



**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, May 9, 2018 at 9:30 a.m.
PLACE OF MEETING: This meeting will be held at the following locations:

**Grant Sawyer State Building
Suite 5400
555 E. Washington Avenue
Las Vegas, NV 89101**

and via video-conference to:

**Governor's Office of Economic Development
808 W. Nye Lane
Carson City, NV 89703**

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 public meeting and again before the conclusion of the public 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.

	1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.
	2. Public Comment. Comment by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
For Possible Action	3. Approval of Minutes of the March 21, 2018 Commission Meeting and the April 18, 2018 Regulation Workshop.
For Possible Action	4. Discussion and approval of a Proposed Stipulation concerning Ethics Complaint No. 17-26C regarding Jeffrey Witthun, Director, Family Support Division, Clark County District Attorney's Office, State of Nevada.

For Possible Action	5. Consideration and approval of Bill Draft Request Concepts submitted to the Office of the Governor based upon recommendations of the Executive Director pursuant to NRS 281A.240(1)(d).
For Possible Action	6. Report by Executive Director on agency status and operations and possible direction thereon. Items to be discussed include: <ul style="list-style-type: none"> • Proposed Regulations for submission to the Legislative Counsel Bureau • Interim Salary Study (S.C.R. 6) Update • Public Records Policy • Education and Outreach by the Commission • Commission Appointments • Meeting Schedule • FY18 Budget Update
	7. Commissioner comments and identification of future agenda items. No action will be taken under this agenda item.
	8. 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.
	9. Adjournment.

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 or call 775-687-5469 as far in advance as possible.
- ❖ To request an advance copy of the supporting materials for any agenda item, contact Executive Director Yvonne M. Nevarez-Goodson, Esq. at ncoe@ethics.nv.gov or call 775-687-5469.
- ❖ This Agenda and supporting materials are posted and available not later than the 3rd 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. 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>
- Nevada Legislative Counsel Bureau website: <https://www.leg.state.nv.us>
- State Library & Archives Building, 100 North Stewart Street, Carson City
- Blasdel Building, 209 E. Musser Street, Carson City
- Washoe County Administration Building, 1001 East 9th 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**

The Commission on Ethics held a public meeting on
Wednesday, March 21, 2018, at 9:30 a.m.
at the following locations:

**Nevada Legislative Building
Room 3138
401 S. Carson Street
Carson City, NV 89701**

and via video-conference to:

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

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 and Roll Call.

Chair Cheryl A. Lau, Esq. called the meeting to order in Carson City, Nevada at 9:30 a.m. Also present in Carson City were Vice-Chair Keith A. Weaver, Esq. and Commissioners Barbara Gruenewald, Esq. and Philip K. O'Neill. Commissioner Brian Duffrin appeared telephonically. Present for Commission staff in Carson City were Executive Director Yvonne M. Nevarez-Goodson, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Judy Prutzman, Esq., and Senior Legal Researcher Darci Hayden. Commissioner Amanda Yen was excused.

The pledge of allegiance was conducted.

3. Approval of Minutes of the January 17, 2018 Commission Meeting.

This item was taken out of order. Commissioner Gruenewald moved to accept the January 17, 2018 Minutes as presented, Commissioner O'Neill seconded the motion. Vice-Chair Weaver was excused from the vote due to his absence at the January meeting. The Motion was put to a vote and carried unanimously.

4. Acceptance and possible direction on the Executive Director's report regarding the Review Panel's approval of a Deferral Agreement in Ethics Complaint No. 17-23C concerning Kurt Carson, Council Member, City of Ely, State of Nevada.

This item was taken out of order. Kurt Carson, City of Ely Council Member and Mr. Carson's counsel, Charles Odgers, Esq., Ely City Attorney, appeared before the Commission telephonically. Mr. Odgers stated that Mr. Carson had taken steps to ensure that he does not violate any provisions of NRS Chapter 281A in the future. Chair Lau explained that the purpose for this Agenda item is informational only and confirmed that the Review Panel had approved the Deferral Agreement.

Executive Director Yvonne M. Nevarez-Goodson, Esq. presented an overview of the purpose of her report on the Deferral Agreement based upon amendments enacted in Senate Bill 84 in the 2017 Legislative Session, which changed the Commission's two-member investigatory panel to a three-member review panel. The change provided the three-member review panel with the authority to approve deferral agreements entered into between the Executive Director and the subject of any complaint. However, Executive Director Nevarez-Goodson explained that the Commission did not have the authority to overturn those deferral agreements or otherwise change the terms of those deferral agreements. Nevertheless, Executive Director Nevarez-Goodson wanted to inform the Commission of all review panel decisions regarding deferral agreements currently in effect.

In Ethics Complaint Case No. 17-23C, Executive Director Nevarez-Goodson reported the deferral agreement process defers any finding of a violation through the imposition of various terms and conditions on future conduct, including education, and in this case, provided an avenue of education and clarification of the Ethics Law for Mr. Carson, who was otherwise cooperative with the investigation. Executive Director Nevarez-Goodson stated that the Review Panel required Mr. Carson to complete certain compliance items, including Ethics training, to avoid a referral to the Commission for a violation. Mr. Carson completed Ethics training by the time the Deferral Agreement became effective. Finally, the Deferral Agreement requires that Mr. Carson not be the subject of a future Ethics Complaint for which just and sufficient cause is found during a two-year compliance period which will be monitored by the Executive Director.

2. Public Comment.

This item was taken out of order. The Chair noted that no members of the public were present at the start of the meeting and the Commission forgot to ask for public comment such that she was calling for any public comment at this time. No members of the public were present in Carson City or Las Vegas.

5. Acceptance and possible direction on the Executive Director's report regarding the Review Panel's approval of a Deferral Agreement in Ethics Complaint No. 17-27C concerning Carl Lackey, Biologist, Game Division, Department of Wildlife, State of Nevada.

The Chair acknowledged Mr. Lackey and his attorney, Deputy Attorney General Joshua Woodbury, and asked if they had any comments. Mr. Woodbury responded that they were attending only to view the Executive Director's report.

The Chair invited Executive Director Yvonne M. Nevarez-Goodson, Esq. to provide her report regarding the terms in Deferral Agreement No. 17-27C. Executive Director Nevarez-Goodson reported that, as in the previous matter, the purpose of this agenda item is to inform the

Commission of the decisions of its review panels with regard to approval of deferral agreements. She stated that this case represents a good example of the Legislature's intent in enacting S.B. 84 and the deferral agreement process because it allowed the Commission to provide educational guidance to Mr. Lackey regarding commitments in a private capacity and to defer any findings of a violation provided Mr. Lackey meets certain compliance requirements. Mr. Lackey was cooperative with the investigation and it became clear that Mr. Lackey had not before been informed of or understood the Ethics Law. Mr. Lackey completed Ethics training immediately and must not be the subject of another Ethics Complaint for which just and sufficient cause is found during a one-year compliance period which will be monitored by the Executive Director.

The Chair asked the Commissioners if they had any questions and Commissioner O'Neill asked whether the Director of the Nevada Department of Wildlife ("NDOW") received notification of the Review Panel's findings through a letter as indicated in the terms of the Deferral Agreement. Executive Director Nevarez-Goodson confirmed that a letter was sent to the Director of NDOW as well as the director of State Personnel according to the terms of the agreement.

6. Consideration and approval of Bill Draft Request Concepts to the Office of the Governor based upon recommendations of the Executive Director pursuant to NRS 281A.240(1)(d).

Executive Director Nevarez-Goodson reported that Commission staff participated in the Governor's Budget Kick-off at the end of February 2018 where instructions were provided by the Governor's Office regarding budget issues for the 2019 Legislative Session as well as concept proposals for bill draft requests ("BDRs"). The Governor's Office will entertain such proposals submitted by Executive Branch agencies and select which concepts to sponsor for the 2019 Legislative Session.

Executive Director Nevarez-Goodson directed the Commission to the list of BDR Concepts that she and Commission Counsel Chase prepared for the Commission's consideration and for submission to the Governor's Office on the Commission's approval. The BDR concepts are based on the amendments enacted by S.B. 84 in the last Legislative Session 2017, the effect of the amendments in processing requests for advisory opinions and complaints in the preceding biennium, and questions and concerns that have come to the attention of the Executive Director through the educational outreach to state and local government officers and employees. Executive Director Nevarez-Goodson explained the proposed concepts to the Commission (see Exhibit A). The deadline to present the concepts to the Governor is April 13. The Chair called for questions from the Commissioners and summarized the list of concepts as clarifying the following:

1. Open Meeting Law exemption
2. Developing fees for late filing Acknowledgment of Ethical Standards Form
3. Scope of the "cooling-off" period
4. Disclosure and abstention regarding confidential matters
5. Initiating a complaint on the Commission's own motion
6. Broadening the scope of advisory opinions beyond an individual request
7. Clarifying contracting provisions
8. Prohibition against the abuse of power in public positions
9. Criteria of limited use exceptions for governmental resources
10. Clarification and codification of a subordinate in a conflict of interest
11. Clarifying legislative privilege and immunity
12. Scope of Commission Counsel and Executive Director's authority in litigation actions and administrative models

Commissioner Gruenewald asked about Concept No. 7 regarding whether advisory opinions were currently available only for a public officer or employee to request an opinion and

not a third party. Nevarez-Goodson confirmed that only a public employee or public officer could request advice regarding his or her own conduct. So, a third party currently could not request advice on behalf of another person.

Commissioner O'Neill asked whether the Governor's Office required the Commission to prioritize the BDR concepts before submitting them. Executive Director Nevarez-Goodson responded that the proposed concepts provided an opportunity for the Commission to discuss its priorities which could then be sent to the Governor. However, the proposals herein were not currently in any specific priority order. Commissioner O'Neill then asked whether the action on the agenda was for the Commission to prioritize the list or ask to get feedback from the Executive Director. Executive Director Nevarez-Goodson offered an alternative to the Commission if it wanted more time to consider the concepts and meet in a teleconference before the April 13 deadline to direct the Executive Director regarding which concepts to propose to the Governor's Office.

Vice-Chair Weaver stated that he was in support of anything that would clarify the "cooling-off" statutes. In particular, fixing the dilemma the Commission faces in catch-22 scenarios that are created when it addresses requests for advice on specific jobs in a regulated industry where, on one hand, the Commission may decline to advise the requester for lack of facts regarding specific employment that the public officer or employee is seeking, and on the other hand, prohibiting a public officer or employee from seeking such employment prior to the one year cooling-off period.

Commissioner Duffrin asked Executive Director Nevarez-Goodson whether there is potential fiscal impact on the BDR concept concerning creating a fee program for late filings of the acknowledgment form. Executive Director Nevarez-Goodson confirmed there could be a fiscal impact to set up an administrative process with staff time to process the fees and monitor compliance. However, the Executive Director noted that the electronic case management system that has been implemented will offset some of the fiscal impact with its automated filing abilities and the Commission would model the process after that of the Nevada Secretary of State for Financial Disclosure Statements. Commissioner Duffrin added that another fiscal impact might include how the Commission would pursue non or late payment of the fees.

