



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

**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS
BILL DRAFT REQUEST (BDR) SUBCOMMITTEE**

The Commission on Ethics held a public meeting on
Wednesday, April 15, 2020, at 10:30 a.m.
at the following location:

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

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. A recording of the meeting is available for public inspection at the Commission's office.

1. Call to Order and Roll Call.

Vice-Chair Wallin, CPA, CMA, CFM appeared telephonically and called the meeting to order at 10:30 a.m. Also appearing telephonically were Commissioners Brian Duffrin and Barbara Gruenewald, Esq. Present for Commission staff in Carson City were Commission Counsel Tracy L. Chase, Esq. and Executive Assistant Kari Pedroza. Executive Director Yvonne M. Nevarez-Goodson, Esq., Associate Counsel Casey Gilham, Esq., and Senior Legal Researcher Darci Hayden appeared telephonically.

2. Public Comment.

There was no public comment.

3. Consideration and approval of the Executive Director's recommendations for Nevada Commission on Ethics' Bill Draft Request (BDR) for the 2021 Nevada Legislative Session.

Executive Director Nevarez-Goodson directed the Subcommittee to the BDR Recommendation memorandum provided in the Subcommittee meeting materials which outlined the Commission's BDR history, as well as the Executive Director's recommendation for the 2021 Legislative Session. She provided summaries of the most recent Commission Legislation included in Senate Bill 84 (SB 84) from 2017 and Senate Bill 129 (SB 129) from 2019, and recommended that the Subcommittee consider the proposed changes in the Second Reprint of SB 129 as a starting point for the Commission's 2021 Legislative BDR.

The Executive Director recommended the following provisions from SB 129 be prioritized in the upcoming Legislative BDR:

Requests for Advisory Opinions

- 2-year statute of limitations for advice re: past conduct.
- Distinction between issuing a decision versus a written opinion; extra time to issue written opinion.
- Materials and hearing are confidential and exempt from Open Meeting Law. Commission **may** hold open hearing upon waiver of confidentiality in accordance with regulations of Commission.

Ethics Complaints

- Authorizing Commission to extend 45-day deadline to determine jurisdiction/investigation based upon showing of good cause.
- Requiring Commission to serve a "Notice of Investigation" instead of a copy of the ethics complaint on the Subject.
- Clarifies that consistent with existing subpoena power, Subject of a complaint must participate in an investigation regardless of whether they file a written response to the allegations; exceptions if privileges apply.
- Review Panel may grant an extension from 70-day timeline to investigate a case for good cause shown.
- Clarifies the parties to adjudicatory proceedings after investigation include the Executive Director and Subject of the complaint who may each present/defend their cases to the Commission after the Commission issues a written notice of hearing and schedule for discovery.
- Distinction between issuing a decision versus a written opinion; extra time to issue written opinion.
- Clarifies the protections for confidentiality of the identity of person who files an ethics complaint, including when they otherwise serve as witnesses.
- Materials and hearings are exempt from OML (except final action). Clarifies that exemption exists even for final action, but the Commission will make its final decision in an open hearing in accordance with regulations of Commission.

Ethical Standards of Conduct

- Cooling Off Provisions:
 - o Confirms that prohibitions apply to current and former public officers and employees.
 - o Expands prohibition against a public officer/employee leaving public service to work for a vendor to which the officer or employee was involved in "awarding" a contract over \$25,000 during the preceding year to any contract in which the public officer or employee was involved in awarding of such contract or material implementation, management or administration of such a contract.
 - o Authorizes public officers/employees to request information from a potential employer in a business or industry without being deemed to improperly negotiate future employment.
 - o Limits application of prohibition to seek/accept employment from regulated business or industry applicable to Executive Branch employees to management level employees.
- Abuse of Power/Authority:
 - o Prohibits actions by public officers/employees that a reasonable person would find gross/unconscionable abuse of official position undermining integrity or impartiality of reasonable person in public officer position;
 - o Does not include allegations of bias, error or abuse of discretion within normal scope of duties.
- Misuse of Government Resources
 - o Clarifies and makes consistent prohibition of public officer/employee and State Legislator from using government resources for significant personal or pecuniary interest.

- Clarifies 2 of the 4 requirements of the limited-use exception: 1) to allow use if there is a **written** policy allowing such use **before** the conduct; and 2) defines “appearance of impropriety” as a perception by a reasonable person that the use is inappropriate, disproportionate, excessive or unreasonable.
- Disclosure/Abstention:
 - New limited exception from disclosing certain information for legally protected confidential relationships (i.e. attorney/client) – abstention mandatory in such circumstances.
 - Adds abstention requirement for matters that are materially affected by the nature of private representations of private clients within the preceding year.

