



**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, October 21, 2020 at 9:30 a.m.
PLACE OF MEETING: This meeting will be held at the following location:

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

Commissioners may appear telephonically.

EMERGENCY COVID-19 NOTICE:

COMMISSION MEETING WILL BE CANCELLED AND RESCHEDULED IF TOO MANY MEMBERS OF THE PUBLIC ATTEND IN PERSON AND THE COMMISSION IS UNABLE TO ENSURE PROPER COVID-19 PROTOCOLS INCLUDING SOCIAL DISTANCING REQUIREMENTS (6 FEET DISTANCE) IMPOSED BY NEVADA GOVERNOR.

MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT WRITTEN PUBLIC COMMENT WHICH WILL BE SUBMITTED INTO THE RECORD OF THE PUBLIC MEETING.

AGENDA

NOTES:

- Two or more agenda items may be combined for consideration.
- At any time, an agenda item may be taken out of order, removed, or delayed.
- Public comment will be accepted at the beginning of the open session and again before the conclusion of the open session of the meeting. Comment and/or testimony by the public may be limited to three (3) minutes. No action may be taken on any matter referred to in remarks made as public comment. Members of the public may also submit written public comment to the Commission at NCOE@ethics.nv.gov.

	1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.
	2. Public Comment. Comment and/or testimony by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
For Possible Action	3. Approval of Minutes of the August 19, 2020 Commission Meeting.

For Possible Action	4. Consideration and approval of the Fiscal Year 2020 Annual Report presented by the Executive Director pursuant to NAC 281A.180(2).
For Possible Action	5. Consideration and approval of the Commission's procedures for reviewing and approving staff recommendations and proposed orders/documents related to ethics complaints and requests for advisory opinions during confidential phases of proceedings, including, without limitation: (1) jurisdictional, evidentiary and investigatory recommendations, proposed orders and proposed confidential letters of caution or instruction related to ethics complaints; and (2) jurisdictional recommendations, recommendations regarding the Commission's review and consideration of requests for advisory opinions via hearing or written submission, and proposed opinions related to requests for advisory opinions.
For Possible Action	6. Report and recommendations by Executive Director on agency status and operations and possible direction thereon. Items to be discussed include, without limitation: <ul style="list-style-type: none"> • FY21 Budget Status • 2021 BDR Status • Commission Meeting Schedule • Media Outreach Status • Update on COVID-19 Emergency Protocols • Education and Outreach
For Possible Action	7. Approval and establishment of Commission vision for Fiscal Year 2021 and beyond, including possible direction on the Commission's mission statement, guiding principles, media and public outreach, education and training, and 2021 Legislative Session and participation therein by Commission Members and Staff, with confirmation of authority for Executive Director to represent the Commission in budgetary and legislative matters.
	8. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.
	9. Public Comment. Comment and/or testimony by any member of the public may be limited to three (3) minutes. No action will be taken under this agenda item.
For Possible Action	10. 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 open session of this meeting, 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 are 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.
- ❖ Any meeting or hearing held by the Commission pursuant to NRS 281A.760 to receive information or evidence regarding the conduct of a public officer or employee and deliberations of the Commission concerning an ethics complaint are exempt from the provisions of NRS Chapter 241, Nevada's Open Meeting Law. As a result, these agenda items, or any portion of them, may be heard in closed session.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020, as amended by the Governor's COVID-19 Declaration of Emergency, Directive 006¹, 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>

¹ Sections 4 and 5 of Directive 006 of the Governor's COVID-19 Declaration of Emergency suspends the requirements of NRS 241.020(4)(a) requiring a public notice to be posted at physical locations within the State of Nevada and maintains continued compliance with NRS 241.020(4)(b) and 241.020(4)(c) for public notices and agendas to be posted to Nevada's notice website and the public body's website, along with providing a copy to any person who has requested one via U.S. mail or electronic mail.

Agenda Item 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, August 19, 2020, at 9:30 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.

Chair Cheryl A. Lau, Esq. appeared via videoconference and called the meeting to order at 9:30 a.m. Also appearing via videoconference were Vice-Chair Kim Wallin, CPA, CMA, CFM and Commissioners Brian Duffrin, Barbara Gruenewald, Esq., Teresa Lowry, Esq., Philip K. (P.K.) O'Neill, Damian R. Sheets, Esq. and Amanda Yen, Esq. Present for Commission staff in Carson City and via videoconference were Executive Director Yvonne M. Nevarez-Goodson, Esq. and Executive Assistant Kari Pedroza. Commission Counsel Tracy L. Chase, Esq., Associate Counsel Ann Wilkinson, Esq., Investigator Erron Terry and Senior Legal Researcher Darci Hayden appeared via videoconference.

The pledge of allegiance was conducted.

2. Public Comment.

There was no public comment.

3. Discussion and approval of Commission Proclamation honoring Chair Cheryl Lau's years of service to the Commission.

Executive Director Nevarez-Goodson read the Proclamation into the record and shared her personal appreciation and gratitude for Chair Lau, including her 8 years of service, unending support of staff and Commission goals.

Vice-Chair Wallin shared that she did not have the words to express her gratitude for Chair Lau's dedication, inspiration, thoughtfulness and direction in which she has taken the Commission over the years.

Commissioner Yen thanked Chair Lau for her public service, dedication, knowledge and continued guidance.

Commissioner Lowry stated that it had been an honor and a privilege to serve on the Commission under Chair Lau's leadership and guidance. She added further that Chair Lau exemplifies the integrity, grace and intellect we all aspire to in serving the state of Nevada. Commissioner Lowry thanked the Chair for her hard work and dedication to the Ethics Commission.

Commissioner Gruenewald echoed the sentiments of fellow Commissioners and commented that in addition to her leadership traits and legal contributions on the Commission, Chair Lau had become a dear friend. She made the Commissioners feel heard and Commissioner Gruenewald extended her appreciation to Chair Lau.

Commissioner Duffrin shared that it was an honor to work with Chair Lau on the Commission. He thanked her for her timeliness and professionalism and wished her the best in future endeavors.

Commissioner O'Neill agreed with the comments of his fellow Commissioners and added that Chair Lau set the standard of what is expected not only as a Commissioner but as the Chairperson for the Commission. He thanked her for her dedicated service as Commission Chair.

Commission Counsel Chase conveyed her appreciation of the privilege in working with Chair Lau. She applauded Chair Lau's guidance, wisdom, work ethic and accessibility to staff.

Chair Lau expressed her gratitude to her fellow Commissioners and Commission staff for their kind words. She thanked them for their assistance in making the Ethics Commission the best Commission of all time.

4. Election of Commission Chair and Vice Chair for Fiscal Year 2020-2021, pursuant to NAC 281A.150.

Commissioner Yen nominated Vice-Chair Wallin for the position of Commission Chair. Commissioner Gruenewald seconded the nomination.

Commissioner Gruenewald nominated Commissioner Duffrin for the position of Vice-Chair. Commissioner O'Neill seconded the nomination.

Based upon the nominations, Chair Lau moved to appoint Commissioner Wallin as the new Chair of the Ethics Commission and Commissioner Duffrin to serve as Vice-Chair for Fiscal Year 2020-2021. Commissioner Yen seconded the motion. The Motion was put to a vote and carried unanimously.

Chair Lau congratulated the Commissioners in electing Commissioner Wallin as Chair and Commissioner Duffrin as Vice-Chair and welcomed Chair Wallin and Vice-Chair Duffrin to their new positions. Former Chair Lau turned over the proceedings to newly appointed Chair Wallin.

Chair Wallin thanked the Commissioners for their support in nominating her as Chair and Commissioner Duffrin as Vice-Chair.

5. Approval of Minutes of the May 13, 2020 BDR Subcommittee Meeting.

Chair Wallin stated that Commissioners Duffrin, Gruenewald and she served as members of the BDR Subcommittee and were each present at the May 13 Subcommittee meeting.

Commission Counsel Chase advised that only the Subcommittee members were permitted to act on this item.

Commissioner Gruenewald moved to approve the May 13, 2020 BDR Subcommittee Minutes as presented. Vice-Chair Duffrin seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.

6. Approval of the May 20, 2020 Commission Meeting.

Chair Wallin stated that all Commissioners were present for the May meeting.

Commissioner Yen moved to approve the May 20, 2020 Minutes as presented. Commissioner Lau seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	Aye.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Aye.
Commissioner Yen:	Aye.

7. Authorization for Commission Counsel to defend and represent the interests of the Nevada Commission on Ethics in pending legal proceedings entitled "Gypsum Resources Materials, LLC vs. Clark County, et. al.," Case No. BK-S-19-14796-mkn, filed in the United States Bankruptcy Court, District Court of Nevada, including responding to any issued subpoenas seeking records of the Commission and related legal proceedings, appeals, writs or any other matters instituted in any court of competent jurisdiction applicable to the Commission, including any Federal courts or State Courts of Nevada.

In accordance with the requirements of NRS 281A.420 and the advice of Commission Counsel Chase, Commissioner Sheets disclosed a conflict of interest in this matter. Specifically, Commissioner Sheets disclosed that he is a partner of the law firm Nevada Defense Group which represents James Rhoades, the President of the parent company of Gypsum Resources, in private matters. Although that representation of Mr. Rhoades is unrelated to the underlying matter involving Gypsum Resources, he has a commitment in a private capacity to the interests of Mr. Rhoades through his attorney-client relationship and would therefore be abstaining from participating in this matter. Commissioner Sheets excused himself from the video conference at this time.

Commission Counsel Chase informed the Commission that this Agenda Item would authorize the Commission Counsel to defend and represent the interests of the Commission related to a subpoena that was issued by Gypsum Resources seeking Commission records in legal proceedings entitled "Gypsum Resources Materials, LLC vs. Clark County". She explained that the subpoena seeks records relating to an Advisory Opinion the Commission issued to Clark County Commissioner Jones identified as Advisory Opinion No. 19-003A. Commission Counsel Chase informed the Commission that Commissioner Jones waived confidentiality of the Commission opinion, and the opinion is published on the Commission on Ethics' website and has been provided to Gypsum Resources. However, Commissioner Jones did not waive other records related to the advisory request and the subpoena also seeks these confidential records and other legally protected records. Accordingly, the Commission will require legal representation in responding to and defending its legal position with regard to the subpoena's request for the records.

Commissioner Lowry moved to approve the item including authorizing Commission Counsel to defend and represent the interests of the Nevada Commission on Ethics associated with the subpoena issued by Gypsum Resources. Commissioner Yen seconded the Motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	Aye.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Abstain.
Commissioner Yen:	Aye.

8. Delegation of authority pursuant to NRS 241.0357 and NAC 281A.155 to the Chair, Vice Chair, and/or any other designated Commissioner of the Nevada Commission on Ethics to direct or authorize any litigation decision in consultation with Commission Counsel, including, without limitation, decisions related to acceptance of service of subpoenas and filing of documents, notices, motions to quash or other pleadings, stipulations or other matters, appeals and negotiations of settlements in pending legal proceedings entitled Gypsum Resources Materials, LLC vs. Clark County, et. al.,” Case No. BK-S-19-14796-mkn, filed in the United States Bankruptcy Court, District Court of Nevada, and any related legal proceedings, appeals, writs or other related matters instituted in any court of competent jurisdiction, including Federal courts or State Courts of Nevada.

Commissioner Sheets joined the video conference and made the same disclosure in this matter as outlined above for Agenda Item 7. He likewise abstained from participating in this matter.

Commissioner Gruenewald moved to approve the item including authorizing the Chair, or, in the absence of the Chair, the Vice-Chair, or any other designated member of the Commission to make litigation decisions in the Gypsum Resources Materials, LLC vs. Clark Co. matters relating to the Commission. Commissioner O'Neill seconded the Motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	Aye.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Abstain.
Commissioner Yen:	Aye.

9. Discussion and approval of a Proposed Stipulation concerning Ethics Complaint Nos. 18-061C and 18-139C regarding Rossi Ralenkotter, Chief Executive Officer, Las Vegas Convention and Visitors Authority, State of Nevada.

In accordance with NRS 281A.420 and the advice of Commission Counsel Chase, Commissioner Yen disclosed for the record that she is a partner with the law firm of McDonald Carano, and the Las Vegas Convention and Visitors Authority (LVCVA) is a client of the firm. Accordingly, she has a commitment in a private capacity to the interest of her firm and its clients. As the Subject of Ethics Complaints 18-061C and 18-139C is Mr. Ralenkotter, the former Chief Executive Officer of the LVCVA, and the underlying facts of the ethics complaints occurred while Mr. Ralenkotter was employed by the LVCVA, the interests of her firm and its client, the LVCVA would be reasonably and materially affected by this agenda item. Therefore, to avoid any

appearance of impropriety and comply with the Ethics Law and Judicial Canons applicable to the Commission, Commissioner Yen disclosed this conflict and abstained from participation in this matter.

Commission Counsel Chase/Executive Director Nevarez-Goodson noted for the record that Mr. Ralenkotter waived his right to a Review Panel proceeding and determination in these matters and consented to the jurisdiction of the Commission to approve this Stipulated Agreement. Accordingly, all Commissioners were eligible to participate in this matter given that none had served on a Review Panel.

Appearing before the Commission in this matter on behalf of subject Rossi Ralenkotter were his counsel, Terry A. Coffing, Esq., and Scott W. Cerdenas, Esq. of Marquis Aurbach Coffing and co-counsel Alanna Bondy, Esq. of Srgo Roger Attorneys at Law. Executive Director Nevarez-Goodson appeared on her own behalf because the Associate Counsel position was vacant until just this week.

Executive Director Nevarez-Goodson provided an overview of Ethics Complaint Case Nos. 18-061C and 18-139C regarding Rossi Ralenkotter, former Chief Executive Officer of the LVCVA. The Ethics Commission initiated these ethics complaints against Ralenkotter alleging violations of NRS 281A.400(1), (2), (7) and (9) by misusing his position and government property through the use of Southwest Airline gift cards purchased by the LVCVA for personal use for himself and his spouse, in part through the influence of subordinates, and negotiating and entering into a post-retirement contract with the LVCVA for him to serve as a consultant in potential violation of NRS 281A.400(1), (2), (3), (7) and (10), 281A.420 and 281A.430.

The Proposed Stipulated Agreement reflects that Mr. Ralenkotter's personal use of Southwest Airline gift cards for himself and family members constitutes a single course of conduct resulting in a willful violation of the Ethics Law for which Mr. Ralenkotter agrees to pay a civil penalty in the amount of \$5,000 plus an additional penalty in the amount of \$17,000 for the financial benefit realized by Mr. Ralenkotter for the personal use of the gift cards. The \$5,000 penalty signifies the maximum penalty the Commission may impose for a first willful violation of the Ethics Law. Furthermore, the statute authorizes the Commission to impose a penalty equal to twice the amount of any financial benefit realized. However, the proposed stipulated agreement recognizes that Mr. Ralenkotter immediately accepted responsibility for the personal use of the gift cards and reimbursed the LVCVA the total amount of his and his spouse's personal use, as confirmed by the internal LVCVA audit and Southwest Airlines records. Accordingly, the proposed stipulation does not impose twice the amount of the financial benefit realized. This penalty structure is consistent with the resolution of the ethics complaint regarding Cathy Tull, the former Chief Marketing Director of the LVCVA, who likewise used Southwest Airline gift cards for personal use and reimbursed the LVCVA in the amount of the gift cards used for her personal purposes.