Vice-Chair Weaver stated that he is in favor of considering amendments regarding anonymous tips or information gathered from multiple sources, including accredited news media, that allows the Executive Director to bring a complaint on behalf of the Commission to address serious patterns of conduct that are getting a lot of attention. He was concerned about circumstances in which the Commission must wait for someone to bring a third-party complaint before it could/should otherwise act.

The Chair asked the Commissioners if they would like to go through the list of BDR concepts and accept or reject them one at a time, or whether they would like further information and time to study the proposals.

Commissioner O'Neill requested that staff prioritize the list and bring it back to the Commission. The Chair called for a 5 minute recess to allow for staff to prioritize the list. Executive Director Nevarez-Goodson presented a list of priorities as follows:

1. Top priorities: BDR concepts 1, 4, 6, 7, 10 and part of 5 regarding Vice-Chair Weaver's request to clarify the "cooling-off" provision for seeking or soliciting employment.
2. Middle priorities: BDR concepts 2, 3, 5, 8 and 11.
3. Bottom priorities: BDR concepts 9, 12 and 13.

Commissioner O'Neill asked for another recess to look at the list as they have been prioritized.

Executive Director Nevarez-Goodson clarified for the record that these concepts are still early stages of the BDR process and there is no requirement by the Governor's Office for final bill drafts at this time. This list will be presented to the Governor's Office on April 14 where the Governor's staff will evaluate the concepts and determine which ones will proceed to the Governor's Executive Branch Agency list of sponsored BDRs for the 2019 Legislative Session. The Commission will then have another opportunity to look at the Governor's preferences and the Executive Director's corresponding proposed bill draft language rather than this conceptual language and make a final decision about which Governor-approved bills in their final draft form the Commission would like to pursue in the 2019 Session.

The Chair called for a motion to approve the BDR concepts. Commissioner Duffrin made the Motion and Commissioner O'Neill seconded the Motion. The Motion passed.

7. Report by Executive Director on agency status and operations and possible direction thereon.

Staff Appreciation

Executive Director Nevarez-Goodson opened her report by commending Commission Counsel's work on recent litigation at the Nevada Supreme Court and all of staff's efforts to support that work and to support the Executive Director in her goal to help reduce the amount of time imposed on the Commissioners at Commission meetings.

BDR Concepts and Budget Instructions

The Executive Director summarized the 2019 Legislative Session activities that are already in motion and upcoming due dates as follows:

1. The Commission's non-budget BDR concepts are due to the Governor's Office on April 14 and the Governor's Office will approve or deny those concepts by May 11, 2018, which will allow Executive Director Nevarez-Goodson to bring back to the Commission any approved concepts for a decision about which ones to file for the 2019 Legislative Session, which filing is due June 8, 2018; and
2. The final agency requested budget is due on or before August 31, 2018. Instructions from the Governor's Office allow for twice the amount of the fiscal year 2019 budget to be requested for the next session. Other instructions provided for any requested enhancements to go into a separate decision unit, which will allow an evaluation by the new governor. In summary, other than the enhancements which will follow a separate path, the main budget should be relatively similar to the budget currently in place.

Current Fiscal Year Budget

Commissioner O'Neill asked Executive Director Nevarez-Goodson how the Commission is doing under the current budget. Executive Director Nevarez-Goodson reported that the Commission is on track to spend the fiscal year 2018 base budget this year. The remaining travel funds are expected to be utilized and ways to spend the remaining training category funds are being considered. Executive Director Nevarez-Goodson noted that despite the Commission vacancies, procedural efficiencies and fewer travel requirements for Commission meetings, other travel needs are filling the gap keeping everything on track.

Regulations

Executive Director Nevarez-Goodson reported that a Workshop for proposed regulations is being scheduled for April 18, 2018, which will require a public meeting of the Commission at the Commission's office by the public and Commissioners may attend telephonically. The public hearing on the regulations should follow at the May or June Commission meeting, depending on when draft language comes back from the Legislative Counsel Bureau, as that draft is required for posting the 30-day notice of the public hearing.

Interim Salary Study

Executive Director Nevarez-Goodson provided a brief update regarding the interim salary study, which was required by Senate Concurrent Resolution from the last Legislative Session. The purpose of the study is to compare salaries between unclassified service, non-classified service and classified service of the State. Executive Director Nevarez-Goodson has testified at the committee meetings and was able to get the Executive Director, Commission Counsel and Associate Counsel positions entered into the Salary Study Committee's survey that will be conducted to determine enhancements for certain State positions. The committee felt that the Investigator and Executive Assistant positions were on target with other similar positions in the unclassified service and the Senior Legal Researcher position may need some adjustments to compare with other similar positions, which can be accomplished through the normal budget process in the next legislative session. Executive Director Nevarez-Goodson reported that participation in the salary committee has been very informational regarding proceeding with any salary enhancements for the three executive positions in the next legislative session. The recommendations resulting from the survey will be reported to the Commission in a future meeting.

Outreach/ Education/ Commission Meetings & Vacancies

Executive Director Nevarez-Goodson reported on recent education and outreach efforts and possible adjustments during the budget process for outreach via online or digital platforms to assist with freeing up some of that time for the Executive Director to focus on other priorities and workload. The Executive Director further addressed the status of the electronic case management system and opinion database including the amended contract with our vendor to continue services through the next biennium. Executive Director Nevarez-Goodson informed the Commission of the upcoming meeting schedules for May and June and acknowledged commissioner vacancies. Executive Director Nevarez-Goodson thanked Commissioner Lynn Stewart, who recently resigned from the Commission, for his valuable service over the past year. Executive Director Nevarez-Goodson acknowledged the two vacant positions as even more important now due to the three-member review panel requirement that was enacted by S.B. 84, and that she would inform the Legislative Commission of that need.

8. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures.

No commissioner comments.

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9. Open Session for Public Comment.

No public comment.

10. Adjournment.

The meeting adjourned at 11:11 a.m.

Minutes prepared by:

/s/ Darci Hayden

Darci Hayden
Senior Legal Researcher

/s/ Yvonne M. Nevarez-Goodson

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved **May 9, 2018:**

/s/ Cheryl A. Lau

Cheryl A. Lau, Esq.
Chair

/s/ Keith A. Weaver

Keith A. Weaver, Esq.
Vice-Chair

Exhibit A



STATE OF NEVADA COMMISSION ON ETHICS

MEMORANDUM

DATE: March 21, 2018
TO: Commissioners
FROM: Yvonne M. Nevarez-Goodson, Esq., Executive Director
SUBJECT: Proposed BDR Concepts (2019 Legislative Session)

Commissioners:

Under NRS 281A.240, the Commission's Executive Director must "recommend to the Commission any legislation that the Executive Director considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government." In response to this statutory mandate, please consider the following recommendations of proposed bill draft request ("BDR") concepts for the 2019 Legislative Session. According to the current Executive Branch budget instructions, on or before April 13, 2018, the Commission must submit any non-budgetary BDR concepts for the Governor's review. The Governor will approve or deny the proposed concepts on or before May 11, 2018. If approved, on or before June 8, 2018, the Commission must submit the formal BDR proposal (detailed request) to the Governor's Office for referral to LCB.

The Commission presented an extensive bill during the 2017 Session (SB 84) and the Legislature enacted various amendments to NRS Chapter 281A providing the Commission with broader discretion to resolve complaint cases, including through letters of caution and instruction, deferral agreements, and additional penalties other than monetary sanctions, such as public admonishments, reprimands, censures, and other corrective or remedial action. The bill further streamlined the Commission's processing of complaint cases to reflect fair due process and promote significant efficiencies in Commission processes and staff work flow while establishing certainty, predictability and stability for Nevada's public officers and employees. Finally, SB 84 addressed inconsistencies among the Ethics Law's standards of conduct to ensure equal application to conflicts that involve financial interests and relationship-based interests. Commission staff has been working hard during the Interim to implement these changes and the Commission still must adopt new and revised regulations to reflect many of these changes.

For the 2019 Legislative Session, I recommend consideration of a less robust legislative proposal. Instead, the Commission may wish to focus its 2019 legislative efforts on a few budget-related reforms that will be presented to the budget process. Nevertheless, the following BDR Concepts are included for your review and consideration as issues that have arisen by virtue of the Commission's outreach and education program and its implementation of SB 84. These statutory changes may be beneficial to clarify the legislative intent and/or the Commission's interpretation of certain provisions of NRS Chapter 281A, as amended by SB 84.

BDR Concepts:

- 1) Clarify Scope of Open Meeting Law Exemption to Commission proceedings – Including action taken in Complaint Cases – in particular during confidential phases of a case.
- 2) Impose fees for late filings of Acknowledgment Forms.
 - Secretary of State imposes fines for late Financial Disclosure Statements;
 - In discussions with the Governor's Office of Finance and the Department of Administration, such a fee could operate as revenue to off-set certain expenses in our budget and/or serve as an efficiency measure as required by the current budget instructions after a pilot period of one to two years to determine the amount of projected revenue.
- 3) Impose additional "cooling-off" measure: Prohibit public officers or employees from securing or granting privileges, preferences, exemptions, advantages, or economic opportunities, including, without limitation, any gift, service, favor, employment, engagement, or emolument for himself/herself or a person to whom he/she has a commitment in a private capacity within 1 year after the public officer has taken an official action related to the matter.
 - Example: Planning Commissioner/Board Member votes to approve a zoning amendment. The Commissioner/Board Member is a realtor in his/her private capacity. The additional "cooling-off" measure would restrict the Commissioner/ Board member from listing the same property for a client on the same matter that he/she acted in his/her official capacity to ensure the zoning within 1 year.
 - Possible Exceptions:
 - o Introduction of legislative matter exempt from disclosure/abstention; could exempt benefits resulting from an action taken as initiation of a legislative measure.
 - o Consider ability for Commission to grant relief from strict application in appropriate circumstances.
 - Example: The official action does not create a benefit or opportunity greater than that for any other person similarly situated.
- 4) Clarify disclosure/abstention obligations related to conflicts that arise out of confidential relationships which are established through a legally protected or confidential relationship.

