



**STATE OF NEVADA
COMMISSION ON ETHICS**

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

The Commission on Ethics' Bill Draft Request (BDR) Subcommittee held a public meeting on Wednesday, May 13, 2020, at 2:00 p.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' Bill Draft Request (BDR) Subcommittee. 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 2:08 p.m. Also appearing telephonically were Commissioners Brian Duffrin and Barbara Gruenewald, Esq. Present for Commission staff in Carson City were Executive Director Yvonne M. Nevarez-Goodson, Esq. and Executive Assistant Kari Pedroza. Commission Counsel Tracy L. Chase, Esq., Associate Counsel Casey Gilham, Esq., and Senior Legal Researcher Darci Hayden appeared telephonically.

2. Public Comment.

There was no public comment.

3. Approval of Minutes of the April 15, 2020 BDR Subcommittee Meeting.

Commissioner Gruenewald moved to approve the April 15, 2020 BDR Subcommittee Minutes as presented. Commissioner Duffrin seconded the motion. The Motion was put to a vote and carried unanimously.

4. 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 proposed BDR language revisions provided in the Subcommittee meeting materials. She explained the formatting of the proposed BDR language was done in a manner familiar to the LCB drafters for amendments to bills during the legislative session, and she explained the different colored, highlighted, strike-

through and underlined text. Executive Director Nevarez-Goodson further explained that the BDR encompassed various provisions from all versions of Senate Bill (SB 129) and updated them based on the direction of the BDR Subcommittee at its last meeting.

Executive Director Nevarez-Goodson directed the Subcommittee members to the BDR's proposed Digest which reflects all of the changes for the BDR from SB 129, , including various reprints of the bill. She explained that the highlighted text in the Digest represents feedback from the BDR Subcommittee meeting on April 15, 2020. Executive Director Nevarez-Goodson presented the proposed changes to the BDR Subcommittee members as follows:

Request for Confidential Personnel Records:

Section 30 of the BDR authorizes the Executive Director to request a subpoena for certain personnel records from public agencies relating to ethics allegations against public employees in an ethics complaint investigation. Such records would be maintained as confidential under the Commission's protected investigatory file.

Commissioner Gruenewald inquired whether the Commission should anticipate any pushback about the proposed addition from the public labor organizations, and Executive Director Nevarez-Goodson responded that the provision mirrored an existing State regulation which allows the state to provide these types of records to entities such as Nevada Equal Rights Commission. Executive Director Nevarez-Goodson further reiterated that the Commission will have additional protections given that its investigatory files are already maintained as confidential. She added that it would be fair to anticipate questions or concerns and would reach out to stakeholders prior to the Legislative Session to explain the Commission's intent regarding this section.

Vice-Chair Wallin asked Executive Director Nevarez-Goodson to share an example of a situation when receipt of a personnel record benefited an Ethics Complaint investigation. Executive Director Nevarez-Goodson provided a scenario wherein the Commission recently investigated a public employee alleged to have misused government resources, including staff time, who was also the subject of an internal disciplinary investigation by the agency alleging the same conduct. The Executive Director's efforts to obtain information from the agency regarding its internal disciplinary investigation were denied due to confidentiality rules. Vice-Chair Wallin inquired about adding language to this section excluding records pertaining to criminal records. Executive Director Nevarez-Goodson deferred to Commission Counsel Tracy Chase who explained that if law enforcement were investigating conduct of its own officer, the subject of an internal affairs investigation, that file would remain confidential. She added further that if law enforcement were investigating a public officer or employee in regard to a criminal matter which also violates the Ethics Law and had an Ethics Complaint filed against the public officer or employee, the law enforcement agency might refrain from contributing any of its investigatory materials to a civil matter until such time that the criminal investigation was concluded. Commission Counsel stated most personnel records would include information relating to civil matters and usually not criminal matters. Executive Director Nevarez-Goodson confirmed that she and Commission Counsel Chase would draft language excluding concurrent or pending criminal investigation material to avoid opposition to this proposal.

Request for Public Officer/Employee Cooperation:

Executive Director Nevarez-Goodson explained this section pertaining to the cooperation from public officers and employees in Ethics complaint case investigations. She informed the Commission that the section was modeled after the process in place at the Commission on Judicial Discipline and added back based on direction provided by the BDR Subcommittee. Executive Director Nevarez-Goodson further disclosed that public officers and employees who participated in complaint cases as witnesses provided feedback that it would be beneficial to have protection under statute.

Upon an inquiry from Commissioner Gruenewald, Executive Director Nevarez-Goodson explained that the language in Section 7 was originally included in SB 129 and it was supported

by various state and local government stakeholders with the language that protected employees' rights, privileges and immunities for providing information to the Commission.

Open Meeting Law:

Executive Director Nevarez-Goodson reminded the Subcommittee of the *Hansen* decision requiring public agencies to meet publicly to direct litigation decisions. The original version of SB 129 included various sections to grant permission to the Commission Counsel to represent the Commission in litigation, to delegate authority to the Chair or the Executive Director, or both, depending on the circumstances, regarding litigation decisions, and to exempt confidential advisory and complaint proceedings from the Open Meeting Law. She informed the Subcommittee that the Commission collaborated with the Attorney General's task force last session to add similar language to the Open Meeting Law stating that all public agencies could at a public meeting delegate those litigation decisions to the Chair or Executive Director or other person as appropriate and that amendment passed. However, there continues to be a loophole for the Commission in that the delegation must take place in an open meeting and the Commission has confidential advisory and complaint cases that may not be addressed in an open meeting to delegate litigation decisions of a confidential case. Upon the direction of the BDR Subcommittee at its last meeting, the language was added back to the BDR proposal to ensure the Commission may delegate those decisions in a confidential setting where appropriate.