Executive Director Nevarez-Goodson informed the Commission that for the second complaint which alleged that Mr. Ralenkotter improperly negotiated and executed a post-retirement consulting contract with the LVCVA while he was still employed as the CEO, the proposed stipulation would acknowledge that Ralenkotter's actions constitute a second willful violation of the Ethics Law with an associated penalty of \$2,500. However, given the circumstances surrounding this conduct, the proposed stipulation recognizes that Mr. Ralenkotter and the LVCVA were separately represented by legal counsel and the LVCVA was instrumental in seeking and negotiating the consulting contract through its counsel without recognition of the potential ethical implications. The proposed violation and mitigating circumstances are consistent with the stipulation entered into with Joel Dunn, the former Executive Director of the Carson City Tourism Department, where he negotiated and entered into a similar post-employment contract with the same agency with certain reliance upon the advice rendered by the District Attorney's Office.

The Proposed Stipulated Agreement reflects that Mr. Ralenkotter's conduct would result in two willful violations of the Ethics Law and the imposition of a total civil penalty in the amount of \$24,406.38.

Mr. Ralenkotter's counsel and co-counsel did not have additional comment for the Commission.

Commissioner O'Neill asked if the civil penalty payment had already been paid or it would be paid on a payment schedule. Terry A. Coffing, Esq. represented to the Commission that the funds are in his possession and are ready to be paid upon the Commission's approval of the Stipulated Agreement.

Commissioner Gruenewald made a motion to accept the terms of the Stipulated Agreement as presented by the parties and direct Commission Counsel to finalize the Stipulated Agreement in appropriate form. Commissioner O'Neill seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	Aye.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Aye.
Commissioner Yen:	Abstain.

10. Discussion and approval of a Proposed Stipulation concerning Ethics Complaint Nos. 19-081C, 19-082C and 19-105C regarding Donald Smith, Clinical Social Worker II, Southern Nevada Adult Mental Health Services, Nevada Division of Public and Behavioral Health, Department of Health and Human Services, State of Nevada.

Chair Wallin stated for the record that Commissioners Lau, O'Neill and Sheets served as members of the Review Panel and would be statutorily precluded from participating in this item.

Appearing before the Commission in this matter on behalf of Subject Donald Smith was his counsel, Mark H. Hutchings, Esq. of Hutchings Law Group. Executive Director Nevarez-Goodson appeared on her own behalf.

Executive Director Nevarez-Goodson gave an overview of Ethics Complaint Case Nos. 19-081C, 19-082C and 19-105C regarding Donald Smith, a Clinical Social Worker II for the Southern Nevada Adult Mental Health Services of the Division of Public and Behavioral Health of the Nevada Department of Health and Human Services. The Complaints alleged that Mr. Smith violated the Ethics Law, specifically NRS 281A.400(1), (2), and (7) when he misused his position and government resources to benefit his secondary private employment.

The Proposed Stipulated Agreement would acknowledge that Mr. Smith used government time and resources to benefit his private employment, which constitutes a single course of conduct resulting in a willful violation of the Ethics Law. Mr. Smith agrees to pay a civil penalty in the amount of \$5,000 plus an additional penalty in the amount of a portion of the financial benefit realized by Mr. Smith for his use of government time for a personal purpose. The \$5,000 penalty signifies the maximum penalty the Commission may impose for the first willful violation of the Ethics Law. The violation recognizes that Mr. Smith accepted a secondary private employment engagement to perform similar duties in the private sector as he performed as part of his official duties. As a condition of the secondary employment, Mr. Smith was prohibited by his public

employer from conducting his private employment during his government shift, and this stipulation acknowledges that Mr. Smith regularly engaged in various duties for his private employer while on his government shift.

The Ethics Law further authorizes the Commission to impose a penalty equal to twice the amount of any financial benefit realized as a result of an Ethics violation. However, the proposed stipulated penalty for the additional financial benefit is offset to the amount of \$1,500 through a recognition that Mr. Smith understood the culture at his public office to permit other similarly situated employees to leave their shifts early and complete paperwork at a later time from home. Mr. Smith likewise would leave his shift early to conduct work for his private employer, but he routinely finished any paperwork the same day as his official shift.

The Proposed Stipulation Agreement reflects that Mr. Smith's conduct would result in a single willful violation of the Ethics Law and the imposition of a total civil penalty in the amount of \$6,500.

Mark H. Hutchings, Esq. did not have a statement or additional comment for the Commission.

Vice-Chair Duffrin asked whether Mr. Smith was still employed by the State of Nevada and Counsel Hutchings confirmed that he is. Vice-Chair Duffrin inquired if Mr. Smith still held the same position with the state. Counsel Hutchings responded that Donald Smith now holds a different position with the Southern Nevada Adult Mental Health Services.

Commissioner Lowry moved to accept the terms of the Proposed Stipulated Agreement as presented by the parties and direct Commission Counsel to finalize the Stipulated Agreement in appropriate form. Commissioner Yen seconded the Motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	Abstain.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Abstain.
Commissioner Sheets:	Abstain.
Commissioner Yen:	Aye.

11. Consideration and approval of Executive Director's proposed Budget for the 2021-2023 Biennium.

Commission Counsel Chase disclosed for the record that included in the Executive Director's report was a salary enhancement proposal for Commission staff positions which could affect her personal interests. She confirmed she did not participate on budgetary matters related to the salary enhancements for the position of Commission Counsel; however, she did review the agenda for compliance with Nevada's Open Meeting Law requirements. Commission Counsel Chase declared that she was not advocating for or against the proposed salary enhancements and would take the direction of the Commission related thereto and acknowledged that any recommendations are the sole authority of the Commission to determine.

Executive Director Nevarez-Goodson disclosed for the record that at the direction of the Commission Chair she included a salary enhancement in her budget proposal which could benefit her pecuniary interest as her position is one that is included in the enhancement. She added further that she abstains from acting on any matters related to the Commission's decision whether to pursue salary enhancements for the Executive Director position. Executive Director Nevarez-Goodson further clarified that she was not advocating for or against the salary enhancements for

the Executive Director position as proposed in her report and assured the Commission she would carry out the Commission's direction.

Executive Director Nevarez-Goodson provided an overview of the Budget Process and informed the Commission that Agency Budget Requests for the next biennial budget are due at the end of August to the Governor's Office of Finance (GFO). She explained the GFO's review and approval process of the Agency's Budget Request to be included with the Governor's Recommended Budget to the Legislature. Each agency was given budget instructions in March instructing flat budgets to mirror the existing biennial budget. She noted that the instructions were issued pre-COVID-19 and amended instructions have not been released. It can reasonably be anticipated that additional cuts may be required during the next biennium if a future budget shortfall occurs as a result of the pandemic.

Executive Director Nevarez-Goodson reminded the Commission of its direction to pursue enhancements during the last budget submission pertaining to its request for an additional staff position, salary enhancements for various positions, additional funds for travel associated with investigations and training presentations, a digital training platform, and a request for a slight increase in staff training funds for the Associate Counsel to attend the annual Council on Government Ethics Law (COGEL) conference. She noted that the Commission had not been approved for these enhancements last Session and in reassessing these needs for the next biennium, the Executive Director was not recommending the majority of those enhancements given the current fiscal circumstances. She specified that pursuing additional travel funds and training funds including those for a digital training platform would not be prudent at this time, especially given the current and projected limitations on travel.

Executive Director Nevarez-Goodson then referred the Commission to her budget memorandum which outlined various proposed salary enhancements for the Commission's consideration. Specifically, the proposed salary enhancements reflect salary parity for Commission positions in line with those of newly formed Commissions such as the Commission on Indigent Defense and the Commission on Sentencing enacted in 2019. She likewise provided an overview on the salary discrepancies between the Commission on Ethics and the Commission on Judicial Discipline, which is the agency that operates most similarly to the Commission on Ethics. Executive Director Nevarez-Goodson shared the difficulty in past years pursuing requests with the Legislature when the Governor did not include the enhancements in the Governor's recommended budget. Accordingly, she recommended that the Commission not pursue these enhancement requests from the Legislature if they are again not supported by the Governor. Executive Director Nevarez-Goodson informed the Commission that she will be in communication with the agency's liaison at Governor's Office regarding the proposed enhancements and the possible stance thereon by the GFO.

Commissioner Lau commented that the salary enhancement was meritorious as the salary disparity between the four Commission staff positions included in the enhancement proposal and those positions of comparable agencies was unfair. She added that the salary enhancement would only require an additional \$19,000 (approximate) from the State General Fund to the Commission's budget. Commissioner Lau expressed her support in pursuing the salary enhancements as part of the Agency Requested Budget to ensure continuity of the prior requests and because parity is necessary to ensure the quality of our staff. Commissioner Lau further suggested that the Commission not move forward with submission of the enhancements to the Legislature if it was not supported by the Governor.

Commissioner Yen shared her support of pursuing the salary enhancement and echoed Commissioner Lau's statements. She noted that the salary discrepancies were an issue prior to the pandemic and would support the submission of the enhancements.

Vice-Chair Duffrin agreed with his fellow Commissioners and commented that the amount is immaterial and supported going forward with the enhancements.

Commissioner Lowry acknowledged that she was struggling with pursuing the enhancements because of the concern that the Commission might look tone deaf during a catastrophic fiscal environment. She stated that the parity issue is a concern to her and warrants the enhancements to ensure equality in pay for the Commission's positions. She wondered if the funds could be proffered from other budgetary categories in which the Commission has cost savings.

Vice-Chair Duffrin suggested that the Commission submit the salary enhancements request to be effective in the second fiscal year of the biennium beginning July 1, 2022 as a compromise.

Chair Wallin echoed Commissioner Lowry's concerns about requesting the enhancements during the financial impact of the pandemic. She voiced her support of going forward with the enhancements as suggested by Vice-Chair Duffrin during the second year of the biennium only if approval is received by the Governor.

Commissioner Lau moved to approve the Executive Director's proposed budget for the 2021-2023 Biennium with the proposed salary enhancements as to commence during the second fiscal year of the biennium. Commissioner Lau's motion included direction not to pursue the enhancements at the Legislature if they were not approved by the Governor. Commissioner Yen seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lau:	Aye.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Aye.
Commissioner Yen:	Aye.

12. Report by Executive Director on agency status and operations and possible direction thereon. Items to be discussed include, without limitation:

- FY21 Budget Status
- FY20 Case Statistics
- Quarterly Case Status Update
- 2021 BDR Status
- Update on Coronavirus Protocols
- Education and Outreach

Executive Director Nevarez-Goodson began by introducing and welcoming the Commission's newly appointed Associate Counsel Ann Wilkinson, Esq. Chair Wallin also welcomed Associate Counsel Wilkinson, and Associate Counsel Wilkinson thanked Executive Director Nevarez-Goodson for the opportunity and stated that she is looking forward to contributing to the mission of the Commission.

FY21 Budget Status: Executive Director Nevarez-Goodson informed the Commission that during the Special Session of the Nevada Legislature held in July, the Commission's proposed budget cuts were approved for the FY21 budget to address the budget shortfalls as a result of the COVID-19 pandemic. She reminded the Commission that the cuts included the closure of the Commission's Las Vegas office in the Grant Sawyer Building, court reporting savings and travel savings to accomplish the necessary budget cuts.

FY20 Case Statistics: Executive Director Nevarez-Goodson referenced the FY20 Case Statistics charts and graphs provided in the meeting materials and asked the Commissioners provide their feedback on the inclusion of the charts and graphs to the Annual Report to be presented at the Commission's next meeting. She noted that all Advisory Opinion requests received in FY20 were completed in the same fiscal year and commended Commission Counsel Chase and Senior Legal Researcher Hayden for their efforts and hard work. Executive Director Nevarez-Goodson pointed out that the number of Complaint cases resolved in FY20 were almost double the amount resolved in FY18 and FY19. She noted the decrease in complaint cases received in the current fiscal year which she attributed to the COVID-19 pandemic and commented that the lull in cases may provide an opportunity to get catch up on the backlog of investigations.

Vice-Chair Wallin stated that she likes the charts as they are easy to understand. She thanked Executive Assistant Pedroza for her contribution on the charts and graphs.

Quarterly Case Status Update: Executive Director Nevarez-Goodson noted that the quarterly case log spreadsheets included in the meeting materials showed the current pending cases in FY21 as well as the case resolution data for FY20. She pointed out that the logs had been updated with the pending compliance details previously requested by Commissioner O'Neill.

2021 BDR Status: Executive Director Nevarez-Goodson informed the Commission that its BDR submission was approved by the Governor and is currently with the Legislative Counsel Bureau drafters. She shared that she had already communicated with the Governor's office and offered insight on the Commission's intent for the proposed BDR language.

Update on Coronavirus Protocols: Executive Director Nevarez-Goodson stated that there has been no further direction provided regarding when offices must be reopened to the public or when state employees will be asked to come back to the physical workplace. She further stated that there is no prohibition against employees working in the office while adhering to social distancing protocols and reported that staff is reporting to the office separately each week to perform administrative duties such as checking the postal mail and voicemail. Executive Director Nevarez-Goodson shared her continued confidence in the Commission staff's ability to accomplish tasks remotely.

Education and Outreach: Executive Director Nevarez-Goodson told the Commission that there had been a significant halt in the number of requests for training during the COVID-19 pandemic. She shared that recently more requests had been received and she can accommodate these requests for training via videoconference. Executive Director Nevarez-Goodson reported that she had recently presented Ethics Training to the Nevada Department of Taxation and would be presenting training to the Nevada Gaming Control Board soon. She further shared that she intends to produce a recording of her training to be posted on the Commission's website.

As a final matter, Executive Director Nevarez-Goodson informed the Commission that former Chair Lau's proclamation would be presented in a frame and mailed directly to her residence.

Chair Wallin offered her assistance in transporting the Commission's equipment and supplies from the Las Vegas office to the Carson City office.

Commissioner Lau moved to accept the Executive Director's agency status report as presented. Commissioner Sheets seconded the motion. The motion was put to a vote and carried unanimously.

13. Commissioner comments and identification of future agenda items. No action will be

taken under this agenda item.

Commissioner Gruenewald commended Commission Counsel Chase regarding the Order Granting the Review Panel's Motion for Dismissal issued by the Eighth Judicial District Order in the *Smith v The Nevada Commission on Ethics*.

Vice-Chair Wallin extended a formal welcome to Associate Counsel Wilkinson and expressed her enthusiasm for working with her. She thanked her fellow Commissioners and Commission staff for their continued hard work.

