence of a genuine issue of material fact lies with  
3 the moving party. See *Zoslaw v. MCA Distr. Corp.*, 693 F.2d 870, 883 (9<sup>th</sup> Cir. 1982), cert. denied, 460  
4 U.S. 1085 (1983). For this purpose, the material lodged by the moving party must be viewed in the light  
5 most favorable to the nonmoving party. See *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 157 (1970);  
6 *Baker v. Centennial Ins. Co.*, 970 F.2d 660, 662 (9<sup>th</sup> Cir. 1992). A material issue of fact is one that affects  
7 the outcome of the litigation and requires a trial to resolve the differing versions of the truth. See *S.E.C.*  
8 *v. Seaboard Corp.*, 667 F.2d 1301, 1306 (9<sup>th</sup> Cir. 1982).

9       Once the moving party presents evidence that would call for judgment as a matter of law at trial  
10 if left uncontroverted, the respondent must show by specific facts the existence of a genuine issue for trial.  
11 See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

12               [T]here is no genuine issue of fact for trial unless there is sufficient  
13 evidence favoring the nonmoving party for a jury to return a verdict for  
14 the party. If the evidence is merely colorable, or is not significantly  
15 probative, summary judgment may be granted.

16 *Id.* at 249-50 (citations omitted). "A mere scintilla of evidence will not do, for a jury is permitted to draw  
17 only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation."  
18 *British Airways Board v. Boeing Co.*, 585 F.2d 946, 952 (9<sup>th</sup> Cir. 1978), cert. denied, 440 U.S. 981 (1979).  
19 Moreover, if the factual context makes the nonmoving party's claim implausible, that party must come  
20 forward with more persuasive evidence than otherwise would be necessary to show there is a genuine issue  
21 for trial. See *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *California*  
22 *Architectural Bldg. Products v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9<sup>th</sup> Cir. 1987), cert. denied,  
23 484 U.S. 1006 (1988).

24       The parties agree that the only issues for the court's consideration are whether N.R.S. §§  
25 281.525(1) and 281.551(2)(a) facially violate the First and Fourteenth Amendments. See Plaintiffs' cross-  
26 motion for summary judgment at p. 4 (#39); defendants' opposition to plaintiff's cross-motion for  
27 summary judgment at p. 2 (#41). Therefore, any issue of fact as to the nature of plaintiffs' particular  
28

1 activities is immaterial and is not an obstacle to the granting of summary judgment. See, e.g., *Village of*  
2 *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 627 (1980).

3 B. Facial Challenge

4 Plaintiffs raise a facial challenge to these statutes, which regulate statements made to the  
5 Commission about a public official for alleged ethical violations and which authorize the Commission  
6 to impose monetary penalties against citizens who violate the statutes. "Although facial challenges to  
7 legislation are generally disfavored, they have been permitted in the First Amendment context where  
8 the licensing scheme vests unbridled discretion in the decisionmaker and where the regulation is  
9 challenged as overbroad." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 223 (1990) (citing *City Council*  
10 *of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 798 and n. 15 (1984)). Litigants also have standing  
11 in First Amendment overbreadth cases to "challenge a statute by showing that it substantially abridges  
12 the First Amendment rights of other parties not before the court." *Village of Schaumburg v. Citizens for*  
13 *a Better Environment*, 444 U.S. 620, 634 (1980), accord, *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365,  
14 1368 (9th Cir. 1997), cert. denied, 523 U.S. 1047 (1998). This occurs "because of the possibility that  
15 protected speech or associative activities may be inhibited by the overly broad reach of the statute."  
16 *Village of Schaumburg*, 444 U.S. at 634. The court finds that plaintiffs' claims are grounded on the First  
17 Amendment, and they may argue the impact of the statutes on their own expressive activities, as well  
18 as those of others. *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 66 (1981). Thus, plaintiffs have  
19 standing to bring a facial challenge to these statutes.