- Example: Attorney/client Relationships – Must disclose that the matter affects a private client relationship, but the full nature and extent of the conflict (name of client/nature of representation) need not be disclosed if it is accompanied by an abstention.
 - Example: Realtors - Various nondisclosure agreements by law require absolute confidentiality in listing agreements.
 - If disclosure without explaining full nature of conflict, must abstain to protect public trust.
 - Exclusions: Confirm that the public officer may not contract out of the application of the Ethics Law and/or the definition of a “commitment in a private capacity to the interests of another person”.
- 5) Clarify scope of Cooling-Off Prohibitions.
- Various agency attorneys continuously ask for clarification regarding the scope of cooling-off applicable to certain positions within the agency.
 - Some agencies have offered that the effects of cooling-off are having the opposite impact than originally intended by the Legislature which was, in part, to prevent government from losing its qualified staff to the private sector. Instead, agencies are having difficulty with recruitment for positions in regulatory agencies for positions which are later prohibited from returning to the private sector for one year.
 - Apply similar criteria to cooling-off interpretation that may be consistent with private sector non-compete clauses; i.e. whether an interpretation causes an undue hardship or unreasonable restraint than is generally necessary on the public officer or employee.
 - Agency counsel contemplates that concerns about actual impropriety, *quid pro quo*, misuse of positions can be captured under other statutes.
 - Repeal language in NRS 281A.550(3) prohibiting “seeking” of employment.
- 6) Clarify criteria regarding the Commission’s ability to initiate a complaint on its own motion.
- Example – Current law states that the Commission may not initiate a complaint on its own motion based solely on an anonymous source. Could we indicate that we may accept information from an anonymous source if the information includes otherwise publicly available information that would not otherwise be readily knowable to the Commission staff?
- 7) Advisory Opinions.
- Without disclosing the name or position of the requester of an advisory opinion, unless confidentiality is waived, authorize Commission to seek information from agency legal counsel in context of a request for advisory opinion to ensure Commission has accurate information regarding the role of agency and duties of a position in rendering advice.
 - Authorize governmental agencies to bring requests for advisory opinions seeking clarification of Ethics Laws as applicable to certain positions within the agency given a specific set of circumstances.

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- 8) Clarify contracting provisions.
- Under current law, any public officer or employee is prohibited from entering into a contract with ANY state or local governmental entity, unless the contract is subject to open competitive bidding or otherwise receives relief from the Commission.
 - This proposal mirrors the suggestion of SB 391 from 2011 which clarifies that the ethical concerns relate to contracts in which the public officer or employee has some influence or other conflict of interest as a result of his public position.
 - Example: Is it an ethical conflict for a public employee who works for a State agency to enter into a contract with a county to provide plumbing services unrelated to his/her work for the State?
- 9) Expand Ethics Law to include prohibition against abuse of position or power.
- The Commission's current jurisdiction to investigate and render an opinion in a matter must include evidence of a pecuniary interest or commitment in a private capacity to the interests of another person that is in conflict with public duties.
 - The Commission is criticized for not having the ability to evaluate inappropriate conduct of public officers and employees that does not implicate these specific private interests but nevertheless implicates conduct that does not comport with the public trust and is otherwise an abuse of official power. As a concept, this may be a valuable idea, but it will require the Commission to develop specific guidelines for public officers to understand the boundaries of conduct deemed as abusive.
 - We may develop factors to consider in evaluating whether conduct amounts to an abuse of authority or power.
 - Commission should evaluate scope of similar provisions in other jurisdictions.
- 10) Clarify and/or revise the criteria for the Limited Use Exception to statute which otherwise prohibits use of governmental resources for a significant personal purpose.
- 11) Extend or clarify definition of a Commitment in a Private Capacity for a public officer or employee to the following relationships:
- Fiduciary or other volunteer service to a "Nonprofit entity"
 - o We have significant requests for clarification and/or application about the nature of conflicts for disclosure and abstention purposes for public officers who are affiliated with nonprofit entities. Concerns have been raised by agency legal counsel that this type of relationship is not captured specifically in statute and has many variations.
 - Subordinate employees
 - o Current law states that a public officer or employee has a commitment to his/her employ~~er~~ – not to his/her employ~~ee~~ (subordinate). Various cases have prompted questions about whether a public officer or employee acts inappropriately to benefit or affect the interests of a subordinate.

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12) Clarify scope of Legislative Privilege and Immunity

- Confirm that the Commission has jurisdiction to investigate allegations of legislative misconduct to determine whether the conduct is protected by legislative privilege and immunity.

13) Confirm scope of Commission Counsel's or other designated counsel's authority regarding litigation.



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

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

The Commission on Ethics held a public meeting on
Wednesday, April 18, 2018, at 9:30 a.m.
at the following location:

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

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

1. Call to Order and Roll Call.

Chair Cheryl A. Lau, Esq. appeared telephonically and called the meeting to order at 9:30 a.m. Also appearing telephonically were Commissioners Barbara Gruenewald, Esq., P.K. O'Neill and Amanda Yen, Esq. Vice-Chair Keith A. Weaver, Esq. and Commissioner Brian Duffrin were excused. Present for Commission staff in Carson City were Executive Director Yvonne M. Nevarez-Goodson, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Judy Prutzman, Esq., Senior Legal Researcher Darci Hayden and Executive Assistant Kari Pedroza.

The pledge of allegiance was conducted.

2. Public Comment.

The Chair asked for public comment. No members of the public were present.

3. Pursuant to NRS 233B.061, Workshop to solicit data, views, arguments or other comments from interested persons regarding the Commission's intent to adopt, amend and repeal regulations set forth in NAC Chapter 281A to implement the amendments to NRS Chapter 281A enacted by Senate Bill 84 of the 2017 Legislative Session (Chapter 384, 2017 Statutes of Nevada), and the provisions of NAC Chapter 281A, as amended in the Commission's expired Temporary Regulation No. T03-16, and any Commission direction thereon.

Executive Director Nevarez-Goodson provided an overview of the administrative process to adopt a Permanent Regulation under NRS Chapter 233B. Specifically Executive Director Nevarez-Goodson provided a summary of the proposed changes to existing regulations set forth in NRS Chapter 281A, noting that the changes will implement procedures to carry out the

amendments from Senate Bill 84. Executive Director Nevarez-Goodson further explained that the purpose of this workshop was limited to seeking public input regarding the proposed regulations and to date the public has not yet offered any feedback.

Commissioner Gruenewald made a motion for the Executive Director to continue to process the regulations. Commissioner Yen seconded the motion. The Motion was put to a vote and carried unanimously.

4. Pursuant to NRS 233B.0608(3), Presentation and acceptance or other direction concerning the Executive Director's Statement Regarding Small Business Impact related to the Commission's intent to adopt, amend and repeal Regulations set forth in NAC Chapter 281A, pursuant to Agenda Item 3.

Executive Director Nevarez-Goodson explained that a statement regarding any small business impact is required for administrative regulation adoption and explained that she had certified as the agency's director that the proposed regulations would not have any impact on small businesses because the Commission's jurisdiction is limited to the conduct of public officers and employees.

Commissioner Gruenewald moved to accept the Executive Director's statement regarding the small business impact. Commissioner O'Neill seconded the motion. The Motion was put to a vote and carried unanimously.

5. Open Session for Public Comment.

No public comment.

6. Adjournment.

Commissioner Yen made a motion to adjourn the public meeting. Chair Lau seconded the motion. The Motion was put to a vote and carried unanimously.

The meeting adjourned at 9:40 a.m.

Minutes prepared by:

/s/ Kari Pedroza

Kari Pedroza
Executive Assistant

/s/ Yvonne M. Nevarez-Goodson

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved **May 9, 2018**:

/s/ Cheryl A. Lau

Cheryl A. Lau, Esq.
Chair

/s/ Keith A. Weaver

Keith A. Weaver, Esq.
Vice-Chair

AGENDA ITEM NO. 4

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STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Jeffrey Witthun**, Director,
Family Support Division, Clark
County District Attorney's Office,
State of Nevada,

Complaint No. **17-26C**

Subject. /

DRAFT

PROPOSED STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Ethics Complaint No. 17-26C ("Complaint") before the Nevada Commission on Ethics ("Commission") concerning Jeffrey Witthun ("Witthun" or "Subject"), Director of the Family Support Division ("Division") in the Clark County District Attorney's Office.

2. **JURISDICTION:** At all material times, Witthun was a public employee, as defined in NRS 281A.150. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A¹ 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 Witthun in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about July 17, 2017, the Commission received this Complaint from an individual who works in the Clark County District Attorney's Office ("Requester")².

¹ Senate Bill 84 ("S.B. 84") of the 79th Session of the Nevada Legislature (2017) amends and enacts various provisions of NRS Chapter 281A, which statutes have yet to be formally codified. The provisions of NRS 281A.400 and 281A.420 before the amendment of S.B. 84 apply to conduct alleged to have occurred before July 1, 2017. The Commission may apply S.B. 84 for all procedural matters. The amendatory provisions of S.B. 84 control over any contrary provisions of NAC Chapter 281A.

² Requester's identity has been kept confidential pursuant to Section 8 of S.B. 84.

- b. On September 11, 2017, the Commission issued its *Order on Jurisdiction and Investigation* accepting jurisdiction and directing the Executive Director to investigate alleged violations of the following provisions of the Ethics Law:³
- 1) 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;
 - 2) NRS 281A.400(2) - Using his public position to secure or grant an unwarranted advantage for himself or any person to whom he has a commitment in a private capacity;
 - 3) NRS 281A.400(7) - Using governmental resources to benefit a significant personal or pecuniary interest;
 - 4) NRS 281A.400(9) - Attempting to benefit his personal or financial interest through the influence of a subordinate; and
 - 5) NRS 281A.420(1) - Failing to disclose a pecuniary interest or commitment in a private capacity to the interest of another person which is reasonably affected by an official matter.
- c. On September 11, 2017, staff of the Commission issued a *Notice of Complaint and Investigation* to the Subject pursuant to section 3.9 of S.B. 84 and Witthun was provided an opportunity to provide a written response to the Complaint.
- d. On October 12, 2017, Witthun, through his legal counsel, Shannon Wittenberger, Esq., provided a written *Response to Ethics Complaint*.
- e. On March 14, 2018, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.440(4), as amended by section 3 of S.B. 84.
- f. A Panel Determination issued on March 22, 2018 concluded that:
- 1) Credible evidence supports just and sufficient cause for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(1), (2), (7) and (9) and NRS 281A.420(1) related to

³ The Commission declined to investigate the alleged violation of NRS 281A.400(4) for lack of sufficient evidence.

Witthun's use of his public position to create a voluntary summer internship position for his son in the Division and his failure to disclose to his supervisor the relationship with his son before he acted on the matter; and

- 2) Sufficient credible evidence supports a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(2) related to Witthun's use of his public position to approve the employment of his son in a part-time paid position in the Division.
- g. In lieu of an adjudicatory hearing before the Commission, Witthun now enters into this Stipulated Agreement acknowledging his duty as a public employee to commit himself to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.