Commissioner Lau commented that she hoped that the Governor takes additional time to find a replacement for her on the Commission.

14. Public Comment.

No public was present for public comment.

15. Adjournment.

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

The meeting adjourned at 11:16 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 October 21, 2020:

Kim Wallin, CPA, CMA, CFM
Chair

Brian Duffrin
Vice-Chair

Agenda Item 4

STATE OF NEVADA
COMMISSION ON ETHICS -
ANNUAL REPORT
JULY 1, 2020

A public office is a public trust, to be held for the sole benefit of the people.

Nevada Commission on Ethics
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ANNUAL REPORT TO THE COMMISSION ON ETHICS REGARDING FISCAL YEAR 2020

Pursuant to Nevada Administrative Code 281A.180(2), the Executive Director provides this Annual Report to the Commission on Ethics (“Commission”) regarding the fiscal, legislative, regulatory and other business undertaken by and on behalf of the Commission in the past fiscal year and the goals for new fiscal year. This report recognizes the Commission's activities and accomplishments between July 1, 2019 and June 30, 2020 (FY20) and its objectives for the coming year.

The information presented is based upon public records of the Commission. Additionally, the Commission maintains a public website at ethics.nv.gov at which the public may search the Commission's database of opinions, review meeting minutes and agendas, instructions and forms for filing Ethics Complaints, Requests for Advisory Opinions, and access other public information. The Commission also posts its meeting agendas on the Nevada Public Notice statewide website at notice.nv.gov.

Dear Commissioners:

This Annual Report sets forth a summary of the Commission's activities during Fiscal Year 2020 (FY20) and goals for the next fiscal year. While the final Quarter of FY20 reflected the significant fiscal and procedural challenges associated with the COVID-19 Pandemic, the majority of FY20 demonstrated a similar increase in case load as we experienced in FY19 and consistent outreach and education to state and local government public officers and employees. The Commission should be proud of its achievements during FY20 and its response to the COVID-19 Pandemic. In fact, through the first 3 quarters of the fiscal year, the Commission received an increased case load, both complaint and advisory cases, conducted steady training and outreach presentations and addressed legislative and fiscal priorities. The latter portion of FY20 resulted in the Commission's response to the Pandemic, and adaptation to remote working operations, virtual meetings and a reduced budget. While the increased case load and altered working conditions contributed to the Commission's investigatory/adjudicatory backlog, the Commission was also able to resolve a number of its oldest cases, create solutions through virtual platforms, and remain accessible to the public and governmental agencies. These challenges, along with the continued priorities for outreach and education, signified the Commission's motivation in FY20.

This Report will focus on the Commission's accomplishments from FY20, and its goals for the next fiscal year. To best appreciate the Commission's accomplishments and identify areas for growth, it is essential to reflect on what we have achieved in recent years and ongoing challenges, which all derive from our statutory mandates. With the passage of Senate Bill 84 (SB84) during FY17, the Commission reformed all of its systems and documents related to advisory requests and complaint cases during FY18 and FY19, including the adoption of all new administrative regulations set forth in the Nevada Administrative Code (Chapter 281A). The Commission also updated all of its information technology resources to establish secure communications, a web-based filing platform, online opinion database and a case management system.

SB 84 was aimed at clarifying the administrative procedures and distinctions between ethics complaints and advisory opinions, resulting in enhanced due process and standards of ethical conduct applicable to Nevada's public officers and employees. Until SB 84, the Commission's only recourse in resolving allegations in complaints was

dismissal or findings of violations with associated penalties and referrals for removal from office and/or employment disciplinary action. In support of the Commission's goals to teach rather than catch, and streamline its enforcement, SB 84 provided the Commission with additional discretion to resolve minor ethics violations through various corrective actions, education, letters of caution or instruction and deferral agreements.

As with any significant omnibus legislation and its accompanying application to various cases, the Commission again recognized the need for various housekeeping and substantive amendments to bolster its mission, close loopholes and reinforce the Legislature's public policy to enhance trust in government. Accordingly, the Commission introduced SB 129 in the 2019 Legislative Session. SB 129 was intended to provide additional procedural clarification to the parties appearing before the Commission in contested and advisory matters, bolster due process and protect the public's trust in government by enhancing various ethical standards of conduct for public officers and employees. Unfortunately, SB 129 was not passed during the legislative session, and the Commission spent the majority of FY20 reassessing its legislative recommendations and priorities for proposed statutory amendments during the next legislative session.

This year, the Commission's Bill Draft Request ("BDR") Subcommittee, consisting of Vice-Chair Wallin and Commissioners Duffrin and Gruenewald, reviewed the Executive Director's recommendations for legislative proposals and recommended its next legislative priorities which were adopted by the full Commission, including several provisions from SB 129 (2019) that were not passed, as well as, many new provisions intended to confront fiscal limitations, due process considerations, standards of conduct applicable to public officers and employees and advisory resources. It is the Commission's expectation that if this BDR is successful, future legislation in the coming years will be minimal.

Coming out of FY19 and the 2019 Legislative Session, the Legislature approved the Commission's request to receive information technology services through the State's Enterprise Information Technology Services ("EITS"), which were implemented at the beginning of FY20. Within months of FY20, the Commission staff had new computers, the Commissioners' tablets were updated and secured by EITS, and the Commission had access to immediate desktop support services for the first time in its history. This technical support has single-handedly improved the Commission's ability to advance its mission, communicate with the public and provide staff with efficient support of its technological

needs. The timing of these resources proved particularly accommodating as the COVID-19 Pandemic hit and EITS was immediately able to ensure that each staff member could remotely and securely access necessary documents from the Commission's server and adapt to technological challenges in a remote environment.

FY20 also represented the Commission's consideration of its next biennial budget. Had the COVID-19 Pandemic not occurred, the Commission would have been poised to pursue many necessary enhancements to its next operating budget, including increased staff and resources to address the increased case load, outreach and education efforts and investigations. However, in light of the fiscal impacts of COVID-19, the Commission instead made significant cuts to its existing operating budget and anticipated additional cuts for the next fiscal year and future biennium. The Commission will consider the precise budget proposals and any necessary enhancements in the next fiscal year, which will secure a balance between respect for the current fiscal crises and the needs of the agency to ensure the Commission's continued operation and integrity.

The Commission also continued its presence on Social Media via its Twitter account to post news of its meetings, trainings and case/opinion determinations. Ethics commissions throughout the Country share data on Twitter and reflect on the issues affecting and decisions made by similar agencies. Furthermore, many state and local government agencies and public officers and employees follow the Commission on Twitter and receive additional outreach and education. The Commission's social media focus will aspire to involve more of the general public presence and involvement in the coming year. The Commission's other media outreach in the next fiscal year may focus on traditional media platforms via press releases, public statements and interviews. Of course, the Commission continued with its traditional training and education programs throughout Nevada to provide education to public officers and employees.

The FY20 Annual Report would not be complete without recognizing the incredible volunteer contributions of the members of the Ethics Commission, who themselves are public servants and volunteer their time, experiences and expertise to the interpretation and enforcement of the Ethics Law. FY20 represented the last year for the storied tenures of two tremendous leaders, Chair Cheryl Lau, Esq. and Vice-Chair Keith Weaver, Esq. Chair Lau and Vice-Chair Weaver have served the Commission with distinction, innovation and grace for two full terms (8 years), the last five years of which were served in their

respective leadership roles. Highlights from their tenures are too many to recount in this Report, but most notable include their: (1) dedication to the Commission's mission in all forums, administrative, judicial and legislative; (2) legal acumen; (3) respect for all parties appearing before the Commission; and (4) unwavering support of staff. The end of their terms marked the unprecedented realities of COVID-19 and their proactive responses to ensure the Commission and its staff remained available and resourceful for the public officers and employees throughout the State. The State of Nevada, its local governments, elected and appointed public officers and employees, and the members of the public will forever benefit from the resolute contributions of these leaders, the finest demonstration of political independence, transparency, and unrelenting nerve to do the right thing, even when nobody was watching ... the very definition of integrity.

With the end of Vice-Chair Weaver's term, the Commission welcomed its newest Commissioner, Damian Sheets, Esq. Commissioner Sheets brings to the Commission his legal experience and knowledge, former role as a public employee and fresh perspective to proposed legislation and application of the Ethics Law. As Chair Lau's second term did not expire until the end of the fiscal year, the Commission awaits the appointment of a new commissioner in the next fiscal year. Of course, the Commission continued to be incredibly well served by all of its members, including Commissioners Duffrin, Gruenewald, Lowry, O'Neill, Wallin and Yen.

Upon the completion of Vice-Chair Weaver's second term, the Commission unanimously elected Commissioner Wallin to serve as its new Vice Chair, recognizing her talent and experience to lead the Commission's vision into the future. In FY20, Commissioner Wallin dedicated countless volunteer hours to attend various administrative, budget and training presentations and chair the Commission's BDR Subcommittee. Her innumerable contributions have included her fiscal expertise and insights into the Commission's statistical information and budget forecasting. Moreover, she presided over numerous cases and other matters in the absence of the Chair, participated in several review panels, and offered her experiences as a former elected official to guide the Commission's endeavors. She also worked diligently with staff to accommodate the challenges presented with COVID-19.

Commissioner Duffrin spent the majority of the Fiscal Year emphasizing the Commission's mission and ideas to promote the integrity and practicality of the Ethics Law

for public officers and employees. Of particular notoriety in the last fiscal year, Commissioner Duffrin highlighted his talents at mediation by participating as a “settlement judge” in a contested case to assist the parties in reaching a mutually agreeable result that most importantly served the best interests of the public, and he likewise served as a quasi-judicial member during a contested adjudicatory hearing in which he heard evidence, asked questions of the parties, deliberated with his colleagues and voted on the applicability of the Ethics Law to the circumstances. Commissioner Duffrin also served on the Commission’s BDR Subcommittee to advise and deliberate on the Commission’s upcoming legislative proposals. His experience as the former Chief of the Administration Division of the Nevada Gaming Control Board presented the Commission with a thorough understanding of legislative and fiscal implications in the changing dynamics confronting the Commission.

Commissioner Gruenewald has continued to serve the public’s best interests through her tenure with the Ethics Commission. Most significantly, Commissioner Gruenewald has raised the bar with her legal preparation of complaint and advisory cases before the Commission, most often responsible for preparing and asking complicated questions to address the legal implications of the Ethics Law. This fiscal year also represents Commissioner Gruenewald’s experience serving as the presiding officer in many review panels tasked with evaluating the investigatory recommendations in complex cases. Rounding out her service this year, Commissioner Gruenewald volunteered her expertise to the BDR Subcommittee, where she prompted her colleagues and staff to address the legal, ethical and political implications of various legislative amendments and efforts to make the Commission more resourceful.

Commissioner Lowry has continued her approach to the interpretation and enforcement of the Ethics Law through legal proficiency and her emphasis on integrity of public service, as exemplified by her former career in public service for the Clark County District Attorney’s Office. Commissioner Lowry participated in a number of training presentations and offered her expertise to review panels and hearings/stipulations in contested cases. Most notably, Commissioner Lowry’s legal experience and understanding of evidentiary principles has shaped various review panels and adjudicatory proceedings. She has helped educate her colleagues and staff on important evidentiary issues and contributed to the Commission’s legal positions in litigation.

Commissioner O'Neill continued his service with a focus on ethics policy, public transparency, and outreach and education. Having previously served as a career public investigator for the Department of Public Safety and his tenure as an elected legislator, Commissioner O'Neill promoted an emphasis on the Commission's mission to teach, not catch. And as a practical matter, Commissioner O'Neill further impressed upon staff and his colleagues his experience with investigations and understanding of performance measures, and he has made various suggestions for tracking additional data in the next fiscal year to showcase much of the Commission's work which is not otherwise reflected in our current statistics.

Commissioner Yen has been a steward of the Commission's legal and fiscal efforts, all while upholding the demands of her private legal practice. Legally, Commissioner Yen has not only challenged the Commission with insightful questions and perspectives to the legal application of the Ethics Law, but has also offered her resources and insights towards the Commission's legal positions in litigation, whether legal process/strategy or substantive legal arguments. Moreover, Commissioner Yen has actively supported the Commission's quest for a better understanding the fiscal uncertainties amid the COVID-19 Pandemic, including outreach to our political leaders. As a final note of appreciation, Commissioner Yen has set the standard for proper disclosures and abstentions under the Ethics Law when confronted with conflicts of interest. Commissioner Yen's law firm represents various clients that may appear before the Commission. In consultation with Commission Counsel, she has established protocols with the Commission to identify conflicts between her private business relationships and public duties to make proper disclosures and abstentions.

It has been the continued privilege of Executive Director Yvonne M. Nevarez-Goodson, Esq., in partnership with Commission Counsel Tracy L. Chase, Esq., to lead the Commission's mission and governance before the various State and local agencies and judicial forums. This fiscal year represented a vacancy in the Associate Counsel position (twice), whose duties the Commission staff rallied to fulfill in spite of the increased number of cases and challenges associated with the COVID-19 Pandemic. The Commission's staff was rounded out by its remarkable members, including the Commission's Investigator, Erron Terry, Senior Legal Researcher, Darci Hayden, PP-SC, and Executive Assistant, Kari

Pedroza. Each team member brings special talents to their respective positions, along with incredibly positive attitudes and trust in our mission that I am so proud to lead.

The Commission continues to monitor its role amid the Country's state and local government ethics agencies and anticipates an update to the nationwide study regarding ethics commissions and agencies throughout the Country, including the strength of their enforcement and sanctioning powers and transparency in the outcomes. Early in the fiscal year, Nevada was ranked 8th in the Country. See *Enforcement of Ethics Rules by State Ethics Agencies: Unpacking the S.W.A.M.P. Index, Coalition for Integrity, September 12, 2019* (<http://unpacktheswamp.coalitionforintegrity.org/>). Notably, the data relied upon in the study was based upon case statistics from FY18, yet the FY19 and FY20 data reflected the Commission's significantly increased case load, sanctions and proceedings. The Commission was asked to participate in updated information during this fiscal year and as any new report and rankings come out, the Commission should anticipate a similar high ranking based upon the level of enforcement and transparency in the outcomes.

Upon reflection of the goals and accomplishments during FY20, it is important to remember that the majority of the fiscal year represented business as usual, with only the last quarter responsible for responding to the ongoing integrity of government officials and employees during unprecedented circumstances resulting from COVID-19, including remote or telecommuting working environments and virtual meetings. It will be more important than ever for this Commission to be focused on accountability in government to protect the public trust and ensure that government continues to operate in an ethical, transparent manner as we tackle the pandemic response in this State. I am immensely proud of the Commission and its staff in response to the increased case load and outreach and education throughout the entire State, while navigating the public health challenges from COVID-19. Thank you for the opportunity to continue serving the Commission, its staff and the public for these last 11 years. I look forward to reinforcing the Commission's mission in the coming fiscal year.