20 C. Level of Scrutiny

21 "The First Amendment generally prevents the government from proscribing speech . . . because  
22 of disapproval of the ideas expressed." *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377, 382 (1992)  
23 (citations omitted). Content-based laws are presumptively invalid. *Id.* (citing *Simon & Schuster, Inc. v.*  
24 *Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991)). Therefore, the initial inquiry must  
25 be whether the statute regulating the speech is content-neutral; that is, whether the state can justify it  
26 without reference either to the content of the speech it restricts or to the direct effect of that speech on  
27



1 listeners. *Ward v. Rock Against Racism*, 491 U.S. 781, 791-92 (1989); see also *Lind v. Grimmer*, 30 F.3d  
2 1115 (9th Cir. 1994), cert. denied, *Wang v. Lind*, 513 U.S. 1111 (1995).

3 The Commission is generally charged with oversight of the ethical conduct of public officials in  
4 the State of Nevada. N.R.S. § 281.471. This includes reviewing and investigating requests for opinions  
5 made by citizens to the Commission regarding allegations that a public official has breached the code of  
6 ethical standards established by N.R.S. § 281.481. See generally N.R.S. §§ 281.465 and 281.511. The  
7 purposes of N.R.S. §§ 281.525(1) and 281.551(2)(a) are to "regulate against false statements of fact"  
8 and to "prohibit [the making of] false statements in the context of petitioning the commission for redress  
9 against a public official." Defendants' motion for summary judgment at p. 7, lines 14-15 (#36);  
10 defendants' reply in support of motion for summary judgment at p. 5, lines 23-24 (#s 40-41).

11 In *Lind v. Grimmer*, 30 F.3d 1115 (9th Cir. 1994), cert. denied, *Wang v. Lind*, 513 U.S. 1111 (1995),  
12 the court considered the content-neutrality of a Hawaii statute regulating speech concerning alleged  
13 campaign spending violations in light of the purposes of the statute, which included preventing candidates  
14 and their supporters from being "unduly tarred by a vindictive complaint," and "to prevent the  
15 Commission's credibility from being invoked to support 'scandalous charges.'" *Id.* at 1117-18. The court  
16 said:

17 Because these concerns all stem from the direct communicative impact  
18 of speech, we conclude that section 11-216(d) regulates speech on the  
19 basis of its content. Moreover, the speech it restricts, speech about  
20 political processes and governmental investigations of wrongdoing by  
21 public officials, falls near to the core of the First Amendment. See *New*  
22 *York Times v. Sullivan*, 376 U.S. 254, 270-71, 84 S. Ct. 710, 720-21, 11  
23 L.Ed.2d 686 (1964). Therefore, the statute is presumptively  
24 unconstitutional. See *R.A.V. v. City of St. Paul*, 505 U.S. 377, ---, 112 S.Ct.  
25 2538, 2542, 120 L.Ed.2d 305 (1992). It will survive scrutiny only if it is  
26 narrowly drawn and is necessary to serve a compelling state interest, *Boos*  
27 *v. Barry*, 485 U.S. 312, 321, 108 S.Ct. 1157, 1164, 99 L.Ed.2d 333 (1988),  
28 or if the speech it regulates otherwise is undeserving of full protection, see,  
e.g., *R.A.V.*, 505 U.S. at ---, 112 S.Ct. at 2543 (listing categories); *Seattle*  
*Times Co. v. Rhinehart*, 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d 17  
(1984) (devaluing information acquired through civil discovery).

1 *Id.* at 1118. This court finds *Lind v. Grimmer* compelling. As with the Hawaii statute, the Nevada  
2 statutes seek to regulate speech that is not content-neutral because the asserted purposes for these statutes  
3 stem from the "direct communicative impact of speech." *Id.* These statutes are designed to prohibit  
4 speech based upon its content and its effect upon listeners. Like the Hawaii statute, the Nevada statutes  
5 regulate speech about allegations of wrongdoing of public officials, which, indeed, "falls near to the core  
6 of the First Amendment." The court must now decide whether N.R.S. §§ 281.525(1) and 281.551(2)(a)  
7 are narrowly drawn and necessary to serve a compelling state interest, or whether the speech being  
8 regulated is unprotected speech.