4. STIPULATED FACTS: At all material times, the following facts were relevant to this matter:⁴

- a. Witthun is the Director of the Family Support Division ("Division") of the Clark County District Attorney's Office ("DA's Office") and is a public employee as defined by NRS 281A.150. He joined the Division in 2010 as the Assistant Director and was promoted to the Director position in June 2015.
- b. The Clark County District Attorney's Office is a local agency as defined in NRS 281A.119.
- c. Witthun is a lawyer licensed in the State of Nevada.
- d. The Family Support Division is one of four divisions within the DA's Office.
- e. Witthun reports directly to the District Attorney, Steve Wolfson ("Wolfson"), and oversees all operations of the Division and approximately 350 employees.
- f. Witthun's job duties include the day-to-day management of investigators, attorneys and the Information Technology ("IT") and Administrative Departments within the Division. Responsibility for the operations side of the

⁴ Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by Section 9 of S.B. 84. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

Division, including the Call Center, has been delegated to Assistant Director Suzi Truby (“Truby”).

- g. Witthun is not directly involved in the recruitment, screening and interviewing processes for all Division positions. Witthun makes decisions regarding hiring for certain positions in the Division and Wolfson has the ultimate and final approval; however, Wolfson generally only involves himself in the hiring of higher level positions within the Division (i.e. investigative supervisor, I.T. Project Manager, etc). Witthun reviews and approves the background checks for potential employees.
- h. Telauna Byamugisha (“Byamugisha”) is a Management Analyst who handles employment and human resources matters for the Division and reports directly to Truby. Byamugisha is responsible for recruitment efforts for open positions within the Division and manages the interview/selection process.
- i. Adam Witthun (“Adam”) is Witthun’s son. Adam graduated from Foothill High School in 2016 and was planning to attend the College of Southern Nevada in August of 2016.
- j. Two formal internship programs existed in the Division – an internship program for UNLV students who wanted to earn credit for doing social work and a volunteer summer internship program in the Investigations Department for students at Valley High School.
- k. No formal internship program existed in the IT Department.
- l. Witthun is authorized to develop or approve the creation of volunteer or internship opportunities within the Division.
- m. During a regular meeting with Brodie and Michael Brown (“Brown”), the IT Department Manager, Witthun had asked if Adam could shadow them to learn about IT.
- n. During their meeting with Witthun, Brodie suggested the idea of having an IT summer internship program for the summer of 2016 and believed having relatives of employees of the Division would help start the program at its inception and suggested having Adam apply for the program.

- o. Witthun approved of Brodie's idea and agreed that he would not be involved in the vetting or decision-making process. Brodie and Brown discussed with Witthun that Adam should be evaluated for the internship in the same way that other interns in the Division were evaluated.
- p. Several weeks before Adam's graduation from high school and after Witthun had the above referenced discussions with Brodie and Brown, Witthun spoke to Adam about the possibility of him shadowing employees in the IT Department of the Division. At the time, Adam was working part-time as a Bakery Clerk at the Vons supermarket
- q. Witthun did not inform Wolfson that he discussed the creation of a summer internship program for which Adam could apply with his subordinates.
- r. The Division's IT Department summer internship program was not advertised or publicized to the general public.
- s. Adam and the daughter of an IT Systems Programmer were the only interns who worked in the Division's IT Department during the summer of 2016.
- t. On or about June 21, 2016, Adam started working ten hours a week as an unpaid intern in the IT Department, reporting directly to Brodie. He was assigned a Clark County email account and spent time shadowing IT employees and assisting at the IT help desk.
- u. Adam did not receive any compensation or college credit for his work as a summer intern.
- v. While working at the IT help desk as an intern, Adam found out about several part-time job vacancies in the Division through his County email, and he was encouraged by one of his co-workers to apply.
- w. On July 26, 2016, Adam submitted his application for a part-time Customer Service Assistant position in the Division Call Center, a position that paid \$12 per hour. On the first page of the application form, Adam indicated that Witthun was his father and he worked in the Division.
- x. Pursuant to Clark County Personnel Policy III, an "appointing authority may hire temporary, part-time hourly, and exempt employees without going through the competitive process." Accordingly, a job announcement for the part-time

- position Adam applied for was not posted publicly, as was customary, and the recruitment/selection process was handled within the Division by Byamugisha, not the Clark County Office of Human Resources.
- y. Adam told Witthun he was applying for a position in the Division after he submitted his application to Byamugisha.
 - z. Twenty-two applications were received for 4 part-time openings in the Division during summer of 2016. The applicants were interviewed by a panel selected by Byamugisha and consisting of three Division supervisors who worked within Witthun's chain of command but reported directly to Truby.
 - aa. Witthun did not discuss Adam's application or otherwise influence Byamugisha or the three Division supervisors who interviewed Adam.
 - bb. Adam, who was the only applicant with prior/current work experience in the Division, received the second highest rating of the four top applicants after the interview process.
 - cc. On August 17, 2016, before Witthun reviewed background checks for the successful applicants and before Adam received an offer of employment, Witthun sent an email to Wolfson regarding Adam's potential employment in the Division. In the email, Witthun explained that Adam would be working four supervisory levels below him and therefore would not report directly to him.
 - dd. In response to Witthun's email, Wolfson stated that he had "no problem" with Adam's employment in the Division and he suggested that Witthun also speak with Greg Smith ("Smith"), Assistant Director of the Administration Division, which includes Human Resources.
 - ee. In an email dated August 17, 2016, Smith told Witthun and Wolfson that "[t]here is no problem with bringing Adam on, based on the fact that there are several layers of supervision between he [sic] and Jeff [Witthun]."
 - ff. On August 18, 2016, Adam received an offer of employment from Byamugisha that was conditioned on passing a background check.
 - gg. On August 30, 2016, Witthun sent an email to Byamugisha regarding his review of background checks for three of the part-time candidates, including Adam. Witthun did not approve the hire of one candidate based on results of

his background check; Adam and another candidate passed their background check.

- hh. With regard to Adam's background results, because Adam was Witthun's son, Witthun sent an email to County HR and internal HR to give them the ability to override his decision and stated that "if anyone else wants to review this, I certainly have no objection." No further review was conducted and Adam started working as a Part Time Customer Service Assistant in the Division's Call Center on October 10, 2016.
- ii. On July 5, 2017, the Clark County Director of Human Resources, Sandy Jeantete, received a confidential complaint via email, asserting that Adam's employment in the Division violated Nevada's nepotism law (NRS 281.120).
- jj. On August 11, 2017, Adam was transferred to a part-time Runner position in the Criminal Division and received a raise to \$15/hour. Witthun was not involved in the decision to transfer Adam to the Criminal Division.
- kk. Clark County does not have a written policy regarding nepotism, but the County follows Nevada's nepotism law (NRS 281.210) and considers the hiring or supervision of a related person to be a conflict of interest as provided in the following sections of County Personnel Policy XII:

I. PREFERENTIAL TREATMENT

Employees will not use or attempt to use their official County positions to secure or grant privileges, exemptions, advantages, contracts, or preferential treatment for themselves or others.

II. CONFLICTS OF INTEREST AND ACCEPTANCE OF GIFTS

B. An employee's involvement in any activity that is a conflict of interest is prohibited. A conflict of interest is any interest of the employee (financial, personal, collaborative or otherwise) that could impair the independence of judgment or the ability of a reasonable employee to act in the County's or public's best interest in any matter. A conflict of interest may arise from outside employment, donor/donee or debtor/creditor relationships, consulting arrangements, family or personal relationships, legal or fiduciary arrangements and financial investments, or any other matter that could be construed by a reasonable third party as conflicting with the employee's duties.

III. FULL DISCLOSURE

A. Employee will disclose to their Department Heads any potential conflicts of interest that may affect any matter or aspect of their County duties. Employees will not participate as agents or representatives of a County department or take any action or make recommendations on any matter in which they have a conflict of interest as determined by the Department Head.

5. **TERMS / CONCLUSIONS OF LAW**: Based on the foregoing, Witthun 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. Witthun is a public employee, 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 Clark County).
- c. Witthun has a commitment in a private capacity to the interests of his son Adam. NRS 281A.065(3).
- d. As a public employee, Witthun must commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves. *See In re Public Employee*, Comm'n Op. No. 10-73A (2011).
- e. Witthun shall not seek or accept any service, favor or engagement which would tend to improperly to influence a reasonable person in the public employee's position to depart from the faithful and impartial discharge of the public employee's public duties (NRS 281A.400(1)). Witthun also must not use his public position to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself or any person to whom he has a commitment in a private capacity (NRS 281A.400(2)) or attempt to influence a subordinate to benefit his personal or financial interests (NRS 281A.400(9)).
- f. The Commission considers whether an action is unwarranted pursuant to NRS 281A.400(2) if the action was illegal, under nepotism or other laws, or otherwise against the written policies of the agency that employs the public employee.
- g. Witthun must avoid actual and perceived conflicts of interest by disclosing sufficient information to the supervisory head of the organization concerning

- any private relationships which would reasonably affect his action on public matters. NRS 281A.420(1).
- h. Witthun violated NRS 281A.400(1) when he asked his subordinates if his son could shadow them to learn about IT because he was seeking a favor and/or engagement for his son, which would tend to improperly influence a reasonable person in his position as Division Director to depart from the impartial discharge of his public duties.
 - i. Witthun used his position as Division Director to ask his subordinates if his son could shadow them and subsequently authorized his subordinates to create a summer internship program that would only be available to relatives of employees, including his son, in an effort to secure an unwarranted privilege or advantage for his son, a person with whom he has a commitment in a private capacity, in violation of NRS 281A.400(2). Witthun's attempt to influence subordinates in a matter related to his son's attainment of a professional summer internship experience also implicates NRS 281A.400(7) and (9).
 - j. Witthun did not, before discussing the creation of a summer internship program in the IT Department or his son pursuing the program, inform his supervisor of the potential effect of having his son engage in the program, a person to whom Witthun has a commitment in a private capacity. Such a disclosure was required by NRS 281A.420(1).
 - k. Witthun's review of his son's background check and approval of his employment as a part-time employee of the Division violated NRS 281A.400(2).
 - l. Witthun now understands that it was improper for him to use his position as the Division Director to act upon any matters involving his son's employment, both as an unpaid summer intern and as a part-time employee of the Division.
 - m. Witthun's act of asking subordinates if his son could shadow them, followed by his authorization of an internship program that would exclusively be available to relatives of Division employees, including his son, constitutes the precise conduct the provisions of NRS Chapter 281A are intended to discourage and prevent. The Ethics Law establishes a per se conflict of interest for public

- employees regarding public duties which affect the interests of a person to whom the employee is related within the third degree, including a son
- n. Witthun's actions related to his son's summer internship constitute a single course of conduct resulting in one willful violation of the Ethics Law, implicating the provisions of NRS 281A.400(2), (7) and (9) and NRS 281A.420(1), as interpreted and applied in accordance with the provisions of NRS 281A.020.
 - o. The Commission concludes that Witthun's violation was willful pursuant to NRS 281A.170 because he acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively
 - p. For an act to be intentional, NRS 281A.105 does not require that Witthun acted in bad faith, or with ill will, evil intent or malice. However, Witthun acted voluntarily or deliberately on matters related to an internship opportunity for his son. *See In re McNair*, Comm'n Op. Nos. 10-105C, 10-106C, 10-108C, 10-109C and 10-110C (2011) ("the relevant inquiry regarding willful misconduct is an inquiry into the intentional nature of the actor's conduct . . . The fact that an actor may have acted with the best of intentions does not relieve the actor of liability.") (citation omitted).
 - q. 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 Witthun had actual knowledge that his 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). Even if Witthun was deemed to have no actual knowledge that his conduct would violate the provisions of NRS 281A, the record reflects Witthun's long career in public service (including years as a licensed attorney). As such, he was aware of and relied upon the statutes and regulations governing public employees. These circumstances put an ordinarily prudent person upon inquiry that a Division Director is subject to the provisions of the Ethics Law and that any voluntary acts would likewise be subject to NRS Chapter 281A.