Open Meeting Law (“OML”) Exemption/Application

- This bill requests complete exemption from OML and instead provides that the Commission will take final action in an open meeting defined under its regulations, but that is not required to comply with the notice, agenda and supplemental materials requirements of OML for confidential documents and scheduling/noticing challenges for cases.
- OML also now requires that a public body take legal action regarding litigation in an open, public meeting under OML. This bill authorizes the Commission to delegate litigation decisions to its Chair, Executive Director or both and to allow Commission Counsel to initiate, defend, participate and appeal in legal proceedings with consent or ratification of Commission or Chair/Executive Director (if so delegated).

Administrative

- Executive Director must be licensed attorney in Nevada.
- Review Panel must prepare/serve written Panel Determinations; deadlines for deferral agreements; mediate settlements.
- Requires all public officers and employees to cooperate in Commission’s lawful investigations or proceedings and furnish information unless limited rights privileges, immunities or confidentiality apply.

Executive Director Nevarez-Goodson also asked the Subcommittee to consider the following new recommendations:

Advisory Opinions

- Authorize Commission Counsel and Executive Director to issue informal advice in reliance on former Commission precedent. Such advice may not be binding and/or may be appealed to the Commission. Such advice may protect the public officer or employee from future finding of a violation. Such advice shouldn’t create new precedent for the Commission.
- Alternatively, authorize streamlined (conclusory) versions of advisory opinions, in particular for cases that are not subject to judicial review or for which the Commission doesn’t believe warrants publication or precedent. For opinions subject to judicial review, simplify opinion to simple findings of fact and conclusions of law.
- Authorize Commission to determine certain advisory opinions as non-binding advice, not subject to judicial review.

Ethics Complaints

- Jurisdictional Recommendations – Confirm confidentiality.
- Confidentiality of Requester: Significant staff time is spent analyzing and coordinating appropriateness of confidentiality of Requester, and if confidentiality is maintained, ensuring appropriate redactions to complaints and protection of witnesses who may otherwise inadvertently identify the

Requester. This may be solved, in part, with the approach to issuing a Notice of Complaint in lieu of providing a copy of the Ethics Complaint.

- Requiring State and local governmental agencies to cooperate and provide information, even if confidential, during the course of an ethics investigation. Internal employee disciplinary matters often parallel ethics investigations. The Commission doesn't want to be blindsided by or uninformed of evidence of an internal agency investigation that relates to ethical misconduct. There is inherent protection of such information given that the Commission's investigatory file is statutorily confidential.
- Increase investigatory timeframe with opportunity to request extensions from Review Panel for good cause.
- Extend deadline for Review Panel to render a decision from 15 days to 45 days. This would provide Review Panel opportunity to direct additional investigation or seek legal research/advice on a given matter.
- Confirm that proposed stipulations are exempt from OML.

Commissioner Duffrin expressed his concern that extensions of statutory timelines could result in delays for subjects of complaints and requesters of advisory opinions to receive resolution of their matters. However, he further opined that the Commission would not likely receive budgetary resources to hire an additional position to help alleviate the increased caseload given the current economic circumstances, and therefore the extensions would assist staff to complete the workload. The Executive Director confirmed that extensions of time would not alleviate the backlog of investigations due to caseload increases but would ensure that the oldest cases do not get pushed further back by newer cases where there is no waiver of the timelines.

Commissioner Gruenewald asked what feedback was given by the Committee Members in the Senate or the Assembly last session regarding the time extensions. Executive Director Nevarez-Goodson reported that the Assembly Committee on Legislative Operations and Elections did not want open-ended deadlines for extensions and the Second Reprint of SB 129 included an amendment clarifying that extensions would only be granted for good cause with a specified deadline, and the same recommendation was incorporated herein.

Commissioner Gruenewald supported the Executive Director's recommendation to remove any section regarding referrals of complaints involving State Legislators from the BDR proposal to avoid legislative concerns that the amendment was targeting legislators. Executive Director Nevarez-Goodson confirmed that the amendment in SB 129 did not grant additional jurisdiction to the Commission over State Legislators and instead provided a procedural mechanism for the Commission to refer appropriate ethics complaints to the Legislature without waiving confidentiality or having to make such decisions in an open public meeting. The BDR Subcommittee agreed to exclude any such provisions to avoid any possibility that the language could damage the other goals of the legislation due to any unintended misinterpretations of the provisions.

Executive Director Nevarez-Goodson informed the Commissioners that feedback from the public regarding the Abuse of Power/Authority provision is that the public is concerned that the Commission does not have jurisdiction over conduct that would be deemed a true abuse of power simply because it does not implicate a pecuniary interest or a commitment in a private capacity under the current law. She stated that the Commission has received numerous complaints alleging an abuse of power, but the complaints were dismissed for failure to allege the financial interest or commitment in a private capacity. She explained that the proposed language to this provision in the BDR was constitutionally supported by legislative attorneys and would provide an opportunity for the Commission to investigate allegations of abuse, but not allegations regarding bias or performance in carrying out public duties.

Executive Director Nevarez-Goodson provided that state and local government agency stakeholders were comfortable with the proposed language in the abuse of power provision as submitted in the 2019 Legislative session.