Commissioner Duffrin asked whether the Commission's proposed provisions related to the Open Meeting Law would result in the need for a specific carve out or amendment of the Open Meeting Law. Executive Director Nevarez-Goodson clarified that the Commission would be requesting a specific carve out for its confidential proceedings and as such only the Commission's statute would be affected and not the entirety of the Open Meeting Law.

Training Materials:

Executive Director Nevarez-Goodson summarized changes in Section 29 for the Subcommittee, including a proposal to amend the requirement for a manual to the Commission's training materials, which are constantly updated. Commissioner Duffrin offered that his previous employer the Nevada Gaming Control Board published a board information packet and he suggested the Commission publish a similar document that can be easily updated. Executive Director Nevarez-Goodson confirmed Commissioner Duffrin's intent that the language in statute be changed from training materials to a broader informational publication related to the Ethics in Government Law for use by public officers and employees. The Subcommittee members agreed and asked that the materials be intuitive and easy to understand for the public.

Referral of Ethics Complaints:

Executive Director Nevarez-Goodson explained the language authorizing the Commission to refer Ethics Complaints to other appropriate state and local government agencies when the Commission does not have jurisdiction over the alleged conduct. Commissioner Duffrin shared his support of the addition and agreed that language protecting the Commission from possible liability resulting from referring complaints should be incorporated. Commission Counsel Chase referenced the existing immunity provision included in the Ethics statute which provides protection for the Commission. She further stated that she assisted the Executive Director in formulating the referral provision language and feels it is sufficient to achieve the Commission's intended purpose. Executive Director Nevarez-Goodson added that the proposed language provided that the Commission could refer all or a portion of the information, communications, records, etc. to the appropriate agency and not necessarily the whole original complaint to allow for confidentiality of the requester.

Statutory Deadline Extensions:

Executive Director Nevarez-Goodson explained the new provisions permitting the Commission to authorize extensions of certain statutory deadlines for good cause shown if there

is a specific and reasonable time period for the extension. The Executive Director noted the fiscal limitations confronting the Commission, the lack of potential resources, the increased case load and the backlog of investigations as support for appropriate extensions. The Subcommittee supported each of the proposed statutory extensions.

Advisory Opinions:

Executive Director Nevarez-Goodson outlined new proposed language pertaining to the advisory opinion process. Specifically, she clarified a new process whereby the Commission would determine which issued opinions would be binding and constitute an administrative precedent for future advisory opinions or ethics complaints. She further emphasized the new process which would authorize the Executive Director and Commission Counsel to provide informal, non-binding advice to public officers and employees on behalf of the Commission with various limitations and conditions. Specifically, the advice may not be contrary to a published opinion of the Commission or otherwise expand its precedential interpretations. Such advice would not be subject to judicial review, but it would be subject to review by the Commission through a formal advisory request, the results of which could be subject to judicial review under existing law. Although not binding, the public officer or employee could rely upon the advice and have safe harbor protections for good faith reliance. The goal of this new process would be to provide expedited advisory services to the public officers and employees. Commissioner Gruenewald voiced her approval of this language and offered that this would be similar to the process in place at the Nevada State Bar.

Provisions Deleted from SB 129:

Executive Director Nevarez-Goodson summarized the various provisions from SB 129 that would be deleted in this BDR as no longer necessary or priorities for the Commission.

Procedural Questions from BDR Subcommittee Members:

Commissioner Gruenewald asked Executive Director Nevarez-Goodson about the BDR drafting process and Executive Director Nevarez-Goodson explained that the BDR would be submitted to the Governor's office for review and approval. If approved, the language would be submitted to LCB for formal drafting and pre-filing before the Legislative Session. The language, as presented in the BDR proposal are currently in a format familiar to the LCB drafters, and as such will not require a lot of revisions by the LCB drafters prior to submission.

Vice-Chair Wallin requested that Executive Director Nevarez-Goodson provide a BDR summary recommendation memorandum to the full Commission at its meeting the following week. Executive Director Nevarez-Goodson agreed she would provide such a memorandum and explain the BDR Subcommittee's recommendations to the full Commission.

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 language proposed relating to the training/informational materials. Commissioner Duffrin seconded the motion. The Motion was put to a vote and carried unanimously.

5. 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 Duffrin thanked Executive Director Nevarez-Goodson and Commission Counsel Chase for their time and hard work and offered his opinion that the proposal will be helpful in meeting with Legislators in the future.

Vice-Chair Wallin thanked her fellow Subcommittee members.

6. Public Comment.

No public comment.

7. Adjournment.

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

The meeting adjourned at 3:30 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 August 19, 2020:

Kim Wallin, CPA, CMA, CFM
Vice-Chair

Brian Duffrin
Commissioner

Barbara Gruenewald, Esq.
Commissioner