- r. The Commission considered the following mitigating factors in determining whether Witthun's violation is willful and the amount of the civil penalty to be imposed on Witthun:
- 1) Witthun has not previously violated the Ethics Law.
 - 2) Witthun has been diligent to cooperate with and participate in the Commission's investigation and resolution of this matter.
 - 3) Neither Witthun nor his son received any remuneration associated with the summer internship position, which was a volunteer, unpaid position.
 - 4) Witthun's son has been transferred to another Division.
 - 5) Witthun relied upon past practices within the Division whereby family members of the Division's staff had been hired to work in the Division.
- s. However, these mitigating factors are offset by the following considerations:
- 1) The seriousness of the conduct is significant when measured against the public's trust that public employees will not use their public position or influence to acquire opportunities or advantages for family members that are not available to the general public.
 - 2) The internship opportunity created untold future benefits for Witthun's son, including a possible advantage as an applicant for the paid part-time position within the Division.
- t. Witthun's actions related to approval of his son's part-time paid position in the Division violate NRS 281A.400(2), but such violation is not deemed willful because the Commission accepts as a mitigating factor to willfulness that Witthun's supervisor approved of Witthun's conduct after disclosure of the facts related to Adam's employment.
- u. For the willful violation, Witthun will pay a civil penalty of \$2,500.00, pursuant to NRS 281A.480, on or before December 30, 2018. However, based upon the unique circumstances presented in this matter and given a recent personal situation that has created a significant financial hardship, the Commission will forgive \$1,500 of the \$2,500 fine if the following conditions are met:

- (a) On or before December 1, 2018, Witthun agrees to facilitate (and attend) an Ethics in Government Law training session(s) for Division staff presented by the Commission's Executive Director, or her designee.
- (b) Witthun shall submit a proposed policy pertaining to the hiring or supervision of family members for all types of positions, paid and unpaid, to the District Attorney administrative staff requesting approval of said policy. Failure of the District Attorney's office to accept and/or implement the policy will not be considered a violation of this Agreement by Witthun. A courtesy copy of such policy will be provided to the Commission on or before December 1, 2018.
- (c) On or before July 1, 2018, Witthun will notify the District Attorney and the Clark County Human Resources Director of the terms of the Stipulated Agreement.
- v. Witthun may pay the penalty in monthly payments of \$100 a month commencing on June 1, 2018.
- w. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to the Ethics Complaint 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.
- x. 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 Witthun. If the Commission rejects this Stipulated Agreement, none of the provisions herein shall be considered by the Commission or be admissible as evidence in a hearing on the merits in this matter.

6. WAIVER

- a. Witthun knowingly and voluntarily waives his right to a hearing before the full Commission on the allegations in Ethics Complaint Case No. 17-26C and all rights he may be accorded with regard to this matter pursuant to NRS Chapter 281A, S.B. 84, the regulations of the Commission (NAC Chapter 281A), the

Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.

- b. Witthun knowingly and voluntarily waives his right to judicial review of this matter pursuant to NRS 281A, NRS 233B 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 May 9, 2018.⁵

DATED this ____ day of _____, 2018. DRAFT
Jeffrey Witthun

The above Stipulated Agreement is approved by:

FOR JEFFREY WITTHUN,
Subject

DATED this ____ day of _____, 2018. DRAFT
Shannon Wittenberger, Esq.
Counsel for Subject

⁵ Subject waived any right to receive written notice pursuant to NRS 241.033 of the time and place of the Commission's meeting to consider his character, alleged misconduct, professional competence, or physical or mental health.

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

DATED this ____ day of _____, 2018. DRAFT

Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this ____ day of _____, 2018. DRAFT

Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.⁶

DATED _____, 2018.

By: DRAFT

Cheryl A. Lau, Esq.
Chair

By: DRAFT

Brian Duffrin
Commissioner

By: DRAFT

Amanda Yen, Esq.
Commissioner

⁶ Vice Chair Weaver and Commissioners Gruenewald and O'Neill participated in the Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4).



**CLARK COUNTY
OFFICE OF THE DISTRICT ATTORNEY**

Civil Division

STEVEN B. WOLFSON

District Attorney

500 S. Grand Central Pkwy, Suite 5075 • Las Vegas, NV 89155 • 702-455-4761 • Fax: 702-382-5178 • TTY and/or other relay services: 711

MARY-ANNE MILLER
County Counsel

CHRISTOPHER LALLI
Assistant District Attorney

ROBERT DASKAS
Assistant District Attorney

JEFFREY J. WITTHUN
Director D.A. Family Support

BRIGID J. DUFFY
Director D.A. Juvenile

April 30, 2018

Nevada Commission on Ethics

Attn: Tracy L. Chase, Esq.

704 West Nye Lane, Suite 204

Carson City, NV 89703

via email: tchase@ethics.nv.gov

RE: Complaint No. 17-26C (Witthun)
Supplemental

Dear Counsel Chase:

My client Jeffrey Witthun hereby submits this supplemental information to support the proposed stipulation in the above referenced matter. Specifically, the information provided supports the request for the Commission to accept the payment of a portion of the fine in full satisfaction of the imposed penalty if Mr. Witthun meets the conditions outlined in the proposed stipulation.

On March 12, 2018, Mr. Witthun was contacted by his son and informed that the house was on fire and the fire department had been called. Mr. Witthun arrived home shortly thereafter to find that much of the upstairs and the roof had burned which required the fire department to use substantial amounts of water and/or foam to put out the fire. The fire damage, smoke damage and resulting water/foam damage has resulted in over \$270,000 in structural damage and Mr. Witthun, his wife and three teenage children losing all of their personal property. Currently, neither the personal property nor the reconstruction claim have been settled with the insurance company resulting in great personal expense in replacing clothes and personal items just to allow the family to continue to work and attend school. Additionally, the family will be displaced from their home until sometime in 2019. Given Mr. Witthun's personal circumstances, any amount of fine is a hardship to him and his family at this time.

Additionally, as outlined in NRS 281A.475, any mitigating factor, without limitation, should be considered. First, in this matter, there was absolutely no bad faith or ill will in Mr. Witthun's actions. Second, Mr. Witthun has been very cooperative throughout the entire process and he, and the District Attorney's office, immediately rectified the employment situation with his son, upon being informed of a complaint to County HR,

April 30, 2018

by moving his son out of Mr. Witthun's division. Third, Mr. Witthun, as ethically required to do so, will inform the Nevada, California and Wisconsin State Bars of the final disposition of this matter and will possibly face additional consequences due to being a licensed attorney in all three states. It is also important to note that Mr. Witthun has never received any type of discipline in any form in any of these states despite practicing law for over 20 years. Fourth, Mr. Witthun has readily agreed to set up training for his division to ensure that he and all employees thoroughly understand the broad requirements of the ethical statutes. In any proceeding regarding a violation of laws or standards, the main goal is to ensure future compliance. With the requirement of implementing a policy to address the violations and implementing the training, as well as Mr. Witthun's full understanding of the ethical standards, the proposed stipulation achieves these goals.

Therefore, we request that the Commission approve and adopt this stipulation.

Sincerely,

STEVEN B. WOLFSON
DISTRICT ATTORNEY

BY:
Shannon Wittenberger
Deputy District Attorney

cc: Judy Prutzman, Esq. via email jprutzman@ethics.nv.gov



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Jeffrey Witthun**, Director,
Family Support Division, Clark
County District Attorney's Office,
State of Nevada,

Ethics Complaint
Case No. **17-26C**

Subject. /

**WAIVER OF NOTICE REQUIRED UNDER NRS 241.033(1)
TO CONSIDER CHARACTER, MISCONDUCT, OR COMPETENCE
OF PERSON IN ETHICS COMPLAINT PROCEEDINGS TO BE HEARD
BY THE STATE OF NEVADA COMMISSION ON ETHICS**

The Nevada Commission on Ethics ("Commission") will be holding hearings and other proceedings (collectively "Proceedings") to consider the Subject's character, misconduct or competence as related to this Ethics Complaint. If the Proceedings are not exempt from Nevada's Open Meeting Law pursuant to NRS Chapters 241 or 281A, NRS 241.033(1) requires notice be personally served on Subject of the time and place of the meeting at least 5 working days before the meeting or sent by certified mail to the last known address at least 21 working days before the meeting. The parties, through their respective counsel, have agreed to comply with all deadlines and scheduled dates for Proceedings, as set forth in the Notice of Hearing and Scheduling Order dated March 29, 2018.

I, Jeffrey Witthun, understand the statutory requirements of NRS 241.033 and hereby knowingly and voluntarily waive my rights to written notice as required under NRS 241.033 for any Proceeding set forth in the above-identified Notice of Hearing and Scheduling Order. In doing so, I expressly consent to any discussion during the applicable meeting and resultant action of the Commission, including any discussion of my qualifications, competence and character in relation thereto. Prior to signing this waiver, I either had the opportunity to discuss this matter with my attorney or have voluntarily determined to proceed on my own accord, thereby waiving the right to consult with an attorney.

Dated this 3 day of April, 2018.

By: _____
Jeffrey Witthun



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Jeffrey Witthun**, Director, Family Support Division, Clark County District Attorney's Office, State of Nevada,

Ethics Complaint
Case No. **17-26C**

Subject. /

NOTICE OF HEARING AND SCHEDULING ORDER

NRS Chapter 281A, as amended by S.B. 84¹

and

**Notice of Hearing and Meeting to Consider
Your Character, Alleged Misconduct, Professional Competence or Health
(NRS 241.033)**

PLEASE TAKE NOTICE, on **May 9, 2018**, the Nevada Commission on Ethics ("Commission") will hold a public meeting to include a hearing to consider any stipulations associated with the alleged misconduct, professional competence or health of Jeffrey Witthun ("Subject"), Director of the Family Support Division, Clark County District Attorney's Office, as it pertains to the Nevada Ethics in Government Law set forth in Chapter 281A of the Nevada Revised Statutes, as amended by S.B. 84 ("Ethics Law").²

After receipt of Ethics Complaint No. 17-26C ("Complaint"), the Commission issued a Notice to Subject stating that the Commission accepted jurisdiction to investigate certain alleged violations of the Ethics Law. On October 12, 2017, Subject provided a written response to the allegations. A Review Panel reviewed the Complaint and related investigation conducted by the Executive Director and issued a Panel Determination on or about March 22, 2018, concluding that there is sufficient credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in this matter with respect to certain alleged violations as stated therein.