9 1. *Whether the speech proscribed by N.R.S. §§ 281.525(1) and*  
10 *281.551(2)(a) is protected under the First Amendment*

11 The Commission contends that the speech these statutes regulate is not protected speech because  
12 N.R.S. § 281.525(1) prohibits the making of false, deceptive, or misleading statements to induce the  
13 Commission to take action against a public official, and N.R.S. § 281.551(2)(a) prohibits citizens from  
14 submitting to the Commission "in bad faith or with a vexatious purpose, an accusation or information  
15 that is false." Unlike truthful statements, false statements of fact do not enjoy First Amendment  
16 protection, since "there is no constitutional value in false statements of fact." *Gertz v. Robert Welsh, Inc.*,  
17 418 U.S. 323, 340 (1974). However, although false statements may be deemed unprotected speech in  
18 some instances, this general constitutional maxim does not apply to statements made about the conduct  
19 of public officials. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). In *New York Times*, the United  
20 States Supreme Court held that even false statements made about public officials are protected unless  
21 it can be shown that the statements were made "with 'actual malice' - that is, with knowledge that it was  
22 false or with reckless disregard that it was false or not." *Id.* at 279-80.

23 The *New York Times* standard for criticism of public officials stems from "a profound national  
24 commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,  
25 and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government  
26 and public officials." *Id.* at 270-71 (citations omitted). The Court analogized the conditional privilege  
27 of criticism of official conduct with the protection afforded a public official when he or she is sued for  
28

1 libel by a private citizen and noted that in *Barr v. Mateo*, 360 U.S. 564, 575 (1959), the Court held  
2 statements of federal officials to be absolutely privileged if made within the scope of his or her duties.

3           The reason for the official privilege is said to be that the threat of damage  
4 suits would otherwise 'inhibit the fearless, vigorous, and effective  
5 administration of the policies of government' and 'dampen the ardor of all  
6 but the most resolute, or the most irresponsible, in the unflinching  
7 discharge of their duties.' *Barr v. Mateo*, *supra*, 360 U.S. at 571, 79 S.Ct.,  
8 at 1339, 3 L.Ed.2d 1434. Analogous considerations support the privilege  
9 for the citizen-critic of government. It is as much his duty to criticize as  
10 it is the official's duty to administer....It would give public servants an  
11 unjustified preference over the public they serve, if critics of official  
12 conduct did not have a fair equivalent of the immunity granted to the  
13 officials themselves. We conclude that such a privilege is required by the  
14 First and Fourteenth Amendments.

15 *New York Times Co. v. Sullivan*, 376 U.S. 254 at 282-83 (citations omitted).

16           This court rejects the Commission's arguments that the *New York Times* standard does not apply  
17 to these statutes, which plainly regulate citizens' speech about public officials. The Commission maintains  
18 that the *New York Times* standard is limited only to cases in which a public official brings suit for  
19 defamatory statements published by the media but offers no citation to authority in support of that  
20 proposition. The Supreme Court has considered the application of the *New York Times* standard in a  
21 variety of contexts, most particularly in *Garrison v. Louisiana*, 379 U.S. 64 (1964). In that case, the  
22 question was whether Louisiana's criminal defamation statute unconstitutionally abridged the district  
23 attorney's right to criticize state court judges at a press conference. *Id.* In finding the Louisiana statute  
24 unconstitutional, the Court held that "only those false statements made with the high degree of awareness  
25 of their probable falsity demanded by *New York Times* may be the subject of either civil or criminal  
26 sanctions." *Id.* at 74.