Sincerely,

[/s/ Yvonne M. Nevarez-Goodson](#)
Yvonne M. Nevarez-Goodson, Esq.
Executive Director

I. About the Nevada Commission on Ethics

Nevada Commission on Ethics - Ethics in Government Law:

The Nevada Commission on Ethics is an independent public body appointed by the Governor and Legislative Commission to interpret and enforce the provisions of Nevada's Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"). The Ethics Law preserves the public's trust in government and ensures that elected and appointed public officers and employees avoid conflicts between their private interests and the interests of the public in carrying out their public duties. The Ethics Law sets forth various standards of conduct to guide public officers and employees to avoid such conflicts and maintain integrity in public service.

The Commission's primary mission includes providing outreach and education to Nevada's public officers, employees and attorneys regarding conflicts of interest and the provisions of the Ethics Law. Encompassed in its educational efforts, the Commission provides confidential advisory opinions to public officers and employees to guide them in compliance with the Ethics Law ("Requests for an Advisory Opinion"). The Commission also enforces the provisions of the Ethics Law by investigating and adjudicating alleged conduct of public officers and employees in violation of the Ethics Law ("Ethics Complaints").

Membership:

The Commission consists of 8 members, appointed equally (4 each) by the Governor and the Nevada Legislative Commission. The Governor and Legislative Commission must each appoint at least two former public officers or employees and one attorney licensed in the State of Nevada. No members may be actively involved in any political activity or campaign or conduct lobbying activities for compensation on behalf of private parties. Finally, no more than half of the total commissioners may be members of the same political party or residents of the same county in the State. The appointment criteria secures independence and objectivity in addressing Requests for Advisory Opinions and Ethics Complaints as applicable to all State and local government elected and appointed public officers and employees.

Requests for Advisory Opinions and Ethics Complaints:

The Legislature established the Commission to interpret and enforce the provisions of the Ethics Law. In particular, the Legislature has emphasized the public policy behind the Ethics Law to ensure the public's trust in government against conflicts between private interests and public duties, while balancing Nevada's form of citizen-based, representative government. The Commission renders its opinions regarding the applicability of the Ethics Law to public officers and employees via Requests for Advisory Opinion and Ethics Complaints. The Commission's primary goal to provide outreach and education to public officers and employees is consistent with its responsiveness to requests for advisory opinion and efforts to prevent ethics complaints. The Commission staff is responsible for reviewing and preparing all case-related matters, including jurisdictional recommendations, legal research and analysis and preparation and presentation of evidence for hearings and determinations by the Commission. The Commission sets the standard for objectivity and political independence while balancing the best interests of the public and the public officers and employees who serve the public.

Requests for Advisory Opinions:

A public officer or employee may request a confidential advisory opinion from the Commission regarding the applicability of the Ethics Law to his/her own past, present or future circumstances. If the request relates to a conflict of interest between a public duty and private interest, the Commission will conduct a closed hearing or consider the written request under submission and render a confidential opinion in the matter advising the public officer or employee whether there is a conflict of interest and whether or how the ethical standards of conduct apply to the circumstances.

To assist the Commission in this process, the Commission Counsel and staff work directly with the requester to identify all relevant facts and circumstances related to the request. The Commission Counsel researches the Commission's opinion precedent, prepares proposed findings of fact, and presents a legal recommendation to the Commission for its review. Once the Commission renders its decision, it is published as a formal written opinion on its website, the Legislative Law Library, and LexisNexis. If the public officer or employee retains the confidentiality of the opinion, the Commission will publish an abstract opinion in the matter, which is a version of the original opinion that

redacts or sanitizes factual circumstances that may otherwise identify the requester of the opinion. The Commission's advice is binding with respect to future conduct and certain advice related to present or future conduct may be subject to judicial review for errors of law or abuses of discretion.

Ethics Complaints:

Any person may file and the Commission may initiate an ethics complaint against a public officer or employee alleging a violation of the Ethics Law for which the Commission may investigate the allegations, conduct hearings and impose various penalties or sanctions. If the Commission has jurisdiction regarding an ethics complaint and it is properly filed with sufficient information to support the allegations, the Commission may direct the Executive Director to investigate the matter and make a recommendation to a three-member review panel of the Commission regarding whether the evidence is sufficient to warrant a hearing and written opinion in the matter.

If the Review Panel determines that the matter supports just and sufficient cause of a potential violation, it may refer the matter to the Commission for adjudicatory proceedings, or for more minor conduct, resolve the matter through the approval of a deferral agreement between the Executive Director and the subject of the ethics complaint. A Deferral Agreement is an agreement between the Executive Director and subject of the Complaint acknowledging sufficient evidence of a violation but deferring any finding of a violation through the imposition of various terms and conditions, including corrective action and education. If the terms and conditions are satisfied, the complaint is dismissed. Otherwise, it is referred back to the Commission for adjudicatory proceedings.

Many ethics complaints have been resolved via other appropriate resolutions such as letters of caution or instruction. If a matter is referred for adjudicatory proceedings, the Commission may hold a formal adjudicatory (evidentiary) hearing and deliberate toward a decision. Alternatively, it may resolve the matter through legal motions or negotiated stipulations. The majority of contested cases that are referred to the Commission by a Review Panel are resolved through deferral agreements and stipulated agreements. If the Commission makes a finding that conduct was willful, i.e., knowing and intentional, it may impose monetary sanctions. For non-willful conduct and willful conduct that may not warrant monetary penalties, the Commission may impose administrative penalties in the

form of appropriate corrective action, referrals for disciplinary action, requirements for education and public apologies.

II. Case Statistics – FY20 (7/2019 – 6/2020)

The Commission's case statistics are calculated based on the number of cases received during the fiscal year; however, many cases are not resolved during the same fiscal year they are received, in particular those cases that are received toward the end of the fiscal year or which require significant investigation, negotiation or hearings, or other Commission resources. Accordingly, the statistics outlined below are intended to denote not only the cases received and processed during the current fiscal year, but also those that were received in prior years and resolved during the current fiscal year.

The Commission experienced an increase in the number of advisory opinions received from FY19, including more than double the number received in FY18. Through the first three quarters of the current fiscal year, the Commission continued to experience the same pace of new ethics complaints as were received in FY19, which also represents more than double the number of complaints received from FY18. The last quarter of FY20 reflected a decrease in complaint filings, presumably caused by the effects of the COVID19 Pandemic. Despite the decrease in the number of complaints *received* in the last Quarter of the fiscal year, the statistics reflect that the Commission *investigated* a greater number of complaints during FY 20 than it did in FY19. Moreover, the Commission continued to address the increased complaint case load from years prior, along with two separate vacancies in our Associate Counsel position this year, which contributed to a backlog of investigations/adjudications, as represented in the case statistics below. The Commission prioritizes investigations based upon whether there is a waiver of statutory timelines and/or the dates the written responses to the allegations are filed with the Commission. Many cases with waivers result in extensions to file written responses.

Requests for Advisory Opinions:

The Commission responded to the increased number of advisory requests received during this fiscal year with the issuance of all opinions and abstract opinions within the same fiscal year. In other words, no opinions or abstracts were carried over into the next fiscal year. Consistent with the Commission's adopted regulations from FY18, Commission Counsel continued to implement a streamlined system of communication and procedures to ensure the efficient review of advisory requests by

written submission and approval of written opinions. The majority of requests for advisory opinion received in FY20 were resolved on written submission, rather than formal, in-person hearings. The efficiencies accomplished by the Commission through its regulatory changes have prompted the Commission to seek additional statutory changes to its advisory process in the next legislative session. Specifically, the Commission believes that it be able to issue opinions even more timely and be more responsive to urgent requests (in as few as days or even hours in urgent circumstances) by authorizing the Executive Director and Commission Counsel to issue informal advice consistent with its established precedent that may be relied upon by public officers and employees. Checks and balances will continue to exist through administrative review by the Commission, as necessary, and judicial review of a Commission opinion.

It is anticipated that the Commission will continue to receive more requests for advisory opinions as the State's public officers and employees are better educated regarding the applicability of the Ethics Law and their responsibilities thereunder. Moreover, State and local government agencies have significantly changed the manner in which they are operating in light of the COVID-19 Pandemic and it is anticipated that questions will arise regarding appropriate conduct while telecommuting or responding to emergency circumstances and protocols. It is also reasonable to expect an increase in the number of requests for relief from the cooling-off provisions as government agencies tackle the fiscal impacts of COVID-19.

In reflecting on the substantive issues presented in the advisory opinions during FY20, approximately half of the opinions dealt with the cooling-off restrictions, in particular requests by public officials and employees to leave public service (either through resignation or retirement) to pursue employment in the private sector from vendors who contracted with their public agencies. The cooling-off provisions of the Ethics Law prohibit former public officers and employees from seeking or accepting employment with private persons/entities who were awarded contracts worth more than \$25,000 from their agencies within the immediately preceding year, and regarding which they had influence or control in the awarding of the contract. In the majority of the opinions, the former public officers or employees were permitted to seek or accept the employment because they were found not to have been involved in the awarding of the contracts to the vendors, even if they had material involvement in the administration or

implementation of the contracts after they were awarded. Nevertheless, the Commission has expressed its concern and heightened scrutiny in approving these employment opportunities to avoid “pay-to-play” scenarios. The Commission has also sought the Legislature’s consideration whether the restrictions should be expanded to preclude former public officers or employees from accepting employment by such vendors for one year if they otherwise had an active role in administering or managing the contracts – and not simply awarding them.

Requests for Advisory Opinions Received: 41

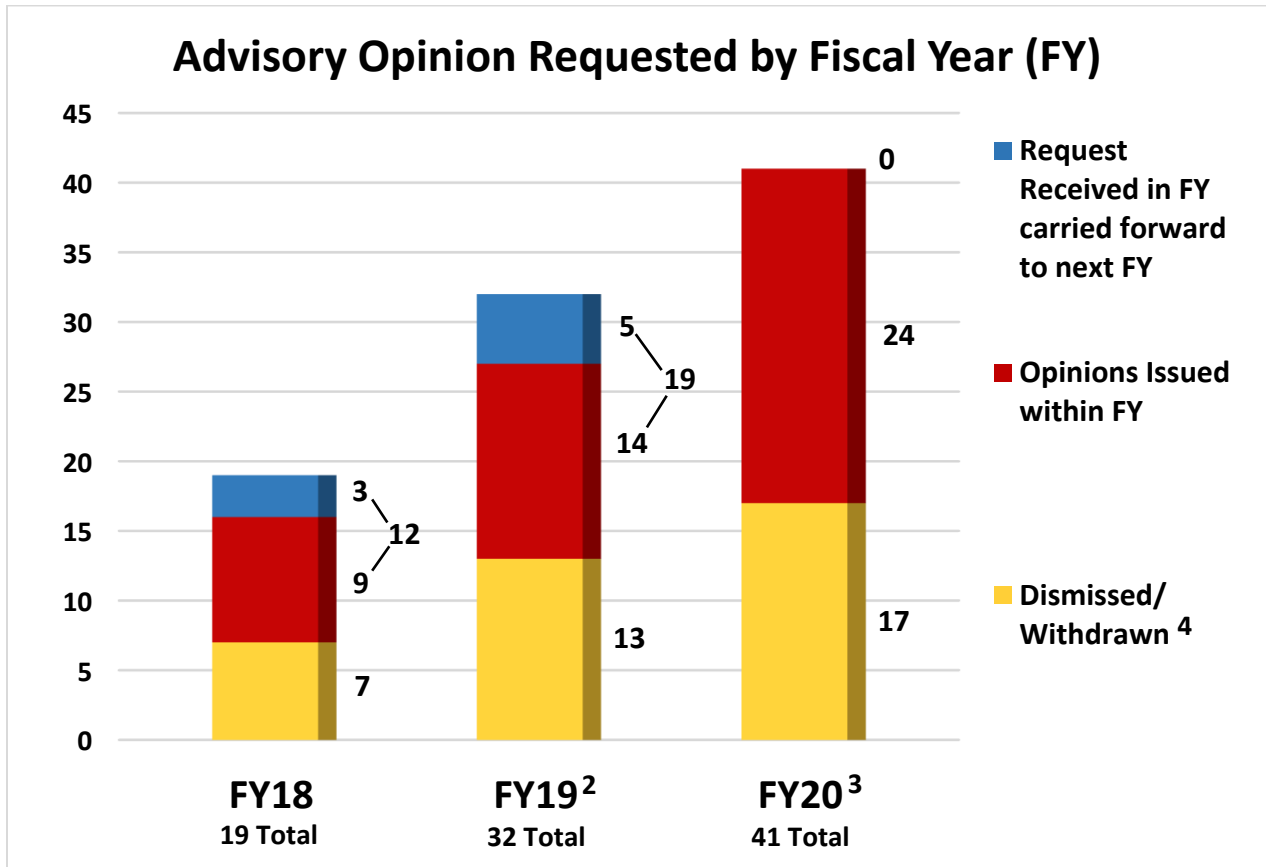
<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed by Commission</u>	<u>Stayed by Order</u>	<u>Written Opinions Issued</u>	<u>Abstract Opinions Issued from Written Opinions (No Waiver of Confidentiality)</u>
17	24	0	24	19 of 24 ¹

For Comparison - Requests for Advisory Opinions Received – FY19: 32

<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed by Commission</u>	<u>Stayed by Order</u>	<u>Written Opinions Issued</u>	<u>Abstract Opinions Issued from Written Opinions (No Waiver of Confidentiality)</u>
13	19	1 of 19	14 of 19 ²	8 of 14

¹ 5 of the 24 written Opinions issued in FY20 waived confidentiality and an additional 19 Abstract Opinions were issued for the cases which remained confidential during FY20.

² The Commission also issued opinions for the remaining 5 advisory requests pending from FY19 (Case Nos. 19-045A, 19-049A, 19-005A, 19-051A & 19-052A). Of these 5, there were an additional 4 abstract opinions issued.



¹ FY18

The Commission received 19 Advisory Opinion Requests in FY18, 7 of which were dismissed or withdrawn. In the 12 remaining cases, the Commission issued 9 Opinions in FY18 and 3 in FY19.

Abstract Opinions: Of the 12 cases, 11 remained confidential and required 11 additional Abstract Opinions. The Commission completed 6 of the 11 Abstract Opinions in FY18 and 5 Abstract Opinions in FY19.