Pursuant to S.B. 84, Sec. 6.5, Subject has waived his right to the 60-day time requirement for a hearing in this matter. A hearing will assist the Commission to determine whether any violation of the Nevada Ethics in Government Law has occurred and, if a violation is found, whether such violation is willful and whether any penalties will be imposed by the Commission pursuant to NRS 281A.480. The Parties have the right to appear, be represented by legal counsel and present the merits of the proposed stipulation. If the stipulation does not fully adjudicate the merits of the case, the Commission will issue an amended Notice of Hearing and Scheduling Order to schedule additional procedural matters and a hearing on the merits.

¹ S.B. 84 of the 79th Session of the Nevada Legislature (2017) amends and enacts various provisions of NRS Chapter 281A, which statutes have yet to be formally codified. The amendatory provisions of S.B. 84 control over any contrary provisions of NAC Chapter 281A. This RFO was submitted before the effective date of S.B. 84. However, the terms of S.B. 84 permit the Commission to implement any procedural changes set forth in S.B. 84. Accordingly, the panel process was resolved under the new provisions of law.

² This notice is issued in compliance with the requirements of the Ethics Law and NRS 241.033. However, certain portions of the meeting are exempt from Nevada's Open Meeting Law pursuant to NRS Chapters 241 and 281A.

THE HEARING WILL TAKE PLACE:

Wednesday, May 9, 2018 at 9:00 a.m., at the following locations:

**Grant Sawyer State Building
Room 5400
555 E. Washington Avenue
Las Vegas, NV 89101**

and via video-conference to:

**Nevada Governor's Office of Economic Development
808 West Nye Lane
Carson City, NV 89703**

Although portions of the hearing are exempt from Nevada's Open Meeting Law pursuant to NRS 241.016, the Commission makes every effort to open the hearing to the public. An agenda will be posted and a record will be made by a certified court reporter.

In accordance with the Scheduling Order outlined below, each party has the right to participate in discovery. Other rights 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.

Scheduling Order

The Commission is scheduled to hear this matter on **May 9, 2018**. The Commission's Executive Director and the Subject (hereafter referred to respectively as a "Party" or the "Parties," as applicable) shall comply with the following scheduling order:

1. APPEARANCE

The Commission requests the appearance of Subject at the **May 9, 2018 hearing**. Subject has 5 business days³ after receipt of the Notice of Hearing to respond to the Commission's request pursuant to NRS 281A.300. If Subject does not respond, the Executive Director may request a subpoena to compel Subject's attendance. Further, if Subject is not excused by the Chair or present when this hearing is called, the Commission may consider as true the alleged violations specified in the Panel Determination.

2. DISCOVERY/INVESTIGATION

On March 26, 2018, Subject served a discovery request for a proposed witness list and documentary evidence pursuant to Section 9 of S.B. 84. The Executive Director shall object or otherwise respond to Subject's discovery on or before **Tuesday, April 10, 2018**. On or before **Wednesday, April 18, 2018**, the Parties may engage in continued investigation of facts and exchange written discovery interrogatories and requests for production. Such requests shall not be costly or burdensome and each party shall bear their own costs associated therewith. Except as provided otherwise in this section, all responses to discovery requests must be completed not later than 5 business days after receipt of the discovery request. Within the limits of time available for satisfying the requirements and deadlines set forth in this scheduling order and preparing for hearing, a party may request to depose any witnesses. Such depositions may be taken by telephone as agreed by the parties. Any disagreement regarding depositions of witnesses may be resolved by the Commission through its Chair or Vice-Chair who will determine whether it is appropriate to issue subpoenas to compel the testimony of such witnesses at deposition or hearing. The investigation of facts and all discovery shall be completed by the Parties no later

³ For the purposes of applying the deadlines established by this Scheduling Order, "business days" means the Commission's regular business days of Monday through Thursday between 7:00 a.m. and 5:30 p.m., excluding State Closures and Holidays. The computation of any time prescribed by this Scheduling Order shall be governed by the computation of time attributed to periods prescribed by NRS 281A.190.

than **Thursday, April 26, 2018**. If this matter is not resolved by stipulation, either party may request additional discovery be permitted in the discretion of the Chair. Such request shall be supported by a detailed list of the proposed additional discovery and associated timeline for completion.

3. FORMAT, SUBMISSION AND SERVICE REQUIREMENTS

The parties have stipulated to electronic service of all matters. With the exception of exhibits, submitted documents must contain a caption and signature, and be consecutively page-numbered on 8 ½ by 11-inch pleading paper with double-spaced text and using a font no smaller than 12 characters per inch. The Parties shall submit all documents on the designated deadline not later than 5:30 p.m. (the Commission's close of business) electronically in PDF format to tchase@ethics.nv.gov, with copy to dhayden@ethics.nv.gov. Upon submission, each party shall serve its documents on the other party by electronic mail as follows:

<p>Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 West Nye Lane, Suite 204 Carson City, NV 89703 ynevarez@ethics.nv.gov</p> <p>Judy A. Prutzman, Esq. Associate Counsel Nevada Commission on Ethics 704 West Nye Lane, Suite 204 Carson City, NV 89703 jprutzman@ethics.nv.gov</p>	<p>Shannon Wittenberger Deputy District Attorney Clark County 500 S. Grand Central Pkwy., Ste. 5075 Las Vegas, NV 89155</p> <p>Shannon.Wittenberger@ClarkCountyDA.com JeffreyWitthun@ClarkCountyDA.com</p>
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A certificate of service shall be included verifying service as required herein.

4. EXTENSIONS, CONTINUANCES AND SCHEDULING MATTERS

The Parties may not agree to extensions of the deadlines included herein without the written consent of the Commission or Chair. Extensions will not be granted except in the case of good cause shown. No unilateral request for continuance of the scheduled hearing will be granted except upon extraordinary circumstances stated in written motion. Please direct any scheduling matters to Commission Counsel, Tracy L. Chase, Esq., at (775) 687-5469 or via email at tchase@ethics.nv.gov.

DATED: March 29, 2018

/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 **Notice of Hearing and Scheduling Order** in Ethics Complaint Case **No. 17-26C** via electronic mail to the Parties as follows:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Judy A. Prutzman, Esq.
Associate Counsel
704 W. Nye Lane, Suite 204
Carson City, NV 89703

Email: ynevarez@ethics.nv.gov

Email: jprutzman@ethics.nv.gov

Shannon Wittenberger
Deputy District Attorney
Clark County
500 S. Grand Central Pkwy.,
Ste. 5075
Las Vegas, NV 89155

Email: Shannon.Wittenberger@ClarkCountyDA.com

Attorney for Subject

Jeffrey Witthun
Director of Family Services
Clark County District Attorney's Office
1900 E. Flamingo Road, Ste. 100
Las Vegas, NV 89119

Email: JeffreyWitthun@ClarkCountyDA.com

DATED: March 29, 2018



Employee of the Nevada Commission on Ethics



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Jeffrey Witthun**, Director, Family Support Division, Clark County District Attorney's Office, State of Nevada,

Ethics Complaint
Case No. **17-26C**

Subject. /

PANEL DETERMINATION¹

NRS 281A.440(5); NAC 281A.440; S.B. 84²

The Nevada Commission on Ethics ("Commission") received Ethics Complaint No. 17-26C ("Complaint") regarding the alleged conduct of Jeffrey Witthun ("Witthun" or "Subject"), the Director of the Family Support Division ("Division") of the Clark County District Attorney's Office. Specifically, the Commission directed the Executive Director to conduct an investigation to determine whether Subject engaged in the following alleged conduct:

NRS 281A.400(1) - seeking or accepting gifts, favors or economic opportunities which would tend to improperly influence the impartial discharge of public duties;

NRS 281A.400(2) - improper use of government position to secure unwarranted advantage;

NRS 281A.400(7) - improper use of governmental time, property or facilities for a personal/pecuniary interest;

NRS 281A.400(9) - attempting to benefit his personal or financial interest through the influence of a subordinate; and

NRS 281A.420(1) - failure to disclose a conflict of interest.

As Director of the Family Support Division in the Clark County District Attorney's Office, Subject is a public employee as defined in NRS 281A.150. The Commission has jurisdiction over this matter pursuant to NRS 281A.280 because the allegations contained in the Complaint relate to the Subject's conduct as a public employee and has associated implications under the Ethics Law.

On March 21, 2018, a Review Panel ("Panel") consisting of Vice-Chair Keith Weaver, Esq. and Commissioners Barbara Gruenewald, Esq. and Philip K. O'Neill reviewed the following: 1) Ethics Complaint Case No. 17-26C; 2) Subject's Response; 3)

¹ Except as provided otherwise by law, a Panel Determination shall not be cited as legal precedent.

² References to the provisions of NRS Chapter 281A include all applicable amendments and revisions adopted pursuant to S.B. 84 of the 79th Session of the Nevada Legislature (2017), which statutes have yet to be formally codified. The provisions of NRS 281A.400 and 281A.420 before the amendment of S.B. 84 apply to conduct alleged to have occurred before July 1, 2017. The amendatory provisions of S.B. 84 control over any contrary provisions of NAC Chapter 281A.

Investigator's Report; and 4) the Executive Director's Recommendation to the Review Panel and associated exhibits.³

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(1), (2), (7) and (9) and NRS 281A.420(1) related to Witthun's use of his public position to create a voluntary summer internship position for his son in the Division and his failure to disclose to his supervisor the relationship with his son before he acted on the matter.

There is also sufficient credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(2) related to Witthun's use of his public position to approve the employment of his son in a part-time paid position in the Division.

The Panel refers the alleged violations 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.

Dated this 22nd day of March, 2018.

NEVADA COMMISSION ON ETHICS

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

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

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

³ All materials provided to the Panel, except the Complaint, represent portions of the investigatory file and remain confidential pursuant to Section 9 of S.B. 84.

