



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Carl Lackey**, Biologist, Game
Division, Department of Wildlife,
State of Nevada,

Ethics Complaint
Case No. **17-27C**

Subject. /

DEFERRAL AGREEMENT

1. On November 20, 2017, this Review Panel authorized the Executive Director of the Nevada Commission on Ethics ("Commission") and Carl Lackey ("Lackey"), a Biologist in the Game Division of the Nevada Department of Wildlife, to develop this Deferral Agreement (the "Agreement") to address the conduct at issue in Ethics Complaint No. 17-27C ("Complaint") instead of referring the Complaint to the Commission for further proceedings.

2. At all material times, Lackey worked for the Nevada Department of Wildlife ("NDOW") as a Biologist and was a public employee as defined in NRS 281A.150. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A gives the Commission jurisdiction over Lackey as a public employee whose conduct is alleged to have violated the provisions of NRS Chapter 281A, as amended by Senate Bill 84 of the 79th Session of the Nevada Legislature (2017) ("S.B. 84").¹ See NRS 281A.280.

3. This Agreement is entered into based upon the statement of facts established by sufficient credible evidence to support just and sufficient cause for the Commission to render an opinion in this matter. See attached Appendix A (the "Statement of Facts").²

¹ S.B. 84 amends and enacts various provisions of NRS Chapter 281A, which statutes have yet to be formally codified.

² The Statement of Facts does not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17), as amended by S.B. 84. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Agreement. The Review Panel's Determination considered the Executive Director's Panel Recommendation and the record of proceedings.

Procedural History

4. On or about August 2, 2017, the Commission received Complaint No. 17-27C from a member of the public (“Requester”).

5. On September 13, 2017, staff of the Commission issued a Notice of Complaint and Investigation to Subject under NRS 281A.440(2), stating that the Commission accepted jurisdiction to investigate alleged violations of the following provisions of the Ethics Law:

NRS 281A.400(1) - Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in public employee’s position to depart from the faithful and impartial discharge of public employee’s public duties.

NRS 281A.400(2) - Using public position to secure or grant unwarranted privileges or preferences to benefit any business entity in which there is a significant pecuniary interest, or any person to whom there is a commitment in a private capacity.

NRS 281A.400(7) Using governmental time, property or equipment or other facility to benefit a significant personal or pecuniary interest or that of any person to whom there is a commitment in a private capacity.

NRS 281A.420(1) - Failing to sufficiently disclose a pecuniary interest or commitment in a private capacity to the interest of another person which is reasonably affected by an official matter.

6. On or about October 12, 2017, Lackey, through his legal counsel, Deputy Attorney General Joshua M. Woodbury, Esq., provided a written Response to the Complaint.

7. On November 1, 2017, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to Section 4 of S.B. 84. A Panel Determination issued on November 20, 2017 concluded that:

- a. There is sufficient credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(2) and (7) and NRS 281A.420(1) with regard to Lackey’s use of his public NDOW title in the GoFundMe campaign established to raise funds for his private legal costs/fees; his creation and use of an NDOW PowerPoint presentation that

publicized a private business owned and operated by Lackey and his spouse (Carson Creature Catchers); and his failure to disclose his pecuniary and private interests associated with Carson Creature Catchers when he included a reference to the business in NDOW PowerPoint presentations he created.

- b. There is not sufficient credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(1); and
- c. Lackey's conduct may be appropriately addressed through corrective action under the terms and conditions of a deferral agreement instead of referring this Complaint to the Commission for further proceedings.

Terms and Conditions

8. This Agreement shall be in effect for a period of two years (the "Deferral Period") from the date of approval by the Review Panel.

9. Lackey must comply in all respects with the provisions of NRS Chapter 281A during the Deferral Period without being the subject of another ethics complaint arising from an alleged violation occurring during the Deferral Period and for which a Review Panel determines that there is just and sufficient cause for the Commission to render an opinion in the matter.

10. Lackey must complete an ethics course within six months, which may be satisfied by completing any online ethics course approved by the Commission's Executive Director that may become available within the next six months.

11. As a remedial course of action, Lackey will not withdraw the remaining funds, which total \$4,401.29, from the GoFundMe account for his personal use and must either return these funds to the donors or donate the funds to a bona fide charitable or nonprofit organization designated by the individuals who established the GoFundMe account no later than February 1, 2018.

12. The Executive Director will notify the Director of NDOW and the Division Administrator of Human Resource Management of this Deferral Agreement.