Commissioner Duffrin asked whether the Commission would experience a significant increase in the number of complaints or investigations if the Commission could investigate allegations of abuse of power not associated with a financial interest and/or a commitment in a private capacity. Executive Director Nevarez-Goodson replied that she did not think the number of complaints filed would increase as the Commission is already receiving these types of complaints; however, the number of complaints being investigated would likely increase. Executive Director Nevarez-Goodson stated she would provide the Subcommittee with statistics regarding the number of these types of complaints received in prior years for the next meeting.

Commissioner Gruenewald asked if there was any feedback from any Legislators that they did not want the Commission to have jurisdiction over the Legislative Branch, and Executive Director Nevarez-Goodson responded that she did not receive that feedback. Vice-Chair Wallin added that she attended many of the hearings and meetings with Legislators during the last session and confirmed that there was no concern about the Ethics Commission oversight of the Legislative Branch from the Legislators. Executive Director reminded the BDR Subcommittee that former Governor Sandoval introduced a bill in 2017 to remove legislators from the jurisdiction of the Ethics Commission and the bill died in committee.

Executive Director Nevarez-Goodson asked the Subcommittee members to consider her recommendation for the Commission's Executive Director and Commission Counsel to issue informal, administrative advice to public officers and employees that would not contradict Commission precedent in an effort to streamline the Commission's Advisory Opinion case load and be more accessible and timely to the needs of public officers and employees. Executive Director Nevarez-Goodson clarified that the proposal would provide the Commission with discretion in determining which opinions would be binding and subject to judicial review, and Commission Counsel Chase offered that this is a similar process to that which is in practice with the Court System.

The BDR Subcommittee members agreed that this would be a worthwhile pursuit for the Commission's bill. Based on the direction of the Subcommittee, Executive Director Nevarez-Goodson confirmed that for the next BDR Subcommittee meeting she would provide language pertaining to Advisory Opinions proposing an extension from the 45-day timeline upon the receipt of the Requestor's approval of the facts and an outline for an informal advisory process.

Executive Director Nevarez-Goodson provided information on why she recommended the inclusion of the language requiring that the Executive Director be a licensed attorney in Nevada, including that the statutory duties of the Executive Director require legal analysis, recommendations, and the overall practice of law, as well as that limited staffing resources require the Executive Director to legally represent herself as a party if there are vacancies in the Associate Counsel position or if a conflicts of interest prevent the Associate Counsel from acting in a particular matter. Commissioner Gruenewald asked if there were other agencies with the same requirement, and Executive Director Nevarez-Goodson noted that two new Commissions were created during the last legislative session, the Commission on Indigent Defense and the Commission on Sentencing, which both statutorily require that their Executive Directors be licensed attorneys. Vice-Chair Wallin shared her opinion that this session may be a more opportune time to propose this with the budget issue and the inability to hire another attorney; Commissioner Gruenewald agreed.

Executive Director Nevarez-Goodson clarified the intention of the proposal requiring state and local governmental agency cooperation during the course of an ethics investigation. Commissioner Gruenewald stated her agreement in pursuing this proposal.

Vice-Chair Wallin asked Executive Director Nevarez-Goodson to provide language at the next meeting allowing the Commission to refer non-jurisdictional complaints to another government agency with appropriate jurisdiction without jeopardizing the confidentiality of the complaint. Commissioners Duffrin and Gruenewald agreed with the request. Executive Director

Nevarez-Goodson confirmed that she and Commission Counsel Chase would work together to draft that language to be provided at the next BDR Subcommittee meeting.

Commissioner Gruenewald moved to accept the Executive Director's recommendations to the Nevada Commission on Ethics' Bill Draft Request (BDR) for the 2021 Nevada Legislative Session, including the Committee's requested revisions and new language to be provided at the next Subcommittee meeting. Commissioner Duffrin seconded the motion. The Motion was put to a vote and carried unanimously.

4. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.

Commissioner Gruenewald thanked Executive Director Nevarez-Goodson for her excellent BDR summary and history of past legislation. Vice-Chair Wallin and Commissioner Duffrin echoed Commissioner Gruenewald's comments. Commissioner Duffrin thanked Commission staff for their efforts working from home and shared his opinion that the BDR recommendation is a good product going forward. Vice-Chair Wallin thanked her fellow Subcommittee members for their time and hard work. She also expressed her thoughts about meeting with legislators before the upcoming session.

5. Public Comment.

No public comment.

6. Adjournment.

Commissioner Gruenewald made a motion to adjourn the public meeting. Commissioner Duffrin seconded the motion. The Motion was put to a vote and carried unanimously.

The meeting adjourned at 12:14 p.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 20, 2020:

/s/ Kim Wallin

Kim Wallin, CPA, CMA, CFM
Vice-Chair

/s/ Brian Duffrin

Brian Duffrin
Commissioner

/s/ Barbara Gruenewald

Barbara Gruenewald, Esq.
Commissioner