27           In light of the Court's extension of the *New York Times* standard in *Garrison v. Louisiana* to  
28 legislatively-created standards that restrict criticism of public officials, this court rejects the notion that  
the *New York Times* standard is limited solely to private defamation suits brought by a public official made  
or published in the media.

          This court also rejects the Commission's contention that *McDonald v. Smith*, 472 U.S. 479 (1985),  
and not *New York Times Co. v. Sullivan*, is the controlling authority in plaintiffs' challenge of these

1 statutes. The issue in *McDonald v. Smith* was whether the Petition Clause provides absolute immunity  
2 to a defendant charged with expressing libelous and damaging falsehoods in petitions to government  
3 officials. 472 U.S. 479 (1985). In holding that the Petition Clause does not provide such absolute  
4 immunity, the Court said that "there is no sound basis for granting greater constitutional protection to  
5 statements made in a petition to the President than other First Amendment expressions." *Id.* at 485.  
6 Plaintiffs' challenge here does not rest on a claim that plaintiff Dehne, or any other citizen who lodges  
7 a complaint with the Commission in the future, has absolute immunity to make false statements about  
8 public officials pursuant to the Petition Clause; therefore, *McDonald v. Smith* does not control.

9 The Commission's argument that N.R.S. §§ 281.525(1) and 281.551(2)(a) do not proscribe  
10 protected speech is based upon a misconception of the effect of these statutes. A statute that regulates  
11 speech critical of public officials and which implicitly requires the critic to guarantee the truth of every  
12 factual assertion made to the Commission on pain of statutorily imposed civil liability (and potential  
13 criminal liability) results in self-censorship and discourages public debate. These statutes are not content-  
14 neutral laws of general applicability, but are, like the campaign spending statutes in *Lind v. Grimmer*,  
15 "intended to impose direct and significant restrictions on speech." 30 F.3d 1115 at 1118. The underlying  
16 principle of the *New York Times* standard is the protection of open public debate critical of official  
17 conduct, and it applies with equal force when the legislative branch attempts to regulate citizens'  
18 comments through a legislatively-created commission. This court finds that N.R.S. §§ 281.525(1) and  
19 281.551(2)(a) regulate protected speech, and that the *New York Times* standard governs consideration  
20 of the constitutionality of the statutes.

21 2. *Whether N.R.S. §§ 281.525(1) and 281.551(2)(a)*  
22 *serve a compelling state interest*

23 The Commission is charged with investigating and taking appropriate action against alleged  
24 violations of Nevada's ethics in government laws by public officers or employees. Nevada's statutory  
25 scheme creates a public forum for the investigation and review of ethics complaints, but also attempts  
26 to protect public officials from complaints based upon false statements or those motivated by bad faith  
27  
28

1 or ill will. The statutes endeavor to strike a balance between these competing, legitimate interests, and  
2 the court finds that the statutes serve a compelling state interest.

3 3. *Whether N.R.S. §§ 281.525(1) and 281.551(2)(a) are narrowly*  
4 *drawn and comport with the New York Times standard*

5 “Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must  
6 be the touchstone. . . .” *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637  
7 (1980) (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)). A statute may be deemed constitutionally  
8 overbroad if a law is written so broadly that it inhibits protected speech. *City Council of Los Angeles v.*  
9 *Taxpayers for Vincent*, 406 U.S. 789, 796 (1984). Moreover, because these statutes regulate speech  
10 critical of public officials, the *New York Times* standard requires that the speech regulated by the statutes  
11 must be made with “actual malice” – that is, with ... reckless disregard of whether it was false or not.”  
12 *New York Times Co. v. Sullivan*, 376 U.S. 254 at 279. This court finds that these statutes do not satisfy  
13 these standards.

