



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Judie Allan**, Member, Lander
County Board of County Commissioners,
State of Nevada,

Ethics Complaint
Case No. 18-039C

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Ethics Complaint Case No. 18-039C (“Complaint”) before the Nevada Commission on Ethics (“Commission”) concerning Judie Allan (“Allan”), a member of the Lander County Board of County Commissioners (“Board”) in Nevada.

2. **JURISDICTION:** At all material times, Allan was a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Allan in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about June 18, 2018, the Commission received this Complaint from an individual who works for Lander County (“Requester”).¹
- b. On August 6, 2018, the Chair of the Commission issued an *Order on Jurisdiction and Investigation* accepting jurisdiction and directing the Executive Director to investigate alleged violations of the following provisions of the Ethics Law:²

- 1) NRS 281A.400(1) – Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which

¹ Requester’s identity has been kept confidential pursuant to NRS 281A.750.

² The Commission declined to investigate the alleged violation of NRS 281A.400(3) for lack of sufficient evidence.

- would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties;
- 2) NRS 281A.400(2) - Using her public position to secure or grant an unwarranted advantage for herself or any person to whom she has a commitment in a private capacity; and
 - 3) NRS 281A.400(9) - Attempting to benefit a significant personal or pecuniary interest of hers or any person to whom she has a commitment in a private capacity through the influence of a subordinate.
- c. On August 6, 2018, staff of the Commission issued a *Notice of Complaint and Investigation* and Allan was provided an opportunity to provide a written response to the Complaint.
 - d. On September 10, 2018, the Commission received Allan's written response to the Complaint.
 - e. On March 13, 2019, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.720.
 - f. A Panel Determination issued on March 20, 2019 concluded that:
 - 1) Credible evidence supports just and sufficient cause for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(1), (2) and (9) regarding Allan's use of her public position and influence of a subordinate to secure an unwarranted economic opportunity for a person to whom she has a commitment in a private capacity; and
 - 2) The matter should be referred to the Commission for further proceedings.
 - g. In lieu of an adjudicatory hearing before the Commission, Allan now enters into this Stipulated Agreement acknowledging her duty as a public officer to commit herself to protect the public trust and conform her conduct to the requirements of the Ethics Law.

4. STIPULATED FACTS: At all material times, the following facts were relevant to this matter:³

- a. Allan is an elected member of the Lander County Board of County Commissioners (“Board”). She was elected in November 2016 and is serving her first term on the Board.
- b. Keith Westengard (“Westengard”) is the County Manager/Executive Director for Lander County. Pursuant to Lander County Ordinance No. 2.06.030, the County Manager is appointed by and serves at the pleasure of the Board and may be removed from office by a majority vote of the Board.
- c. Doug Mills (“Mills”) served as a member of the Board from 2014 to January 7, 2019 and was Chair of the Board in 2017 and 2018.
- d. Donald Negro (“Negro”) was hired by Lander County in October 2009 as a Road and Bridge North Foreman in the Public Works Department.
- e. Negro and Allan cohabitated in a non-marital relationship for approximately 15 years until sometime in June 2017. During their cohabitation, Allan and Negro resided in a home owned by Negro and his brother, Bart Negro (“Bart”), and the two held themselves out to the public as spousal equivalents.
- f. Negro was terminated by Westengard in January 2016 for disruption of the workplace and disruption of production. In May 2016, the Board ratified the decision to terminate Negro’s employment.
- g. On January 24, 2017, shortly after Allan took office as a Commissioner, Negro filed an employment lawsuit against Lander County and Westengard in federal district court (the “County Lawsuit”), alleging claims for retaliation under the First Amendment of the Constitution, tortious discharge, intentional infliction of emotional distress and negligence.
- h. Rebecca Bruch, Esq. (“Bruch”), was the legal counsel retained to represent Lander County and Westengard in Negro’s County Lawsuit.

³ Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- i. In June 2017, Negro accepted a job in Sparks, Nevada and started residing in his motorhome in Fernley, Nevada to be closer to his place of employment. Allan remained in the Battle Mountain home owned by Negro and his brother, who permitted Allan to reside there rent-free while paying utilities.
- j. At some point between June and October 2017, the romantic relationship between Allan and Negro ended.
- k. In October 2017, Negro was involved in an accident that prevented him from working and he returned to Battle Mountain to live in his motorhome on the property he owns with his brother. Allan continued to live in the home owned by Negro and his brother.
- l. On or about December 1, 2017, Allan called Westengard to discuss Negro's County Lawsuit and requested that Mr. Negro be paid a settlement amount of \$50,000.
- m. Westengard advised Allan that he did not have authority to authorize a settlement without the Board's approval and he recommended that she pursue the request with Board Chair Mills.
- n. Allan met with Mills at his place of business in Battle Mountain and requested that he place the issue of settling Negro's County Lawsuit for \$50,000 on the agenda for a future Board meeting. Mills was uncomfortable with the conversation and declined Allan's request, but indicated that he would be willing to bring a lower settlement amount to the Board for consideration at a Board meeting.
- o. On December 15, 2017, Bruch filed a Motion for Summary Judgment ("Motion") in the County Lawsuit, seeking to dismiss all of Negro's claims.
- p. Allan contacted Bruch to inquire about the status of any settlement offers in Negro's County Lawsuit and also requested an extension of time to file a response to the Motion.
- q. Negro did not ask Allan to seek a settlement payment for him and did not know about Allan's conversations with Westengard, Mills and Bruch until later.

- r. At the time Allan contacted Westengard, Mills and Bruch, Allan was still residing in the home owned by Negro and his brother and Negro was residing in his motor home adjacent to the home. Allan did not pay rent but otherwise paid for utilities and served as a caretaker.
- s. Negro's lawsuit was resolved with a Court Order issued on July 13, 2018 that dismissed all claims in favor of the County and Westengard.

5. TERMS / CONCLUSIONS OF LAW: Based on the foregoing, Allan and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Stipulated Agreement is agreed to by the parties.
- b. In her capacity as an elected member of the Board, Allan is a public officer pursuant to NRS 281A.160, which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the citizens of Lander County).
- c. Allan has a commitment in a private capacity to the interests of Negro, as defined in NRS 281A.065(6), because her relationship with Negro was substantially similar to a spousal/domestic partner relationship for approximately 15 years. After the relationship ended, Allan's commitment in a private capacity to the interests of Negro continued based on her remaining ties with Negro, including Allan's pecuniary interest related to the home she resided in that is owned by Negro and his brother. *See, e.g., In re Public Officer, Comm'n Op. No. 16-14A (2016)* (explaining that a relationship with a former spouse can qualify as a commitment in a private capacity).
- d. In his capacity as the County Manager/Executive Director for Lander County, Westengard is Allan's subordinate.
- e. As a public officer, Allan may not seek or accept any gift, service, favor, emolument or economic opportunity for herself or Negro which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties (NRS 281A.400(1)). Allan also must not use her public position to secure unwarranted privileges, preferences, exemptions or advantages for herself or Negro (NRS

281A.400(2)) or attempt to benefit herself or Negro through the influence of a subordinate (NRS 281A.400(9)).