² FY19

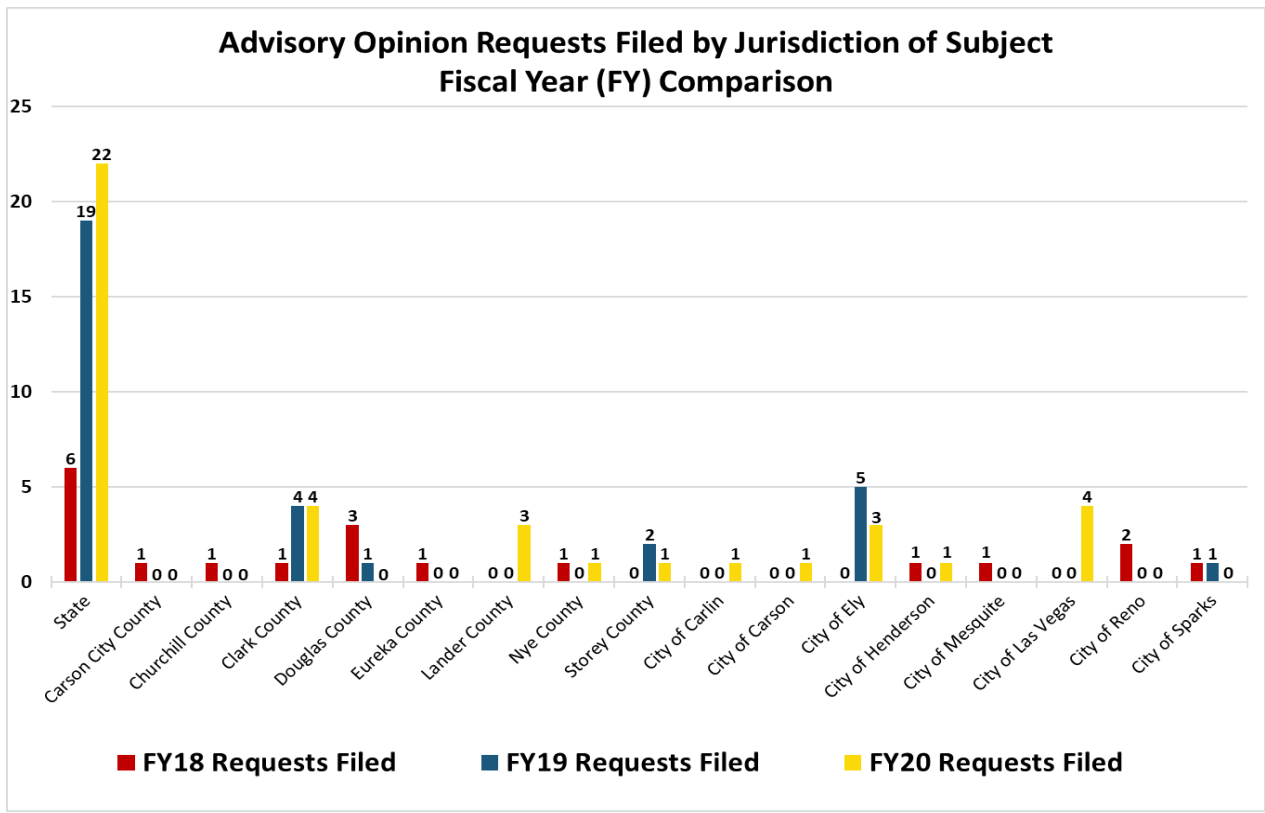
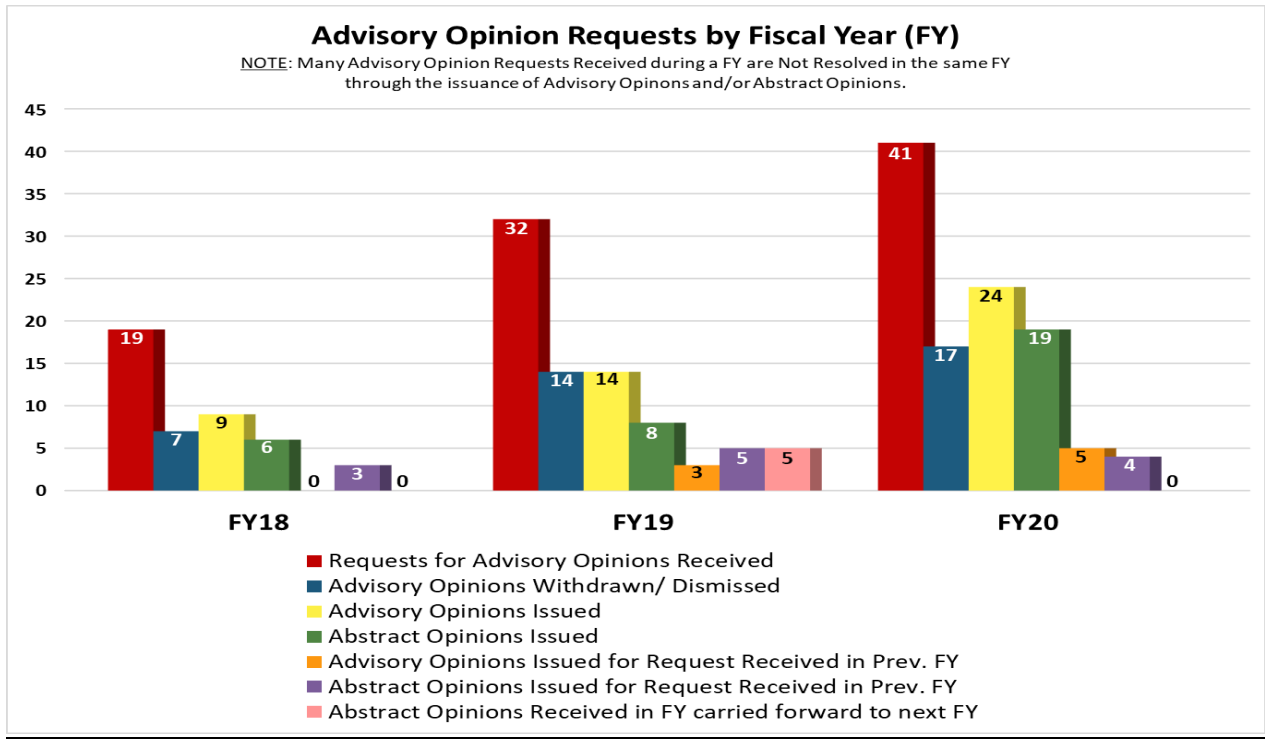
The Commission received 32 Advisory Opinion Requests in FY19, 13 of which were dismissed or withdrawn. In the 19 remaining cases, the Commission issued 14 Opinions in FY19 and 5 Opinions in FY20.

Abstract Opinions: Of the 19 cases, 12 remained confidential and required an additional 12 Abstract Opinions. The Commission completed 8 Abstract Opinions in FY19, and 4 Abstract Opinions in FY20.

³ FY20

The Commission received 41 Advisory Opinion Requests in FY20, 17 of which were dismissed or withdrawn. In the remaining 24 Requests, the Commission issued 24 Opinions in FY20. 5 additional Opinions were issued in FY20 for requests received in FY19.

Abstract Opinions: Of the 24 cases, 19 remained confidential and required an additional 19 Abstract Opinions, all of which were completed within the FY.



Ethics Complaints:

With regard to ethics complaints, the Commission received and investigated more than twice the amount of complaints this fiscal year than FY18 (similar to the case load from FY19), through the first 3 quarters of the year. Again, the COVID-19 Pandemic resulted in a decrease in the overall complaints *filed* between FY 19 and FY20, but the number of cases *investigated* in FY20 increased significantly over FY19, even with fewer complaints. The majority of cases received waivers of statutory deadlines by the subjects of the complaints. The subjects of complaints who did not waive the 70-day deadline for investigation were given investigatory priority. Consequently, older cases have taken longer to investigate.

The Commission and its staff reviewed and vetted every complaint that was filed to make a recommendation regarding jurisdiction and whether an investigation was warranted. Each staff recommendation includes legal and factual research, written recommendations and legal analysis, and the Commission deliberates and issues orders and/or confidential letters of caution or instruction, as applicable. Notably, despite the increased case load and staff vacancies during the fiscal year, the Commission has continued to satisfy its 45-day statutory deadline to issue jurisdictional orders in every case.

The Commission reviews each complaint case that is filed to assure the public that its concerns receive the highest level of review. Even when a case is dismissed by the Commission before an investigation, the Commission issues a formal order in the case explaining its decision. In those cases that did not warrant a full investigation, but nevertheless supported additional outreach by the Commission, a letter of caution or instruction was issued. Most cases that are dismissed fail to allege a private interest in conflict with public duties, which is a prerequisite to jurisdiction of the Commission. The Commission will not investigate allegations that a public officer or employee failed to perform his/her job duties or made allegedly poor decisions or errors in carrying out job duties, unless those official actions (or failures to act) affected a private interest.

Final dispositions of an ethics complaint, including deferral agreements and stipulations, reflect significant negotiation and legal procedure between the Executive Director/Associate Counsel and the subject of a complaint, after a full investigation has been conducted. The staff time required to review each ethics complaint, conduct investigations, prepare legal motions or negotiations and compile and present evidence

for hearing or settlement is not adequately reflected in the final statistics. However, the Commission started tracking staff time on jurisdictional analyses and investigations half-way through this fiscal year and will be able to more accurately reflect this time commitment as of the Commission's next Annual Report.

The Commission does not control the number of ethics complaints that may be filed in any particular year; however, the Commission's outreach and education, accessibility of complaint forms through the Commission's website and the statutory protection of the identity of certain requesters/complainants may be attributable to the increased number of complaints in recent years. If requested, the Commission is required to protect the identity of a requester who works for the same agency as the subject of the complaint. The Commission may also protect the identity of the requester if evidence is provided that the requester or his/her family will be subject to a bona fide threat of physical harm for filing the complaint. As we continue to deal with the changing, remote/virtual working environments and public meetings as a result of the COVID-19 Pandemic, it is reasonable to assume we will continue to see an increased number of complaints and public concerns regarding ethical conduct of public officers and employees.

Ethics Complaints Received: 89

<u>Dismissed, without a Letter of Caution or Instruction</u>	<u>Dismissed, with a Letter of Caution or Instruction</u>	<u>Withdrawn</u>	<u>Investigated</u>
51	5	8	25

Ethics Complaints Received in FY20, which the NCOE Investigated: 25

<u>Panel Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Stipulations/ Opinions</u>	<u>Investigations Remain in Progress for FY21</u>
3	0	0	22 ³

Ethics Complaints Received in FY18 and FY19; Investigated/Resolved in FY20: 19⁴

<u>Panel Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Commission Motion Hearings/ Adjudicatory Hearings</u>	<u>Stipulations/ Opinions</u>
11	3	0	5

Ethics Complaints Received in FY18 and FY19; Still Pending in FY21: 3⁵

For Comparison – Ethics Complaints Investigated in FY19 (7/18-6/19): 28

<u>Panel Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Commission Motion Hearings/ Adjudicatory Hearings</u>	<u>3rd Pty Stipulations/ Opinions</u>
1	4	0	1

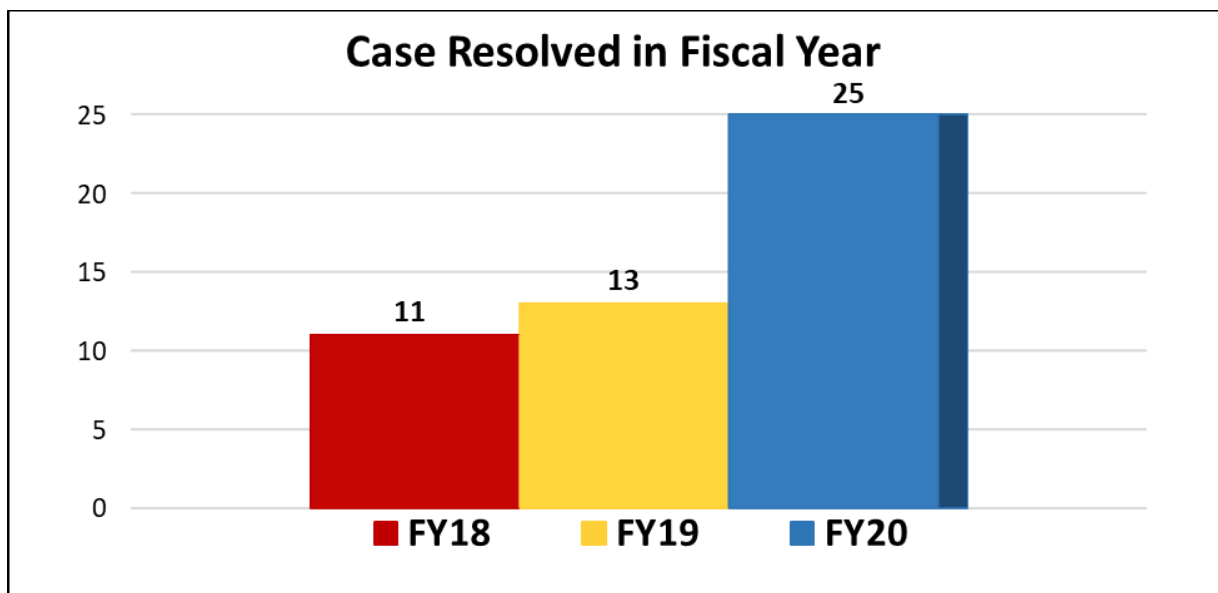
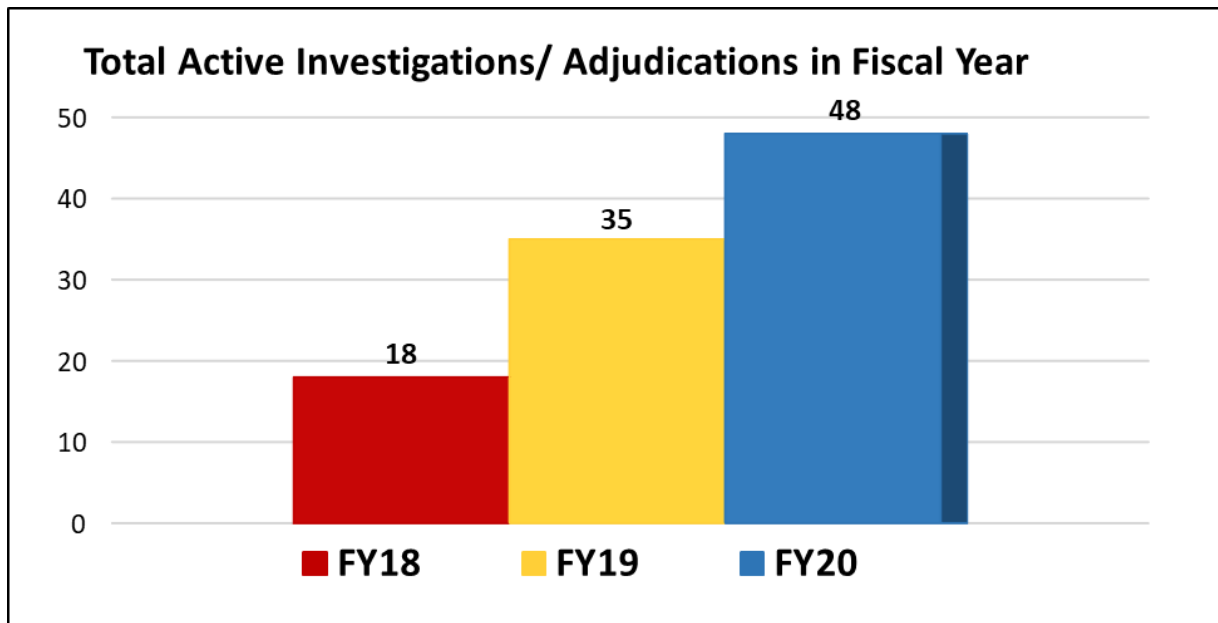
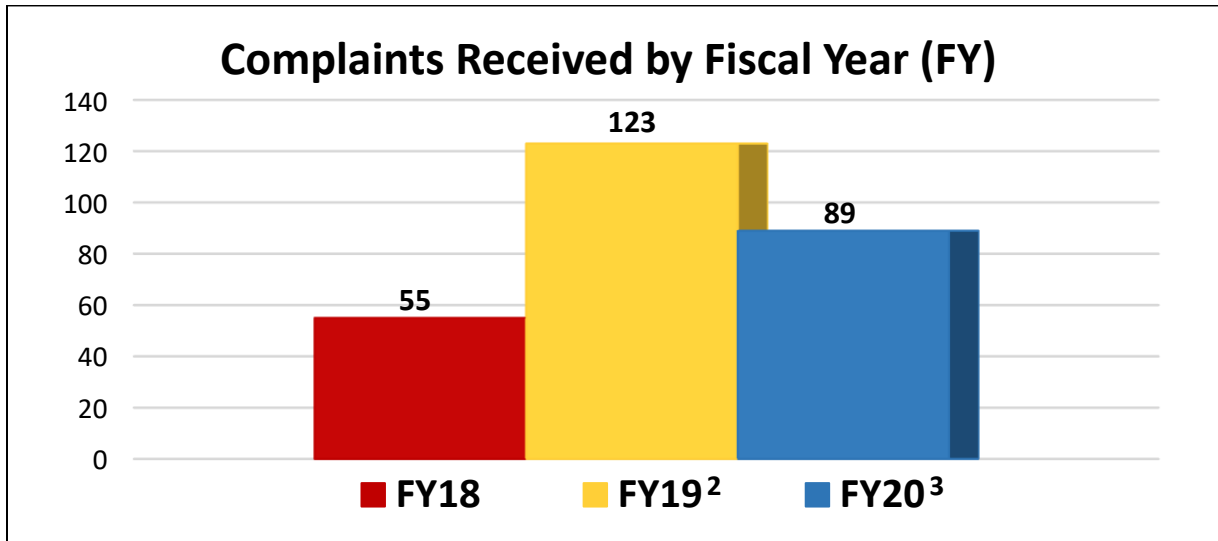
Ethics Complaints Resolved by Letters of Caution/Instruction or Deferral Agreements:

	<u>Letters of Caution</u>	<u>Letters of Instruction</u>	<u>Deferral Agreements</u>
Pre-Panel	1	2	
By Panel		3	
11 FY19 Cases Resolved in FY20 By Panel	4	4	3

³ 22 Complaints remained pending in FY21 from cases received in FY20; Complaint Nos. 19-065C, 19-067C, 19-081C, 19-082C, 19-088C, 19-093C, 19-095C, 19-102C, 19-105C, 19-111C, 19-113C, 19-126C, 19-128C, 19-129C, 20-001C, 20-007C, 20-010C, 20-018C, 20-023C, 20-027C, 20-043C & 20-048C. (1 additional Complaint remained pending from FY19 - Complaint Case No. 18-060C).

⁴ From FY18 - Complaint No. 18-031C – stipulation (consolidated with 18-052C). From FY19 – Complaint Nos. 18-049C – panel dismissal, 18-052C – stipulation (consolidated with 18-031C), 18-064C - panel dismissal with letter of instruction, 18-077C - panel dismissal with letter of instruction, 18-114C – panel dismissal, 18-121C - panel dismissal with letter of instruction, 18-130C - panel dismissal with letter of caution, 19-004C – panel deferral agreement, 19-021C – stipulation, 19-022C - panel dismissal, 19-026C – stipulation (consolidated with 19-027C), 19-027C – stipulation (consolidated with 19-026C), 19-028C - panel dismissal with letter of caution, 19-029C - panel dismissal with letter of caution, 19-031C - panel dismissal with letter of caution, 19-039C – panel deferral agreement, 19-042C - panel dismissal with letter of instruction & 19-044C – panel deferral agreement.

⁵ 3 Complaints received and investigated in FY19 remained pending in FY20; Complaint Nos. 18-060C, 18-061C, 18-139C.



Complaint Case Statistics by Fiscal Year (FY) Footnotes

¹ **FY18**

13 Active Investigations of Complaints received in FY18; 5 additional Active Investigations from prior Fiscal Years.

-Total Active Investigations = 18

-Total Cases Resolved in FY18 = 11

-Total Investigations Remaining Pending for FY19 = 7

² **FY19**

28 Active Investigations of Complaints received in FY19; 7 additional Active Investigations from prior Fiscal Years.

-Total Active Investigations = 35

-Total Cases Resolved in FY19 = 13

-Total Investigations Remaining Pending for FY20 = 22

³ **FY20**

25 Active Investigations of Complaints received in FY20; 23 additional Active Investigations from prior Fiscal Years (including 1 from FY18).

-Total Active Investigations = 48

-Total Investigations Resolved = 25

-Total Investigations Remaining Pending for FY21 = 23

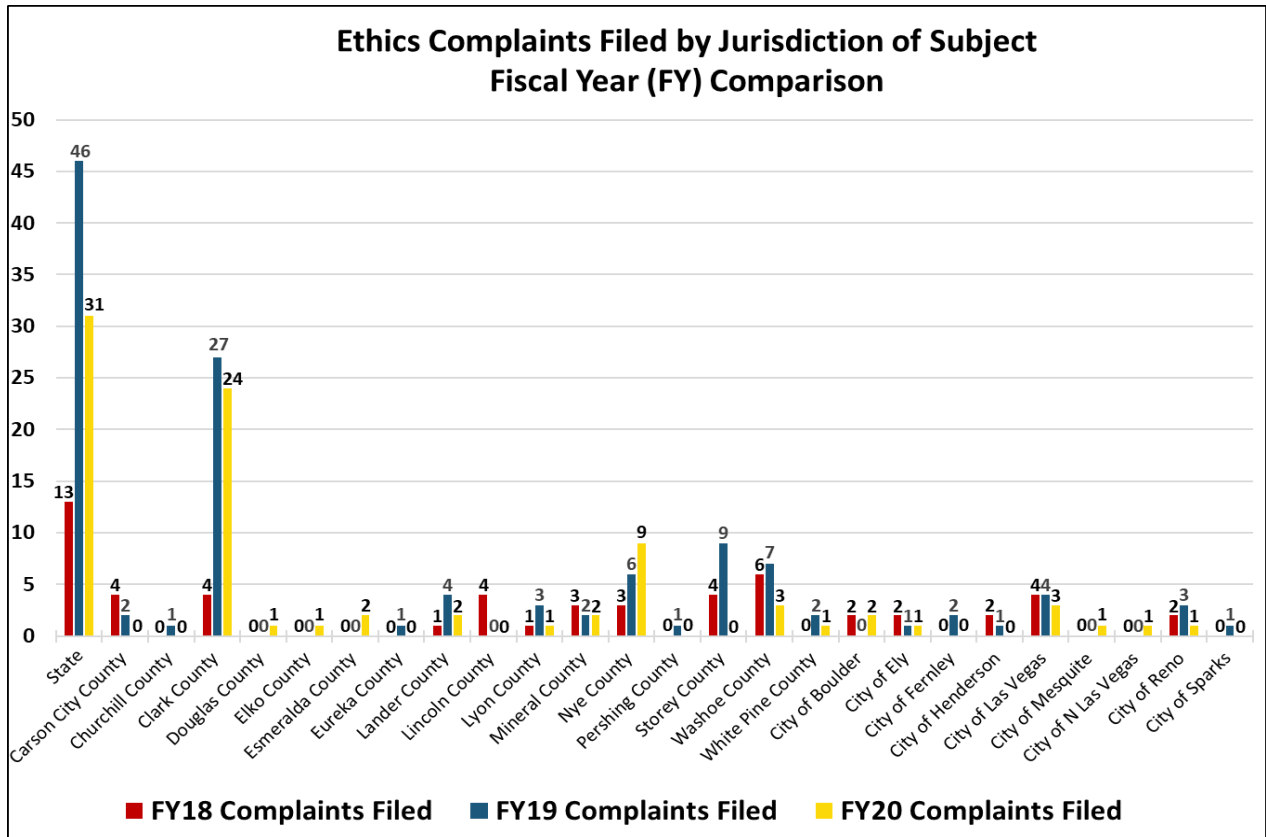
Dismissed/ Withdrawn Cases – No Investigation

In FY18, 25 of the 39 Complaints were dismissed/ withdrawn.

In FY19, 81 of the 123 Complaints were dismissed/ withdrawn.

In FY20, 64 of the 89 Complaints were dismissed/ withdrawn.

The Commission reviews every Complaint and issues a Formal Order in each case regarding its jurisdiction and determination whether to formally investigate the allegations. Staff prepare a written recommendation in every case regarding whether the Commission has jurisdiction in the matter and whether the Complaint is filed with sufficient evidence in support of the allegations to warrant an investigation. The recommendation includes preliminary investigation, legal research and legal analysis with 4-5 staff members working on each case. Many cases are dismissed with a separate Letter of Caution or Instruction.



Penalties/ Sanctions Imposed:

In FY20, the Commission imposed \$5,000.00 in civil penalties for willful violations of the Ethics Law and collected \$32,292.56 for civil penalties imposed from FY19. Pursuant to State law, the Commission collects and deposits all funds received from the imposition of sanctions into the State General Fund. Subjects who fail to remit payment of a civil sanction are reported to the State Controller for collection. Many of the sanctions imposed authorize the payment of these penalties in monthly installments for 1 or 2 years.

<u>FY 2019 Sanctions Imposed or Received</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Rec'd in FY20</u>
<u>Gerald Antinoro, Sheriff, Storey Co.</u>	<u>10/17/2018</u>	<u>NRS 281A.400(2) and (7)</u>	<u>\$2,500</u>	<u>\$2,500</u>
<u>Lawrence Weekly, Chair, Las Vegas Convention & Visitors Authority</u>	<u>1/16/2019</u>	<u>NRS 281A.400(1), (2), (7) and (9)</u>	<u>\$2,398.64</u>	<u>\$2,000</u>
<u>Judie Allan, Commissioner, Lander Co.</u>	<u>5/22/2019</u>	<u>NRS 281A.400(1), (2) and (9)</u>	<u>\$500</u>	<u>\$500</u>
<u>Lisa Cooper, Former Executive Director, Board of Massage Therapy</u>	<u>5/22/2019</u>	<u>NRS 281A.400(1) and (2)</u>	<u>\$25,023</u>	<u>\$25,023</u>
<u>Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority</u>	<u>6/17/2019</u>	<u>NRS 281A.400(1), (2), (7) and (9)</u>	<u>\$8,700</u>	<u>\$2,269.56</u>
<u>FY 2020 Sanctions Imposed or Received</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Rec'd in FY20</u>
<u>Joel Dunn, Former Executive Director, Carson City Culture & Tourism Authority</u>	<u>11/13/2019</u>	<u>NRS 281A.420(1)</u>	<u>\$5,000</u>	<u>\$5,000</u>
<u>FY 2021 Outstanding Sanctions Owed</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Owed in FY21</u>
<u>Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority</u>	<u>6/17/2019</u>	<u>NRS 281A.400(1), (2), (7) and (9)</u>	<u>\$8,700</u>	<u>\$6,433.</u>

Documents Filed:

Pursuant to NRS 281A.500, public officers filed 717 Acknowledgment of Ethical Standards Forms (“Acknowledgment Forms”) with the Commission for calendar year 2019. The number of filings remains consistent with the prior calendar year of 695

Acknowledgment Forms filed in 2018. Public officers (not public employees) are required to file an Acknowledgment Form within 30 days of any appointment and reappointment to a public office or special election, and on or after January 15 following a general election for each term of office. Public officers who are appointed to serve an indefinite term of office at the pleasure of the appointing authority must file an Acknowledgment Form within 30 days of appointment and again on or before January 15 of each even-numbered year. The number of Acknowledgment Forms filed generally increases following educational outreach by the Commission as the awareness of this requirement is implemented throughout the State and local jurisdictions. To assist with enforcement, the Commission is seeking a legislative amendment to require all State and local agencies to provide a master list of public officers throughout the state, as they are currently required to provide to the Secretary of State for Financial Disclosure Statements.

The Commission's website allows for submission of Acknowledgment Forms directly through the website and the Commission anticipates it will make the filed forms publicly available in searchable format on the Commission's website during the next fiscal year.

III. Legislative Matters

During FY20, the Commission approved a recommendation by its Bill Draft Request (“BDR”) Subcommittee, consisting of Vice-Chair Wallin and Commissioners Duffrin and Gruenewald to request a bill for the 2021 Legislative Session to amend various provisions of the Nevada Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A.

The Governor has agreed to sponsor the proposal which will be presented to the Legislature during the 2021 Legislative Session. The bill signifies efforts by the Commission after several years of public meetings and stakeholder input to address amendments that would promote and clarify the Ethics in Government Law, and internal processes that have been implemented and reviewed since the 2017 legislative amendments (SB 84). In particular, the BDR is aimed at increasing and clarifying due process, transparency in the Commission’s processes, additional outreach and education, confidentiality protections, streamlining procedural requirements, and addressing jurisdictional issues. Notably, the Commission and the BDR Subcommittee focused on amendments/additions that would balance improved/enhanced access to the Commission with the anticipated fiscal limitations on its resources in response to its case load. The proposed BDR includes the following summary of amendments to the Ethics Law:

1. Requests for Advisory Opinions

Increase accessibility to and responsiveness of the Commission for requests for advisory opinions by authorizing the Commission’s Executive Director and Commission Counsel to provide immediate informal, confidential advice to a public officer or employee on issues regarding which the Commission has already issued precedential opinions. Such advice is subject to review by the Commission, and it may be relied upon by the public officer or employee as protection against potential violations of the Ethics Law. Additional amendments clarify process related to requests for and issuance of advisory opinions. Finally, the Commission requests statutory discretion to grant appropriate extensions of statutory deadlines for good cause to issue such opinions.

2. Ethics Complaints

Significant clarifications and procedures are recommended to enhance transparency and due process for ethics complaints, including jurisdictional

determinations, investigations and adjudication. Specifically, the Commission requests statutory discretion to grant appropriate extensions of statutory deadlines for good cause to conduct investigations and render decisions. Procedurally, the Commission seeks to streamline its processes and provide transparent direction and additional rights to requesters and subjects of complaints regarding its processes, including its jurisdictional/investigatory processes, issuance of notices of investigations and hearings, discovery and settlement processes, confidentiality protections, and increased safe harbor protections for reliance on legal counsel.