14 a. The New York Times Standard

15 Nevada Revised Statutes § 281.525(1) makes statements unlawful which are “known or through  
16 the exercise of reasonable care should be known to be false, deceptive or misleading,” and N.R.S. §  
17 281.551(2)(a) punishes not only false statements, but also those found to be vexatious or made in bad  
18 faith. This language falls short of the *New York Times* standard because N.R.S. § 281.525(1) employs  
19 a “reasonable care” standard as opposed to the higher “reckless disregard” standard required by *New York*  
20 *Times Co. v. Sullivan*. 376 U.S. 254 at 279. Nevada Revised Statutes § 281.551(2)(a) employs no  
21 standard at all. “[R]eckless conduct is not measured by whether a reasonably prudent man would have  
22 published, or would have investigated before publishing. There must be sufficient evidence to permit  
23 the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.  
24 Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.”  
25 *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). If the legislature wishes to regulate speech critical  
26 of public officials, such statutes must incorporate the “actual malice” standard. *Id.*; *New York Times*, 376  
27 U.S. 254 at 279. Nevada Revised Statutes § 281.551(2)(a) is also defective because it has no standard

1 at all by which the Commission may evaluate statements it may deem untrue, vexatious, or made in bad  
2 faith.

3 b. Vagueness

4 To enable citizens to steer between lawful and unlawful conduct, "we insist that laws give the  
5 person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he [or she]  
6 may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Vague laws that may be  
7 a trap for the unwary are disfavored, particularly when the statute at issue "abut(s) upon sensitive areas  
8 of basic First Amendment freedoms" and it may "inhibit the exercise of (those) freedoms." *Id.* at 109  
9 (citations omitted). The question then is whether the boundaries of N.R.S. §§ 281.525(1) and  
10 281.551(2)(a) are clearly drawn. It is this court's view that they are not. The terms "false," "deceptive,"  
11 "misleading," and "bad faith" are not defined, which is of great importance because the statutes seek  
12 to regulate speech critical of public officials. If the legislature wishes to trod on First Amendment ground  
13 and regulate such speech, it must do so with the utmost specificity and clarity. There lies in the plain  
14 meaning of these statutes the potential to punish protected expression about the conduct of public  
15 officials, along with the equally troubling prospect of subjective or discriminatory enforcement. "A vague  
16 law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad  
17 hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.* at  
18 108-09.

19 c. Overbreadth

20 Plaintiffs also challenge N.R.S. §§ 281.525(1) and 281.551(2)(a) as overbroad because they are  
21 content-based laws which proscribe more speech than is necessary to fulfill a compelling state interest.  
22 *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637 (1980). To find that a statute  
23 is overbroad, "there must be a realistic danger that the statute itself will significantly compromise  
24 recognized First Amendment protections of parties not before the Court . . ." *City Council of Los Angeles*  
25 *v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984) (citations omitted). These statutes may have the  
26 general effect of chilling citizens' willingness to lodge complaints about possible ethical violations by public  
27 officials. The obvious intent of the statutes is to discourage citizens from filing false allegations of ethical

1 misconduct about public officials with the motive to harass public officials and damage their reputations.  
2 However, the statutes go beyond that compelling state interest. For example, a citizen may file a  
3 complaint about an official's alleged ethical misconduct that he or she believes is true. Even if the  
4 allegations are deemed true, the Commission may decide they are in some way deceptive or misleading;  
5 hence, the citizen may be subject to criminal and civil penalties. Nevada Revised Statutes §  
6 281.551(2)(a) authorizes the Commission to adjudge whether a citizen is motivated by bad faith or is  
7 acting with a vexatious purpose in filing an ethics complaint. Even if the allegations of the complaint  
8 are true, a citizen may nevertheless be charged with a misdemeanor or a fine of up to \$5,000.00 because  
9 the Commission finds the complaint was lodged in bad faith or for a vexatious purpose. The Commission  
10 is entitled to serve legitimate state interests, "but it must do so by narrowly drawn [statutes] designed  
11 to serve those interests without unnecessarily interfering with First Amendment freedoms." *Village of*  
12 *Schaumburg*, 444 U.S. 620 at 637 (citations omitted). This court finds these statutes overbroad because  
13 they proscribe more speech than is necessary and there is a realistic potential that they will discourage  
14 protected speech.