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 a true and correct copy of the **PANEL DETERMINATION** regarding **Ethics Complaint Case No. 17-26C** via U.S. Certified Mail and electronic mail addressed to the Parties as follows:

Yvonne M. Nevarez-Goodson,
Esq.
Executive Director
Judy A. Prutzman, Esq.
Associate Counsel
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703

Email: ynevarez@ethics.nv.gov

Email: jprutzman@ethics.nv.gov

Shannon Wittenberger
Deputy District Attorney
Clark County
500 S. Grand Central Pkwy.,
Ste. 5075
Las Vegas, NV 89155

Email: Shannon.Wittenberger@ClarkCountyDA.com

Attorney for Subject

Jeffrey Witthun, Director
Family Support Division.
Clark County DA's Office
1900 E. Flamingo Road,
Suite 100
Las Vegas, NV 89119

Certified Mail: 9171 9690 0935 0037 6395 46

Subject

Dated: 3/22/18



Employee, Nevada Commission on Ethics



RECEIVED
 JUL 17 2017
 COMMISSION
 ON ETHICS

**NEVADA COMMISSION ON ETHICS
 ETHICS COMPLAINT**

Sec. 3.6 to 13, inclusive, of S.B. 84 (2017)

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.)*

NAME: <small>(Last, First)</small>	Jeffrey Witthun	TITLE OF PUBLIC OFFICE: <small>(Position)</small>	Director
PUBLIC ENTITY: <small>(Name of the entity employing this position)</small>	Clark County District Attorney's Office-Family Support Division		
ADDRESS:	1900 E Flamingo Rd Suite 100	CITY, STATE, ZIP CODE	Las Vegas, NV 89119
TELEPHONE:	<small>Work:</small> 702-671-9500	<small>Other: (Home, cell)</small>	E-MAIL:

2. Describe in specific detail the public officer's or employee's conduct that you allege violated NRS Chapter 281A. *(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.

The director of the Clark County District Attorney's Office Family Support Division, Jeffrey Witthun, is the final hiring authority for all full time, part time, contract and unpaid positions within this government agency. Director Witthun reviews and gives final hiring authorization to all prospective employees and transfers to this agency. All employees, whether directly or through their supervisor are under the administration of Jeffrey Witthun.

Mr. Witthun hired his son Adam Witthun, as an unpaid intern to work in the Family Support Division that he oversees and then appointed his son Adam to a paid part time position in this same department. Adam is still currently employed and reports ultimately to his father, in the same work location that houses the entire family support division which he oversees.

It is my belief that Mr. Witthun hired his son in violation of Nevada Revised Statutes and is clearly receiving a personal gain from this act. Mr. Witthun is a licensed Nevada Attorney as well as the defacto Human Resources Director for this division and is therefore knowledgeable of Nevada Laws and Ethics.

3. Is the alleged conduct the subject of any action or matter currently pending before another administrative or judicial body? If yes, describe:

The matter was referred to Clark County Human Resources.

4. NRS 281A requires public officers and employees to hold public office as a public trust and avoid conflicts between public duties and private interests. (NRS 281A.020) What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Statutory Summary:
<input checked="" type="checkbox"/>	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity for himself or person to whom he has a commitment in a private capacity 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.
<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 himself, and any business entity in which he has a significant pecuniary interest or any person to whom he has a commitment in a private capacity.
<input checked="" type="checkbox"/>	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for himself or any person to whom he has a commitment in a private capacity 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, or any person to whom he has a commitment in a private capacity.
<input checked="" type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his significant personal or financial interest, or any person to whom he has a commitment in a private capacity. (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 or any person to whom he has a commitment in a private capacity through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Representing or counseling a private person for compensation on an issue pending before the agency while employed, or within 1 year after leaving the service of the agency, including before any state agency of the Executive or Legislative Department. (State and local legislators and part time public officers and employees may represent/counsel private persons before agencies they do not serve, except local legislators may not represent/counsel private persons before other local agencies within the same county.)
<input type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person that is reasonably affected by an official matter.
<input type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.
<input type="checkbox"/>	NRS 281A.430	Negotiating, bidding on or entering into a government contract in which he has a significant pecuniary interest.
<input type="checkbox"/>	NRS 281A.500	Failing to file or timely file a Nevada Acknowledgement of Ethical Standards for Public Officers form.
<input type="checkbox"/>	NRS 281A.510	Accepting or receiving an improper honorarium.
<input 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	Negotiating or accepting employment from a business or industry regulated by or contracted with former public agency within one year after leaving the service of the agency. (Failing to honor the applicable "cooling off" period after leaving public service).

*Pursuant to NRS 281A.065, a public officer or employee has a commitment in a private capacity to the following persons:

1. Spouse; domestic partner
2. Household member
3. Family member within 3rd degree of consanguinity
4. Employer or spouse's/domestic partner's employer
5. Substantial and continuing business partner/associate
6. Substantially similar relationships

5. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS PURSUANT TO NRS.

Attach all documents or items you believe support your allegations. NAC 281A.400(6) defines "evidence which supports the allegation" as "any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects, and such forms of proof that support a reasonable belief in the truth of the allegation." A newspaper article or other media report will not support your allegations if it is offered by itself, but may be included with evidence that corroborates the article on report.

State the total number of additional pages attached (including evidence) 2.

6. 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.

NAME and TITLE: (Person #1)			
ADDRESS:			
TELEPHONE:			
NATURE OF TESTIMONY:	Please see above statement		
NAME and TITLE: (Person #2)	All employees working in the Family Support Division		
ADDRESS:		CITY, STATE, ZIP	
TELEPHONE:	Work:	Other: (Home, cell)	E-MAIL:
NATURE OF TESTIMONY:			

7. REQUESTER'S INFORMATION:

YOUR NAME:			
YOUR ADDRESS:		CITY, STATE, ZIP:	
YOUR TELEPHONE:	Day:	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 regarding these allegations. I acknowledge that, pursuant to NRS 281A, this Ethics Complaint, the materials submitted in support of the allegations, and the Commission's investigation are confidential until the Commission's Review Panel renders its determination, unless the Subject of the allegations authorizes their release.

Pursuant to Sec. 8 of S.B. 84, I request that my identity as the requester of this Ethics Complaint remain confidential because (please check appropriate box):

I am a public officer or employee who works for the same public body, agency or employer as the subject of this Ethics Complaint.

OR

I can show a reasonable likelihood that disclosure of my identity will subject me or a member of my household to a bona fide threat of physical force or violence.

07/14/2017

Date:

Print Name:

You must submit this form bearing your signature to:

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Or through the Commission's website: www.ethics.nv.gov



Employee:

Witthun, Adam

[Alternate Search](#)

671-9423

Title:

PT - Customer Service Assistant

Unit Name:

[Customer Service](#)

Functional Area:

Team Name:

[Contact Center Team 1](#)

Alpha Start:

Unit Tel No:

Alpha End:

Unit Fax No:

366-2424

Schedule:

[Five eight hour days](#)

Team Tel No:

Location:

A100-66

Supervisor:

[Jennifer Morrone](#)

UserId:

WiththUA

Supervisor Tel No:

671-9437

NOMADS:

AVZ

Hierarchy:

[View](#)

Email:

adam.witthun@clarkcountyda.cc

[Change Request](#)



Employee:

Witthun, Jeffrey

[Alternate Search](#)

671-9500

Title:

Director

Unit Name:

[Administration](#)

Functional Area:

Team Name:

Alpha Start:

Unit Tel No:

671-9499

Alpha End:

Unit Fax No:

366-2400

Schedule:

[Five eight hour days](#)

Team Tel No:

Location:

B233

Supervisor:

[Jeffrey Witthun](#)

Userid:

Withthul

Supervisor Tel No:

671-9500

NOMADS:

JJW

Hierarchy:

[View](#)

Email:

jeffrey.witthun@clarkcountyda.c

[Change Request](#)

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

Cheryl A. Lau, Esq.
Chair

Keith A. Weaver, Esq.
Vice-Chair

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
(D) 775-687-4312
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>

April 12, 2018

Dear Governor Sandoval:

Under NRS 281A.240, the Commission's Executive Director must "recommend to the Commission any legislation that the Executive Director considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government." In response to this statutory mandate, the Commission has reviewed various recommendations and voted to present the enclosed recommendations for proposed bill draft request ("BDR") concepts for the 2019 Legislative Session.

The Commission presented and passed an extensive bill during the 2017 Session (SB 84) aimed at providing the Commission with broader discretion to resolve complaint cases, including through letters of caution and instruction, deferral agreements, and additional penalties other than monetary sanctions, such as admonishments, reprimands, censures, and other corrective or remedial action. The bill further streamlined the Commission's processing of complaint cases to reflect fair due process and promote significant efficiencies in Commission processes and staff work flow while establishing certainty, predictability and stability for Nevada's public officers and employees. Finally, SB 84 addressed inconsistencies among the Ethics Law's standards of conduct to ensure equal application to conflicts that involve financial interests and relationship-based interests. Commission staff has been working hard during the Interim to implement these changes and the Commission is in the process of adopting new and revised regulations to reflect many of these changes.

For the 2019 Legislative Session, the Commission recommends the enclosed BDR Concepts for your review and consideration as issues that have arisen in specific cases before the Commission, the Commission's outreach and education program to Nevada's public officers and employees, and the implementation of SB 84. These statutory changes may be beneficial to clarify the legislative intent and/or the Commission's interpretation of certain provisions of NRS Chapter 281A, as amended by SB 84.

Sincerely,

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

BDR Concepts:

- 1) Clarify Scope of Open Meeting Law Exemption to Commission proceedings – Including action taken in Complaint Cases – in particular during confidential phases of a case.
 - Intent:
 - o The Commission serves as a quasi-judicial body responsible for enforcing the Ethics Law applicable to public officers and employees. The statutory structure preserves the confidentiality of a complaint through certain proceedings and provides short statutory deadlines and timelines for hearings and other administrative matters. Given the unique framework and the propriety of information reviewed by the Commission in such cases, the Legislature has always treated the Commission as a different administrative agency than others for purposes of the Open Meeting Law and provided an exemption from the OML, as confirmed in Legislative History by the Attorney General's Office. Recent challenges have questioned the scope of the exemption to the Open Meeting Law. Examples: Action may be taken in closed session during confidential phases of case and no notice of character or competence is required under OML during confidential phases and because subjects are separately notified of all proceedings under notices of hearing coordinated with subjects and counsel.

- 2) Impose fines for late filings of Acknowledgment Forms.
 - Intent:
 - o The Ethics Law requires all State and Local Government Public Officers (not employees) to file an Acknowledgment of Statutory Ethical Standards confirming that the public officer understands the Ethics Law. Public officers often do not file the form or file it late, with very little enforcement authority by the Commission.
 - The Secretary of State (SOS) imposes fines for failure to file and late filings of Financial Disclosure Statements (FDS).
 - In discussions with the Department of Administration and Governor's Office of Finance, such a fee could potentially operate as revenue to off-set certain expenses in the Commission's budget and/or serve as an efficiency measure as required by the current budget instructions after a pilot period of one to two years to determine the amount of projected revenue.
 - Potential considerations include the amount of staff time necessary to track/impose fines which could trigger Fiscal Note. We would collaborate with the SOS for processing of fines and use the same list of individuals identified as public officers required to file the FDS Forms.
 - Without effective enforcement, no incentive to file the form.