- f. Allan violated NRS 281A.400(1) when she contacted Westengard and Mills to request a settlement payout for Negro because she was seeking an “emolument or economic opportunity” for Negro, a person to whom she had a commitment in an private capacity, which would tend to improperly influence a reasonable person in Allan’s position as a Commissioner to depart from the impartial discharge of her public duties owed to the County.
- g. Allan used her position as a Commissioner to influence her subordinate, the County Manager, to issue settlements funds in an effort to secure an unwarranted privilege or advantage for Negro, a person with whom she has a commitment in a private capacity, in violation of NRS 281A.400(2). Allan’s attempt to influence her subordinate in a matter related to Negro’s lawsuit also implicates NRS 281A.400(9).
- h. Allan’s actions constitute a single course of conduct resulting in one willful violation of the Ethics Law, implicating the provisions of NRS 281A.400(1), (2) and (9), as interpreted and applied in accordance with the provisions of NRS 281A.020.
- i. Allan’s violation was willful pursuant to NRS 281A.170 because she acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively.
- j. For an act to be intentional, NRS 281A.105 does not require that Allan acted in bad faith, or with ill will, evil intent or malice. However, Allan acted voluntarily or deliberately when she sought to secure a financial settlement for a person to whom she had a commitment in a private capacity through the improper influence of a subordinate. *See In re McNair*, Comm’n Op. Nos. 10-105C, 10-106C, 10-108C, 10-109C and 10-110C (2011) (“the relevant inquiry regarding willful misconduct is an inquiry into the intentional nature of the actor’s conduct”) (citation omitted).

///

///

- k. NRS 281A.115 defines “knowingly” as “import[ing] a knowledge that the facts exist which constitute the act or omission.” NRS Chapter 281A does not require that Allan had actual knowledge that her conduct violated the Ethics Law, but it does impose constructive knowledge when other facts are present that should put an ordinarily prudent person upon inquiry. *See In re Stark*, Comm’n Op. No. 10-48C (2010).
- l. Pursuant to the factors set forth in NRS 281A.775 in determining whether a violation is willful and the penalty to be imposed, the Commission has considered the following factors:
 - 1) Allan has not previously violated the Ethics Law.
 - 2) Allan has been diligent to cooperate with and participate in the Commission’s investigation and resolution of this matter.
 - 3) Neither Allan nor Negro received any financial benefit from Allan’s conduct.
- m. However, these mitigating factors are offset by the seriousness of Allan’s conduct when measured against the public’s trust that public officers will not misuse their public position or influence to acquire economic opportunities or advantages for others.
- n. For the willful violation, Allan will pay a civil penalty of \$500.00 pursuant to NRS 281A.790(1)(a) not later than June 30, 2020. Allan may pay the penalty in one lump sum payment or in monthly installment payments as arranged with the Commission’s Executive Director.
- o. This Stipulated Agreement also signifies the Commission’s public reprimand of Allan’s conduct described herein.
- p. Allan must file with the Commission, on or before July 1, 2019, an Acknowledgment of Statutory Ethics Standards form to acknowledge that she received, read and understand the statutory ethical standards for public officers and public employees provided in NRS Chapter 281A.
- q. On or before December 1, 2019, Allan agrees to attend an Ethics in Government Law training session presented by the Commission’s Executive Director or her designee.

- r. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to the Ethics Complaint now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.
- s. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Allan. If the Commission rejects this Stipulated Agreement, none of the provisions herein shall be considered by the Commission or be admissible as evidence in a hearing on the merits in this matter.

6. **WAIVER**

- a. Allan knowingly and voluntarily waives her right to a hearing before the full Commission on the allegations in Ethics Complaint Case No. 18-039C and all rights she may be accorded with regard to this matter pursuant to the Ethics Law (NRS Chapter 281A), the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Allan knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement during the regular meeting of the Commission on May 22, 2019.⁴

DATED this 24 day of May, 2019.



Judie Allan

⁴ Subject waived any right to receive written notice pursuant to NRS 241.033 of the time and place of the Commission's meeting to consider his character, alleged misconduct, professional competence, or physical or mental health.

The above Stipulated Agreement is approved by:

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

DATED this 28th day of May, 2019.

Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 28th day of May, 2019.

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

The above Stipulated Agreement is accepted by the majority of the Commission.⁵

DATED May 28, 2019.

By: ABSENT
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Kim Wallin
Kim Wallin, CPA
Commissioner

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

By: /s/ Amanda Yen
Amanda Yen, Esq.
Commissioner

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

⁵ Chair Lau and Commissioners Duffrin and Lowry participated in the Review Panel hearing and are therefore precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220(4).