15 **D. Procedural Due Process**

16 Apart from plaintiffs' challenge to the constitutionality of the statutes pursuant on First  
17 Amendment grounds, they also contend that the statutes violate the Fourteenth Amendment because  
18 the statutory framework offers no procedural due process by which a citizen is given notice of a violation  
19 of the statutes, and citizens are afforded no hearing prior to imposition of a fine or referral to the district  
20 attorney or attorney general. N.R.S. 281.525(3). Plaintiffs are correct.

21 In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (citation omitted), the Supreme Court identified  
22 three factors to determine whether a procedural due process violation has occurred:

23 First, the private interest that will be affected by the official action;  
24 second, the risk of an erroneous deprivation of such interest through the  
25 procedures used, and the probable value, if any, of additional or substitute  
26 procedural safeguards; and finally, the Government's interest, including  
27 the function involved and the fiscal and administrative burdens that the  
28 additional or substitute procedural requirement would entail.

1 The private interest at issue here is the loss of the First Amendment right of free expression, the loss of  
2 which has been held to constitute irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Jacobsen*  
3 *v. United States Postal Service*, 812 F.2d 1151, 1154 (9th Cir. 1987). In addition, N.R.S. § 281.525(2)  
4 characterizes a violation of N.R.S. § 281.525(1) as a misdemeanor. Not only does a citizen stand to lose  
5 his or her First Amendment rights, but also faces a misdemeanor criminal penalty and a fine of up to  
6 \$5,000.00.

7 As to the second factor, the statutes provide neither notice of the Commission's intention to  
8 impose the sanctions allowed, nor do they provide for a hearing. The value of additional procedural  
9 safeguards is obvious. Notice of the Commission's finding that a citizen has violated N.R.S. 281.525(1),  
10 a procedure for filing a response to the notice, the opportunity for a hearing, and providing a citizen the  
11 opportunity to secure counsel are additional safeguards that should be implemented before depriving a  
12 person of the property interests described above.

13 The third factor concerns the government's interest, fiscal and otherwise, that will result if  
14 additional procedural safeguards are implemented. The Commission offered no evidence that providing  
15 notice and a hearing before imposing a penalty would unduly burden the Commission, and the court does  
16 not view such a procedure as unduly expensive or burdensome.

17 The Supreme Court has repeatedly held that "some form of hearing is required before an  
18 individual is finally deprived of a property interest," and that a basic tenet of due process "is the  
19 opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424  
20 U.S. 319, 333 (1976) (citations omitted). The importance of such safeguards is particularly important  
21 here, where the legislature seeks to regulate speech critical of public officials. In *St. Amant v. Thompson*,  
22 390 U.S. 727, 730-31 (1968), the Court held that under the *New York Times* malice standard, the finder  
23 of fact must establish by sufficient evidence that the statement was either a deliberate falsification, or  
24 there was evidence of reckless publication "despite the publisher's awareness of probable falsity. . . ."  
25 Here, the importance of a hearing is especially compelling because "reckless conduct is not measured  
26 by whether a reasonably prudent man would have published, or would have investigated before publishing.  
27 There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious



1 doubt as to the truth of his publication." *Id.* at 731. Because the statutes provide for no notice or an  
2 evidentiary hearing, the Commission cannot determine actual malice and must instead rely on its  
3 members' own perceptions of the citizen's intent in filing an ethics complaint. The court finds that  
4 process violates the Fourteenth Amendment and is unconstitutional.