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- 3) Impose additional “cooling-off” measure: Prohibit public officer or employee from securing or granting privileges, preferences, exemptions, advantages, or economic opportunities, including, without limitation, accepting or providing any gift, service, favor, employment, engagement, or emolument for/to himself/herself or a person to whom he/she has a commitment in a private capacity within 1 year after the public officer has taken an official action related to the matter.
- Intent:
 - o The Commission has experienced questions and/or circumstances in which a public officer or employee acts in an official capacity to create an economic opportunity or to benefit a personal relationship or interest after the official action. Current law only contemplates circumstances in which a public officer or employee engages in conduct in an official capacity that benefits an existing personal interest.
 - Example:
 - o Planning Commissioner/Board Member votes to approve a zoning amendment. The Commissioner/Board Member is a realtor in his/her private capacity. The additional “cooling-off” measure would restrict the Commissioner/ Board member from listing the same property for a client on the same matter that he/she acted in his/her official capacity to ensure the zoning within 1 year.
 - Possible Exceptions:
 - o Introduction of legislative matter exempt from disclosure/abstention requirements; this measure could likewise exempt any personal benefits resulting from an action taken solely as the initiation of a legislative measure.
 - o Consider ability for Commission to grant relief from strict application in appropriate circumstances.
 - o The official action does not create a benefit or opportunity greater than that for any other person similarly situated.
- 4) Clarify disclosure/abstention obligations related to conflicts that arise out of confidential relationships – must be legally protected or confidential relationship.
- Intent:
 - o Under current law, a public officer or employee must disclose the full nature and extent of any private interest/relationship that is affected by an official matter, including how/whether the interests of certain persons with whom there is a private relationship (family, business, employer, etc.) are affected by the official matter. The disclosure requires the name of the person with whom there is a relationship and the nature of the relationship. Certain business relationships are confidential as a matter of law and the disclosure requirements place the public officer in the position of violating other confidentiality provisions.
 - Examples:
 - o Attorney/client Relationships – Must disclose that the matter affects a private client relationship, but the full nature and extent of the conflict (name of client/nature of representation) need not be disclosed if it is accompanied by an abstention.
 - o Realtors - Various nondisclosure agreements require absolute confidentiality in listing agreements.

- If disclosure without explaining full nature of conflict as a result of a confidential relationship, must also abstain from acting to protect public trust.
 - Exclusions: Confirm that the public officer may not contract out of the application of the Ethics Law and/or the definition of a “commitment in a private capacity to the interests of another person.”
- 5) Clarify scope of Cooling-Off Prohibitions.
- Intent:
 - o Various governmental agency attorneys continuously ask for clarification regarding the scope of cooling-off applicable to certain positions within the agency, including for recruitment purposes and advising their clients.
 - o Some agencies have offered that the effects of cooling-off are having the opposite impact than originally intended by the Legislature which was, in part, to prevent government from losing its qualified staff to the private sector. Instead, agencies are having difficulty with recruitment for positions in regulatory agencies for positions which are not compensated as highly as the private sector and are later prohibited from working for the private sector for one year.
 - Apply similar criteria to cooling-off interpretation that may be consistent with private sector non-compete clauses; i.e. whether an interpretation causes an undue hardship or unreasonable restraint than is generally necessary on the public officer or employee.
 - o Agency counsel contemplates that concerns about actual impropriety, *quid pro quo*, misuse of positions can be captured under other statutes.
 - Repeal language in NRS 281A.550(3) prohibiting “seeking” of employment.
 - o The statute currently prohibits a public employee from “seeking” employment opportunities before the Commission has determined whether the statute applies to the public employee or to grant relief, yet the Commission will refuse to opine on cooling-off requirements to speculative facts and circumstances. Employees often are unable to present facts and circumstances related to the type of work, duties or nature of the employer if they are prohibited from seeking the opportunities.
 - Clarify which positions constitute having “direct control or influence” over an action, particularly if it is a lower-level employee.
- 6) Clarify criteria regarding the Commission’s ability to initiate a complaint on its own motion.
- Intent:
 - o Current law states that the Commission may not initiate a complaint on its own motion based solely on an anonymous source. However, information that may come to the attention of the Commission or its Executive Director may be in the form of public records or information that would only come to our attention via a source that does not desire to file a complaint but is nevertheless the type of conduct that should be investigated to ensure the public’s trust in government and the role of the Commission.

- Clarify that the Commission may accept information from an anonymous source if the information includes otherwise publicly available information that would not otherwise be readily knowable to the Commission staff.

7) Advisory Opinions.

- Intent:
 - o Under existing law, only a public officer or employee can request a confidential advisory opinion from the Commission regarding his/her own past, present or future conduct based upon a specific set of facts or circumstances. The Commission must then rely solely upon the facts as presented by the requester, which may inaccurately characterize the nature of the public position, role of the agency or other factors the Commission may deem relevant to provide accurate advice.
- Without disclosing the name or position of the requester of an advisory opinion, unless confidentiality is waived, authorize Commission to seek information from agency legal counsel in context of a request for advisory opinion to ensure Commission has accurate information regarding the role of agency and duties of a position in rendering advice.
- Authorize governmental agencies (Managers/Legal Counsel) to bring requests for advisory opinions seeking clarification of Ethics Laws as applicable to certain positions within the agency given a specific set of circumstances.

8) Clarify contracting prohibitions/restrictions.

- Intent:
 - o Under current law, every public officer or employee is prohibited from entering into a contract with ANY state or local governmental entity, unless an exception applies, including if the contract is subject to open competitive bidding or relief is granted by the Commission. Other existing State laws establish criminal consequences for public officers and employees who enter into certain contracts with government, even if the Commission grants relief from an ethical violation.
- This concept would clarify that the ethical concerns relate to contracts in which the public officer or employee has some influence or other conflict of interest as a result of his public position, and to otherwise align the prohibition with the concurrent criminal statutes which prohibit certain contracts.
- This proposal mirrors the suggestion of SB 391 from 2011.
 - o Example: Is it an ethical conflict for a public employee who works for a State agency to enter into a contract with a county to provide plumbing services unrelated to his/her work for the State?

9) Expand Ethics Law to include prohibition against abuse of position or power.

- The Commission's current jurisdiction to investigate and render an opinion in a matter must include evidence of a pecuniary interest or commitment in a private capacity to the interests of another person that is in conflict with public duties.

- The Commission is criticized for not having the ability to evaluate inappropriate conduct of public officers and employees that does not implicate these specific private interests but nevertheless implicates conduct that does not comport with the public trust and is otherwise an abuse of official power. As a concept, this may be a valuable idea, but it will require the Commission to develop specific guidelines for public officers to understand the boundaries of conduct deemed as abusive.
- We may develop factors/criteria to consider in evaluating whether conduct amounts to an abuse of authority or power.

10) Amend NRS 281A.400(7) – Clarify and/or revise the criteria for the Limited Use Exception to this statute which prohibits use of governmental resources for a significant personal purpose.

- Intent:
 - o Existing Law prohibits a public officer or employee from using government resources for a personal purpose unless the use is limited under certain criteria (the Limited Use Exception)
- The “Appearance of Impropriety” language could be defined.
- Delete or define “significant” requirement regarding a “personal interest.”

11) Extend definition of a Commitment in a Private Capacity for a public officer or employee to the following relationships:

- Intent:
 - o The Ethics Law defines conflicts of interest to include the interests of a person to whom a public officer or employee shares certain private relationships, including certain family members, business entities and affiliates, employers, household members and “substantially similar relationships” to those listed herein. The Commission has interpreted certain relationships to qualify as “substantially similar” including certain relationships with business entities.
- Clarify that fiduciary or other significant volunteer service to a “Nonprofit entity” qualifies as a private commitment.
 - o We have significant requests for clarification and/or application about the nature of conflicts for disclosure and abstention purposes for public officers who are affiliated with nonprofit entities. Concerns have been raised by agency legal counsel that this type of relationship is not captured specifically in statute and has many variations.
- Subordinate employees:
 - o Current law states that a public officer or employee has a commitment to his/her employer – not to his/her employee (subordinate). Various cases have prompted questions about whether a public officer or employee acts inappropriately to benefit or affect the interests of a subordinate.
- Clarify scope of “continuous” regarding a continuous business or substantially similar relationship where the relationship has ended. Should it violate the law for a public employee to terminate a business relationship and approve a contract for that business with his governmental entity the next day?

12) Clarify scope of Legislative Privilege and Immunity.

- Intent:
 - o Existing Law states that the Commission does not have jurisdiction of a State Legislator and/or legislative employee for a matter that constitutes a core legislative function or is otherwise protected by Legislative Privilege and Immunity. A legislator or employee may claim privilege and immunity and force litigation before the Commission has had an opportunity to investigate the conduct to determine whether it is protected conduct.
- Clarify that the Commission has jurisdiction to investigate allegations of legislative misconduct to determine whether the conduct is protected by legislative privilege and immunity.

13) Clarify scope of Commission Counsel's authority regarding litigation and Executive Director's authority regarding administration of the agency.

- Intent:
 - o The extent of the authority of the 2 professional-level positions which are appointed by the Commission to carry out the mission of the agency has been questioned in litigation.
- Clarify the scope of authority and duties in legal and administrative matters.

14) Clarify complaint proceedings:

- Intent:
 - o Clarify the types of notice required for Ethics Complaints, including that the Commission may issue a Formal Notice of Charges if it determines that a complaint will be investigated rather than providing a copy of the complaint form that a member of the public submits. The public is not responsible for analyzing whether a public officer or employee's conduct violates a specific statutory provision. Instead, Commission staff (lawyers) evaluate the allegations in a complaint form and determine whether alleged conduct implicates the statutes. If the complainant is granted confidentiality, it is an administrative hurdle to redact any and all information in a complaint form that identifies the requester.
- Public officers and employees, in particular those who work in the same agency as the subject of a complaint, if relevant to the complaint, should be required to participate in an investigation of the Commission. The Commission's investigatory file remains confidential and we therefore can protect the identity of any witness who is interviewed during the course of an investigation. For example:
 - o **NRS 1.460 Public officers and employees to cooperate with Commission; service of process.**
 - o 1. All public officers and employees of the State, its agencies and political subdivisions and all officers of the court shall cooperate with the Commission in any lawful investigation or proceeding of the Commission and furnish information and reasonable assistance to the Commission or its authorized representative.
 - o 2. All sheriffs, marshals, police officers and constables shall, upon request of the Commission or its authorized representative, serve process on behalf of and execute all lawful orders of the Commission.
- Housekeeping clarifications for proceedings.