3. Ethical Standards of Conduct

Clarify scope of ethical standards that apply to public officers and employees. Specifically, the Commission seeks to limit cooling-off prohibitions to certain management-level employees, while expanding the one-year prohibitions against private employment with agency contract vendors to employees who have material influence in management or administration of those contracts instead of just influence in awarding the contracts. Moreover, the Commission seeks to expand and clarify the standards of conduct to prohibit abuses of power/authority (not including allegations of bias, error or abuse of discretion in carrying out public duties), misuse of government resources, and disclosure and abstention obligations.

4. Open Meeting Law (“OML”) Exemption/Application

Under current law, the Commission is exempt from the OML for its proceedings regarding requests for advisory opinion and review panels, and for its receipt of information and deliberations regarding ethics complaints. Final actions taken in an ethics complaint must comply with the OML. Given the dynamics of the confidential adjudicatory process, including confidential negotiations of settlement, this bill would make the final action of the Commission exempt from the procedural requirements of the OML, which require special notice and public meeting materials. Instead, the final decision of the Commission, including any records relied upon by the Commission that are not otherwise confidential, would be transparent and made public records, but the procedural requirements of the OML would not apply.

In 2019, the OML was amended as applicable to all public bodies (including the Commission) to delegate litigation decisions to its Chair or Executive Director of the

agency. Such delegation must occur in an open public meeting in compliance with the OML. This amendment occurred as a result of OML litigation involving the Commission in prior years that affected all public bodies and their decisions regarding litigation. This OML amendment did not take into account the specific exemptions of the OML applicable to the Commission under NRS Chapter 281A, including litigation decisions related to confidential proceedings regarding advisory opinions and ethics complaints. Therefore, the Commission seeks specific language to authorize an exemption from OML for the delegation of litigation decisions related to confidential proceedings before the Commission. The Commission would continue to maintain its transparency by publishing all decisions on its website, which is accessible to the public.

5. Administrative Amendments

Additional proposed amendments include: (1) assignment of the Chair's duties in certain circumstances; (2) requirements of the Executive Director to be a licensed attorney; (3) clarifications regarding the Executive Director's status as a party to adjudicatory proceedings; (4) confidential referrals to appropriate governmental agencies for matters not within the Commission's jurisdiction; (5) cooperation with ethics investigations by public officers and employees who are witnesses; and (6) procedural requirements of governmental entities related to Acknowledgment of Statutory Ethical Standards Forms.

IV. Litigation & Appellate Review:

During FY20, the Commission defended several of its decisions that were the subject of petitions for judicial review and other litigation initiated in State courts.

Commission Case No. 16-54C (Antinoro) – Nevada Supreme Court Case No. 74206 and First Judicial District Court Case No. 17 OC 00138

The Commission issued a final opinion finding that Subject Antinoro committed a willful violation of the Ethics Law by using government letterhead as a mechanism to endorse a political candidate and the Commission imposed a \$1,000 sanction. Subject Antinoro filed a Petition for Judicial Review of the Commission's decision in the First Judicial District Court of the State of Nevada in and for Carson City, Case No. 17 OC 00138, asserting that the Commission committed legal error and asserting a constitutional challenge to NRS 281A.400(7). The Commission filed a motion to dismiss asserting the Court lacked jurisdiction to consider the petition due to noncompliance with the mandatory requirements of Nevada's Administrative Procedures Act set forth in NRS Chapter 233B, including failing to name all parties of record in the administrative proceedings and failing to exhaust administrative remedies. The District Court granted the motion to dismiss in favor of the Commission. Subject Antinoro filed a Notice of Appeal with the Nevada Supreme Court, Case No. 74206. The issues presented on appeal were briefed by the parties and the appeal was directed by the Nevada Supreme Court to the Nevada Court of Appeals for consideration.

On May 24, 2019, the Nevada Court of Appeals issued an Order of Reversal and Remand indicating, in part, that at the time the District Court dismissed the petition, it did not have the benefit of the Nevada Supreme Court's opinion in *Prevost v. State, Dep't of Admin.*, 134 Nev Adv. Op. No. 42, ___, 418 P. 3d 675, 676 (2018), which clarified prior case precedent and determined that the failure to identify a party in the caption of the petition for judicial review is not a fatal jurisdictional defect when the petitioner attached a copy of the underlying administrative decision that identified the parties. The Court of Appeals also determined that exhaustion of remedies was not required by application of NRS Chapter 281A and NAC Chapter 281A. Upon remand, the parties filed their respective briefs on the merits.

On October 30, 2019, the district court issued an Order and Judgment Denying Petitioner's Petition for Judicial Review and Affirming the Final Decision of the Nevada Commission on Ethics. In doing so, the district court confirmed that NRS 281A.400(7) is constitutional on its face and as applied in the case because it is a content-neutral statute that does not restrict the private rights of free speech under the First Amendment, is not view-point discriminatory and serves a legitimate governmental interest. The court also affirmed the Commission's final decision that Antinoro violated NRS 281A.400(7) when he used official letterhead to endorse a political candidate because the decision was supported by substantial evidence in the record. After expiration of the appeal deadline, the Commission published the final decision on its website.

Smith v. Review Panel of the Nevada Commission on Ethics, State of Nevada. - Eighth Judicial District Court Case No. A-20-812778-J

Donald Smith is the subject of three ethics complaints administratively identified as complaint numbers 19-081C, 19-082C and 19-105C ("Complaints"). On March 24, 2020, Smith filed a petition for judicial review to challenge the three-member Review Panel's determination referring certain allegations set forth in the Complaints to the Commission for adjudicatory proceedings pursuant to NRS 281A.730, and he also filed an Application to Stay the pending administrative proceedings before the Commission.

On April 22, 2020, the Review Panel filed a motion to dismiss asserting the District Court lacked jurisdiction to consider the petition due to noncompliance with the mandatory requirements of Nevada's Administrative Procedures Act set forth in NRS Chapter 233B and provisions of NRS Chapter 281A which assert that a Review Panel's determination is not a final decision, but is an interlocutory order, and the final decision to be issued by the Commission and related rights of judicial review provide petitioner with an adequate remedy at law. Further, the motion asserted that petitioner did not properly name all parties and comply with other statutory requirements.

On April 22, 2020, The Review Panel also filed an opposition to petitioner's Application for Stay and a Motion to Stay the briefing schedule related to the merits of the judicial review until such time as the Court ruled upon the motion to dismiss and whether it had jurisdiction to consider the petition. The parties thereafter stipulated to the Review Panel's requested stay of proceedings, which stipulation was confirmed by court order issued on June 3, 2020.

The issues set forth in motion to dismiss were fully briefed and oral arguments were presented to the District Court on June 10, 2020. The District Court issued a minute order dated June 16, 2020, granting the motion to dismiss in favor of the Commission/Review Panel instructing that judicial review of the final decision of the Commission will provide petitioner with an adequate remedy at law and therefore the court did not have subject matter jurisdiction under NRS 281A.130 to review the interlocutory order issued by the Review Panel. The District Court directed the parties to prepare of a proposed order consistent with the minute order and the final order was issued on July 6, 2020. Petitioner will have statutory rights to pursue an appeal to the Nevada Supreme Court. In the meantime, the Commission is proceeding with adjudication on the merits of the allegations set forth in the Complaints that were referred by the Review Panel.

V. Fiscal Matters

Commission Budget:

The Commission derives its funding based upon a proportionate split between the State General Fund and certain of Nevada's local governments (cities and counties). The portion attributable to the local governments is based on a proportionate split relative to the respective populations of the cities and counties.

The Commission's funding split between the State General Fund and local governments for each biennium is based upon the jurisdictional split between the number of public officers and employees who serve the State versus local governments. Accordingly, the Commission relies upon the legislatively-approved labor data reported by the Nevada Department of Employment, Training and Rehabilitation showing a split of Nevada's public officers and employees between State and local governments at approximately 28 percent State and 72 percent local governments.

FY20 wrapped up the first year of the Commission's biennial budget. Through the first three quarters of FY20, the Commission was on track to expend nearly the entirety of its legislatively approved budget, which reflects the projected operating costs requested and approved for the fiscal year. The Commission's legislatively approved budget for FY20 was \$930,837, as amended at the end of the fiscal year to accommodate the requested agency budget cuts resulting from the COVID-19 Pandemic. The Commission's budget funds personnel (salaries/benefits), travel (to conduct meetings, investigations and trainings), operating expenses, court reporting, information technology equipment and services and other State-related cost allocations and assessments. Other than personnel and operating costs, the Commission's primary efforts to provide outreach and education regarding the Ethics in Government Law and respond to advisory requests and investigate and adjudicate ethics complaints establish the largest fiscal impacts on the Commission's budget.

Given the legislative priorities and demands on Commissioners and staff during FY20 to respond to its ongoing increased case load and outreach efforts, the Commission primarily met virtually and via email communications (where the Open Meeting Law was not applicable) to enable Commission staff to utilize the Commission's travel budget for

investigations and training efforts throughout the State, until the COVID-19 Pandemic halted all travel and in-person meetings.

The Commission's budget objectives in FY20 included direction to the Executive Director to seek additional Interim investigatory/adjudicatory resources from the Governor and Legislature to address the backlog of investigations/adjudications resulting from the increased case load and staff vacancies. Specifically, the Commission sought a temporary, contract attorney to round out the Interim, and to adequately assess whether the needs of the agency would require an additional full-time attorney position for the next biennium. While the case load and legal demands on the Commission warranted the additional legal position, the devastating fiscal impacts on the State's revenues as a result of the COVID-19 Pandemic toward the end of the fiscal year required all State agencies to significantly cut the remainder of their fiscal year budgets (and next fiscal year budgets) to assist the State in balancing the overall State General Fund.

Since the COVID-19 Pandemic resulted in restrictions/prohibitions on travel and in-person meetings, and the majority of the Commission's budget consists of travel, training and court reporting costs, the Commission was easily able to revert the required percentage of funding back to the State for the remainder of FY20. Unfortunately, the Pandemic also reversed the Commission's course in retaining an Interim contract attorney to assist with its backlog of investigations and adjudications. The Commission also had to compromise on the form of its investigations, which included telephonic or virtual (as opposed to in-person) witness interviews and delays in receiving documentation and other evidence from various governmental agencies. These compromises have contributed to the ongoing backlog of investigations and adjudications. On a positive note, these challenges have also developed additional resources for the Commission in future cases, i.e., virtual interviews and meetings in appropriate cases.

Perhaps more daunting for all government agencies, including the Commission, will be the fiscal effects for the next fiscal year and future biennium as the State continues to respond to the economic impacts of the COVID-19 Pandemic. During FY20, the Commission was asked to propose additional cuts to its FY21 Budget (for consideration at a special session to be held next fiscal year), which have again included significant cuts to travel, operations, and court reporting, along with the closure of the Commission's Las Vegas Office, which was unstaffed. The Commission will continue to do its part to respond

to the crisis and develop any efficiencies in its processes as may be appropriate. In fact, the Commission's BDR Subcommittee recommended various legislative amendments that will not solve the increased case load or backlog, but will make it the Commission more able to respond appropriately to various statutory deadlines through extensions of time for good cause and other procedural streamlining of advisory and complaint cases.

Going forward, the Executive Director will work with the Commission and the Governor's Office to determine its priorities amid the fiscal realities confronting the State. In continuing to achieve the Commission's mission of education and outreach and as the case load increases and demands on staff become greater to process those cases, it will be necessary to consider increasing staff and achieving salary parity with similar positions in other State agencies, and modernizing the Commission's tools and resources for outreach and educational programs.

VI. Outreach & Education Program

In FY20, the Commission continued its program of outreach and education to Nevada's public officers and employees and public attorneys. The Executive Director continued outreach at nearly the same pace as the prior fiscal year, until the COVID-19 Pandemic shut down travel and in-person meetings. While the number of trainings reduced toward the end of the fiscal year, the Executive Director adapted to a virtual training platform for several agencies. While the level of interaction in this platform has some limits, the overall accessibility has proven effective. So much so, that the Commission staff will be developing a formal virtual/digital training in the next fiscal year.

The Commission has continued to express its intention to increase the number and type of outreach in the future to promote its primary mission of education, including modernizing public and media outreach. Given the staffing and fiscal limitations confronting the State and the Commission in the next year, the Commission will continue to adapt to the virtual environment and otherwise seek creative alternatives to ensure that State and local agencies may seek and receive training from the Commission.

Ethics Trainings – FY20

Trainings Provided to:	Number of Ethics in Government Law Trainings Presented:
State Government Entities	3
Local Government Entities	22
Total	25

In addition to the Commission's training program, the Commission engages in other outreach efforts via staff communications and correspondence with the public. The Commission staff provides regular, often daily, feedback for the public, public officers and employees and government attorneys regarding the applicability of NRS Chapter 281A and Commission's opinion precedent.

VI. Closing Remarks

FY20 can be best summarized as a year of contrast in both steadiness and flexibility. Given the significant dynamics in responding to the COVID-19 Pandemic toward the end of the fiscal year, it is easy to forget the pace at which the Commission was operating for the first 3 quarters of the fiscal year. The COVID-19 Pandemic has dominated our view of FY20, as the Commission staff converted to remote, tele-working conditions and the Commission's meetings became virtual. Nevertheless, the Commission should be praised for the pace at which it responded to its increased case load with limited resources, and its ability to remain accessible to the public as well as State and local government public officers and employees in the remote circumstances presented by the Pandemic.

While the number of new complaint cases slowed during the last Quarter, staff and the Commission remained steadfast in resolving a significant number of its older cases, addressed unprecedented litigation and adapted to a new virtual format for providing outreach and education. As other governmental agencies adapt to new reforms under COVID-19, including virtual meetings, telecommuting work environments and the upcoming fiscal and legislative issues in the next fiscal year, it is reasonable to assume that the Commission's case load may pick up again in the coming fiscal year. The Commission and its staff will be poised to tackle these challenges to ensure the public's trust in government oversight and transparency.

Commission and Commissioner Information

Nevada Commission on Ethics
as of 06/30/20

Commissioners

*=Appointed by Governor

**=Appointed by Legislative Commission

Chair - Cheryl Lau, Esq. (R)*
(07/01/16 – 06/30/20)

Teresa Lowry, Esq. (D)**
(05/16/18 - 05/15/22)

Vice Chair - Kim Wallin, CPA (D)**
(06/26/18 – 06/25/22)

Philip “P.K.” O’Neill (R)*
(07/01/19 – 6/30/23)

Brian Duffrin (NP)*
(11/01/19 – 10/31/23)

Damian R. Sheets, Esq. (D)*
(10/01/19 – 9/30/23)

Barbara Gruenewald, Esq. (D)**
(10/12/19 - 10/31/23)

Amanda Yen, Esq. (R)**
(12/21/16 – 12/20/20)

Staff

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Executive Director

Tracy L. Chase, Esq.
Commission Counsel

VACANT
Associate Counsel

Darci L. Hayden, PP-SC
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Executive Assistant

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Nevada Commission on Ethics

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Agenda Item 5

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Chair

Brian Duffrin
Vice-Chair

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October 14, 2020

TO: Commissioners

FR: Yvonne M. Nevarez-Goodson, Esq.
Executive Director

RE: October 21, 2020 Meeting of the Commission on Ethics, Agenda Item 5,
Jurisdictional Review Process

This agenda item provides the Commission with an overview of the Commission's (and staff's) jurisdictional review process and determination whether to investigate an ethics complaint. The purpose of this agenda item is to review current processes and provide the Commission an opportunity to approve or amend the process.