5 E. Conclusion

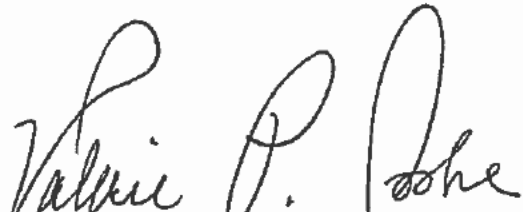
6 Nevada Revised Statutes §§ 281.525(1) and 281.551(2)(a) are unconstitutional both on their  
7 face and as applied to plaintiff Dehne. These statutes are also unconstitutionally overbroad, and they  
8 violate the Due Process provisions of the Fourteenth Amendment. Plaintiffs' cross-motion for summary  
9 judgment (#39) is granted, and it is recommended that judgment be entered declaring N.R.S. §§  
10 281.525(1) and 281.551(2)(a) violate the First and Fourteenth Amendments to the United States  
11 Constitution, and that permanent injunction issue enjoining enforcement of these statutes. It is  
12 recommended that defendants' motion for summary judgment (#36) be denied.

13 RECOMMENDATION

14 IT IS THEREFORE RECOMMENDED that the District Court enter an order GRANTING  
15 plaintiffs' cross-motion for summary judgment (#39) and that judgment be entered declaring N.R.S. §§  
16 281.525(1) and 281.551(2)(a) violate the First and Fourteenth Amendments to the United States  
17 Constitution, and that permanent injunction issue enjoining enforcement of these statutes.

18 IT IS FURTHER RECOMMENDED that defendants' motion for summary judgment (#36)  
19 be DENIED.

20 DATED: August 6, 2001.

21   
22 \_\_\_\_\_  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28

This Page Intentionally Left Blank





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,

Request for Opinion No. **16-54C**

\_\_\_\_\_  
Subject. /

**UPDATED NOTICE OF HEARING**  
**(LOCATION)**

**PLEASE TAKE NOTICE**, the Nevada Commission on Ethics ("Commission") has duly scheduled a hearing for oral argument on **Wednesday, April 19, 2017** to consider any stipulations or dispositive motions presented by the Parties. This notice provides updated information on the location of the hearing.

**THE HEARING WILL TAKE PLACE:**

**Wednesday, April 19, 2017 at 9:00 a.m.,**  
or as soon thereafter as the Commission is able to hear the matter, at the  
following location:

**Nevada Commission on Tourism  
Laxalt Building - Second Floor Chambers  
401 North Carson Street  
Carson City, NV 89701**

All other provisions in this matter previously noticed in the *First-Amended Notice of Hearing and Scheduling Order* issued on January 5, 2017, remain in effect.

DATED: April 5, 2017

/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 **UPDATED NOTICE OF HEARING (LOCATION)** in Request for Opinion No. **16-54C**, via email, to the Parties and interested persons 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](mailto:ynevarez@ethics.nv.gov)

Judy A. Prutzman, Esq.  
Associate Counsel  
Nevada Commission on Ethics  
704 W. Nye Lane, Suite 204  
Carson City, Nevada 89703

Email: [jprutzman@ethics.nv.gov](mailto:jprutzman@ethics.nv.gov)

Katherine F. Parks, Esq.  
Thorndal Armstrong et al  
6590 S. McCarran Blvd., #B  
Reno, NV 8950

Email: [kfp@thorndal.com](mailto:kfp@thorndal.com)  
Cc: [psb@thorndal.com](mailto:psb@thorndal.com)  
Cc: [gantinoro@storeycounty.org](mailto:gantinoro@storeycounty.org)

*Attorney for Subject*  
*Gerald Antinoro*

Rick R. Hsu, Esq.  
Maupin Cox Legoy, Attorneys at Law  
P.O. Box 30000  
Reno, NV 89520

Email: [rhu@mclrenolaw.com](mailto:rhu@mclrenolaw.com)

*Attorney for Requester*  
*Kris Thompson*

DATED: April 5, 2017

  
\_\_\_\_\_  
An employee, Nevada Commission on Ethics