13. The Executive Director shall monitor Lackey's compliance with this Agreement. Should the Executive Director discover that Lackey has not complied with any term or condition of this Agreement, the Executive Director shall:

- a. Inform the Commission of any alleged failure of Lackey to comply with the Agreement;
- b. Give Lackey written notice of any alleged failure to comply with the Agreement; and
- c. Allow Lackey not less than 15 days to respond to such a notice.

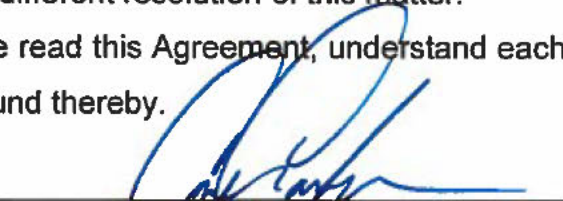
14. The Commission may vacate this Agreement and conduct further proceedings in the matter if the Commission finds that Lackey has failed to comply with any terms and conditions of the Agreement.

15. If Lackey complies in a satisfactory manner with this Agreement, the Commission shall dismiss the matter at the conclusion of the Deferral Period.

16. This Agreement is entered and approved without prejudice and depends on and applies only to the specific facts, circumstances and law related to this Complaint. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.

Acceptance: We, the undersigned parties, have read this Agreement, understand each and every provision therein, and agree to be bound thereby.

DATED this 9 day of January, 2018.



Carl Lackey

The above Stipulated Agreement is approved by:

FOR CARL LACKEY, Subject

DATED this 9 day of January, 2018.



Joshua M. Woodbury, Esq.
Deputy Attorney General

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

DATED this 11th day of January, 2018.



Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 16th day of January, 2018.

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

After review of the record and good cause appearing, the above Deferral Agreement is approved by the Review Panel.

DATED: January 16, 2018.

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

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

By: /s/ Brian Duffrin
Brian Duffrin,
Commissioner

Appendix A – Statement of Facts

The NDOW PowerPoint Presentation Created by Lackey

Approximately two years ago, Lackey created a PowerPoint presentation to be used when he and other NDOW employees provide presentations and trainings to law enforcement personnel about wildlife control. Lackey provides the presentation three to four times per year and estimates that approximately 700 law enforcement personnel have seen the presentation.

Part III of the presentation, entitled “First Responder Considerations,” provides information and resources to help law enforcement deal with situations involving wildlife such as bears and mountain lions. Slide 26 of Part III provides the names and phone numbers of two private nuisance wildlife control businesses that assist with removal of other types of wildlife, such as raccoons, bats and snakes. One of the businesses listed on slide 26 is Carson Creature Catchers, a private business owned by Lackey and his spouse. At least five private businesses in the northern Nevada region handle some level of wildlife nuisances like those handled by Carson Creature Catchers, but only Carson Creature Catchers and a Reno-based business are referenced in the NDOW presentation.

Lackey did not disclose to his supervisor that he was including Carson Creature Catchers in the PowerPoint presentation before he created and used it in NDOW presentations.

The GoFundMe Page

In May 2017, a GoFundMe page was established with the title “Support Carl Lackey” and included the following explanation of the page’s purpose:

This site has been set up to support NDOW biologist Carl Lackey. It’s our hope that sportsman and conservationists will come together to donate and help support Carl’s legal fees as he defends himself against animal rights/bear activists who have created a defamatory, slanderous and libelous smear campaign against him.

These activists have sought to damage Carl’s reputation, NDOW’s reputation and the ability to manage wildlife responsibly. As sportsmen and conservationists, we need to unite to support each other and stand up with Carl.

Carl is recognized as a wildlife professional and human –bear conflict expert by bear biologists across the west. He has been leading the Karelian Bear Dog program and bear management research in Nevada. The Nevada Department of Wildlife’s Karelian Bear Dog program is a unique tool used by the Department to help keep bears out of trouble with humans.

Any donation is welcome. Please spread the word to help support Carl. Any funds that are not used towards his legal fees will go straight to bear conservation, research and education in Nevada.

Although the GoFundMe page was not created by Lackey, he was aware that the page was being created and he reviewed and approved the text that described the page's purpose. The page was deactivated shortly after this Complaint was submitted. Before deactivation, donations totaling \$11,550 had been received. Lackey withdrew \$6,400 from the GoFundMe account to pay legal costs associated with his private defamation lawsuit. The remaining funds are held in a bank account that Lackey can access.