Ethics Complaints:

- 1) Receipt of Ethics Complaint – 45-day statutory deadline commences for Commission to determine jurisdiction/investigation.
- 2) Staff's Jurisdictional Review of Ethics Complaints:
 - Pursuant to the Commission's regulations set forth in NAC Chapter 281A, the Executive Director and Commission Counsel are required to review every ethics complaint and make a legal recommendation to the Commission whether it has jurisdiction and whether the complaint was filed with sufficient evidence to support the allegations to warrant an investigation. The Associate Counsel participates in all jurisdictional recommendations.
 - Jurisdictional Recommendation:
 - o Does the Complaint allege a violation of a provision of NRS Chapter 281A by a public officer or employee?
 - Staff reviews the nature and scope of Subject's agency, duties, position, etc. to confirm status as a public officer/employee.
 - Staff reviews allegations in complaint to determine whether it alleges an ethics violation (i.e., conflict of interest between public duties/private interests).

- Ex: No jurisdiction if complaint involves judges or advisory body members, exceeds statute of limitations (2 years), or implicates the Open Meeting Law, workplace harassment or discrimination.
 - Sufficient evidence to support the allegations.
 - A Complaint may not be filed with mere allegations or assertions of a violation without a minimal threshold of evidence to support the allegations, i.e., witness statements; documentation, etc.
 - Staff researches whether there are any relevant, readily available public records related to the allegations.
 - Ex: media; meeting recordings/transcripts/minutes; agency websites; etc.
 - Staff prepares a written recommendation regarding whether the Commission has jurisdiction of the complaint and whether the complaint is supported by sufficient evidence
 - Recommendation includes a summary of the facts presented in the complaint along with any readily available public records or facts.
 - Legal analysis is included regarding whether such evidence supports the alleged violation of the Ethics Law to warrant an investigation.
 - Staff also determines which statutory provisions may be implicated by the allegations (public isn't required to know all the statutory provisions).
 - Staff makes a legal recommendation to the Commission whether to accept jurisdiction and whether the complaint is filed with sufficient evidence to support the allegations to warrant an investigation.
 - Confidentiality of Requester:
 - If the Requester of the Complaint requests the confidentiality of his/her identity, Commission staff will review the complaint and make a recommendation to the Commission regarding whether the Requester has provided sufficient evidence that he/she works for the same agency as the subject of the complaint or has a bona fide threat of physical harm to himself or his family.
 - If the Requester works for the same agency as the subject, the Commission **MUST** maintain the identity of the Requester as confidential
 - If the Requester provides information supporting a bona fide threat of physical harm if his/her identity is revealed, the Commission **MAY** maintain the identity as confidential.
- 3) Executive Director's Recommendation/Email to Commission:
- The Commission's deliberation and review of an ethics complaint for jurisdiction and investigation is confidential and not subject to the Open Meeting Law.
 - The Executive Director emails the Commission **2 weeks** before the deadline with the recommendation and a proposed order.
 - If the recommendation includes a confidential letter of caution or instruction, the email will also include a proposed letter for review/approval by the Commission.
 - The Executive Director provides the Commission with **1 week** to vote on the recommendation via email.
- 4) Commissioners' Deliberations:
- Each Commissioner should review every complaint to confirm whether he/she has any conflicts of interest in the Commission's determination regarding jurisdiction/investigation. Any conflicts should be communicated with the Executive Director and Commission Counsel for confirmation whether the conflict requires a disclosure/abstention.

- If a Commissioner remains silent and does not participate, he/she will be noted as **ABSENT** on the final order.
- Unless there is a conflict mandating abstention, each Commissioner should vote whether he/she agrees with staff's recommendation, and respond directly to the Executive Director confirming their vote regarding the recommendation.
- If a commissioner disagrees with or has an alternative recommendation to staff's recommendation, a commissioner may email his/her colleagues to deliberate via email, or request the Executive Director to schedule a teleconference for discussion with the commissioners regarding the jurisdictional determination and order. There is an additional week built into the timeframe before the 45-day deadline to schedule and hold such a teleconference for the Commission to deliberate and render a decision.
 - o COMMISSION'S REVIEW:
 - If the Commission does not have jurisdiction of the complaint, it **MUST** dismiss the complaint without an investigation and without the issuance of a confidential letter of caution or instruction.
 - If the Commission concludes that it does have jurisdiction and makes a finding that there is sufficient evidence in support of the allegations, it **MAY**: (1) Direct an Investigation; or (2) Dismiss the Complaint with or without the issuance of a Confidential Letter of Instruction of Caution. This is typically done in cases with allegations of minor conduct that can be supported by available public records.

5) Vote/Issuance of Order on Jurisdiction and Investigation:

- If there is no request for additional deliberation, the Executive Director will calculate the votes to determine whether a majority of a quorum has approved the recommendation and whether there are any commissioners dissenting in the determination.
- The Executive Director will send a final email to the Commission confirming the vote, any disclosures/abstentions and any dissenting votes.
- The Executive Director will conduct a final review of the Order on Jurisdiction and Investigation to confirm its accuracy with the vote, add any disclosures/abstentions or dissents and issue the Order.
- If a Commissioner does not participate, a footnote is added to acknowledge an absent Commissioner. A commissioner is listed as absent so that there can be no future concern that the commissioner had a conflict and didn't disclose or abstain, or otherwise allowing staff to assume a particular vote.
- The Order is confidential:
 - o If the Commission directs an investigation or dismisses with a letter, the Order (and letter) is sent to the Subject and the Requester of the Complaint.
 - o If the Commission declines jurisdiction and dismisses the complaint, the Requester is provided with a copy of the Order.

6) Notices of Complaints –

- If the Commission accepts jurisdiction and orders the Executive Director to investigate, the Executive Director issues a Notice of Complaint and Investigation to the Subject of the Complaint along with the Order on Jurisdiction and Investigation.
- The Executive Director must provide a copy of the complaint with the Notice.
 - o If the Commission orders that the identity of the Requester be maintained as confidential, the Executive Director provides a redacted complaint that protects the identity of the Requester.

- The 70-day statutory deadline to complete an investigation commences with the issuance of an Order on Jurisdiction and Investigation and Notice of Complaint and Investigation.
- A Notice of Complaint and Investigation provides the subject with notice of the complaint and investigation, and the Subject of the complaint is given an opportunity to file a written response within 30 days.
- Notice of Complaint includes a copy of any legal waivers of statutory deadlines.
- Subjects are provided 30 days to file a written response.
- If the subject files a waiver of the statutory deadlines for investigation, the Executive Director may approve extensions of time to respond to the allegations not to exceed 30 days each for good cause shown.

Advisory Opinions:

- 1) Receipt of Request for Advisory Opinion - 45-day statutory deadline commences for Commission to render opinion.
- 2) Staff's Jurisdictional Review of Advisory Requests:
 - Pursuant to the Commission's regulations set forth in NAC Chapter 281A, the Commission Counsel and Executive Director are required to review every request for an advisory opinion and determine whether the Commission has jurisdiction to render the advice.
 - Commission Counsel reviews each request for jurisdiction and emails the Executive Director with a recommendation regarding jurisdiction and whether the matter may be considered by written submission or whether a hearing would be more appropriate to ascertain additional facts/circumstances.
 - The Executive Director confirms jurisdiction and review by submission or hearing with Commission Counsel via email.
- 3) Commission Counsel's Communication with Requester/Draft Opinion:
 - Commission Counsel follows up with Requester to confirm factual circumstances and provide additional documentation, as necessary
 - o Similar to ethics complaints, Commission Counsel will research any available public records relevant to the request and draft proposed findings of fact along with the information provided in the Request for Advisory Opinion or supplemented by the Requester.
 - o If additional information is required from the Requester, the 45-day timeframe does not commence until the Requester provides the supplemental information.
 - o After confirmation of the proposed facts from the Requester, Commission Counsel will provide the information to the Commission as part of the proposed written opinion.
 - o Commission Counsel prepares a draft written opinion outlining the proposed application of the ethics law to the confirmed facts, consistent with the Commission's written precedent.
 - The Executive Director and staff provide edits/review for Commission Counsel.
- 4) Commission Counsel's Recommendation/Email to Commission:
 - The Commission's deliberation and review of a request for advisory opinion is confidential and not subject to the Open Meeting Law.
 - The Commission Counsel emails the Commission before the 45-day deadline with the proposed written opinion and a deadline for the Commission to vote on the recommendation via email.

- Commission Counsel emails the Commission with confirmation of approval from a majority of a quorum. Commissioners who do not participate in the vote will be listed as absent on the final written opinion.
- Commission Counsel and staff conduct a final review of the proposed Opinion, add any disclosures/abstentions, dissents or absent commissioners.
- Commission Counsel issues the final opinion to the Requester and confirms whether the Requester wants to retain confidentiality of the opinion.
- If the Requester does not want to retain confidentiality, the Opinion is published on the Commission's Website and sent to LCB for annotations within NRS 281A.
- If the Requester maintains confidentiality of the Opinion, Commission Counsel prepares an abstract opinion for review by staff and publication.

Agenda Item 7

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October 14, 2020

- TO: Members of the Nevada Commission on Ethics,
Commission Staff and Members of the Public
- FR: Chair Kim Wallin, CPA, CMA, CFM, Nevada Commission on Ethics
- RE: October 21, 2020 Meeting of the Commission on Ethics, Agenda Item No. 7 – Approval and establishment of Commission vision for Fiscal Year 2021 and beyond, including possible direction on the Commission’s mission statement, guiding principles, media and public outreach, education and training, and 2021 Legislative Session and participation therein by Commission Members and Staff, with confirmation of authority for Executive Director to represent the Commission in budgetary and legislative matters

This agenda item provides the Commission the ability to discuss its past successes and challenges and establish the Commission’s vision for Fiscal Year 2021 and beyond including providing direction on the Commission’s: (1) mission statement; (2) guiding principles reflecting organizational values; (3) media and public outreach; (4) education and training; and (5) the upcoming legislative session.

Prior to this item on the October Agenda, the Commission will have received presentations on the 2020 Annual Report, the Commission’s procedures for reviewing and approving staff recommendations, and the Executive Director’s Report on agency status. This agenda item is focused on the Commission’s development of its vision and will serve to highlight many of the successes and challenges occurring during the past fiscal year given the Covid-19 Pandemic (“Pandemic”) and resultant operational and budgetary issues.

In particular, I want to take a moment to acknowledge the ability of the Commission to navigate the challenges presented by the Pandemic in compliance with the directives issued by the Governor of the State of Nevada, which resulted in the efficient processing of ethics complaints and advisory opinions by the Commission and its staff. The remote environment that we are working certainly creates challenges; however, the Commission and its staff continually strive to maintain the public faith and confidence in its operations and issued opinions.

In determining its vision, the Commission values input from its members, Commission staff and the public. The Commission's vision planning starts with revisiting the mission statement. The Commission's current mission statement is:

The Nevada Commission on Ethics, by the authority granted under Chapter 281A of NRS, strives to enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties.

As part of its vision, the Commission is also presented with the opportunity to establish written guiding principles to support the organizational values it already maintains. Vice-Chair Duffrin offers the following examples of guiding principles for your consideration and discussion:

1. Our highest priority is to protect the citizens of Nevada by interpreting and enforcing the provisions of the Ethics Law in a fair, consistent and impartial manner.
2. We act with a high degree of integrity, honesty and respect when investigating and adjudicating public complaints alleging ethics violations by public officers and employees.
3. We are committed to providing outreach and education to public officers and employees to enhance their awareness and understanding of ethics requirements and prohibitions under the Nevada Ethics law.
4. Our objectivity, independence and impartiality are beyond reproach. We avoid all personal or professional circumstances or conflicts calling these into question.
5. Our processes ensure all actions, decisions and policies are consistently applied and do not result in advantages or disadvantages to any party to the detriment of another.
6. Our confidential advisory opinions are thoroughly researched and written with the needs of the requestor in mind and consistent with opinion precedent and applicable statutes including legislative intent.
7. We carry out our duties in a timely, rigorous and detailed manner and utilize the resources provided to us wisely and only for the legitimate purposes of the agency.
8. We continuously challenge ourselves to improve the practices and processes of the agency to keep pace with the needs of the individuals we serve and to comply with legislative mandates.
9. We continuously improve our public communication and public access to provide guidance and assistance to those we hold accountable for compliance.
10. We value and respect the opinions and recommendations of our Stakeholders, Staff and Commission Members which guide us in our decision making.

In addition, direction is sought from the Commission on whether there are other opportunities that would support its endeavors associated with media and public outreach, education and training and navigating the 2021 Legislative session.

As background, the Commission already conducts media and public outreach including posting public opinions on its website, publication of public opinions in the Nevada Law Library and in Lexis. Further, the Commission communicates with the media and public through twitter and has designated the Executive Director as the media contact and spokesperson for the agency. Commission staff responds to public records requests and are available to assist the public with informational questions. The inquiry for the Commission is whether there are other opportunities it would like to institute.

The Commission maintains proactive education and training programs serving to educate about Nevada's Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"). Education and training are provided to public agencies, public officers, public employees throughout the State of Nevada, including related associations and stakeholders, such as the Nevada State Bar and its Public Lawyer's Section, Nevada League of Cities, Nevada Association of Counties, Association of Government Accountants, and Institute of Internal Auditors. The Pandemic and associated budget reductions have created challenges in maintaining pre-pandemic levels of education and training. For example, in-person trainings have been modified to virtual presentations and funding for travel has been eliminated as a cost-saving measure. Reestablishment of travel funding for training is not anticipated for the next biennium budget. The Commission's direction on conducting future training will assist in developing future programs and delivery methods.

Further, next year will hold an important Legislative session, at which the Commission will present its proposed 2021 bill draft and next biennium budget to the Legislature. The Commission's direction relating to the Legislative session and authority of Commission members, the Executive Director or other Commission Staff to appear and represent the Commission on its legislative and budgetary matters will assist in obtaining recognition of the importance of ethics and resultant protection of the public trust. In previous sessions, the Commission established its direction in public meetings regularly held throughout the Legislative session and authorized the Executive Director to present and navigate budgetary and legislative items within the parameters of Commission approved direction. Appearances of the Chair or other members of the Commission occurred as directed by the Commission and coordinated with the Executive Director. Given the fast-approaching Legislative Session, this agenda item provides the opportunity for the Commission to consider and provide direction on how to approach this Legislative session.

I look forward to hearing from my fellow Commissioners, staff and members of the public on this agenda item and establishing a vision and direction for the Commission that reinforces its organizational values and principles.