



Confidentiality Waived for Opinion Only

STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Becky Harris**, Former Chair,
Nevada Gaming Control Board,
State of Nevada,

Advisory Opinion No. 19-077A
CONFIDENTIAL

Public Officer. /

OPINION

I. STATEMENT OF THE CASE

Becky Harris (“Harris”), the former Chair of the Nevada Gaming Control Board (“NGCB”), requested this advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675 regarding the propriety of her anticipated future conduct as it relates to the Ethics in Government Law (“Ethics Law”) set forth in Chapter 281A of the Nevada Revised Statutes (“NRS”). Pursuant to Section 13 of the Commission’s approved regulation, LCB File No. R108-18, effective August 30, 2018, a quorum of the Commission considered this matter by submission, without holding an advisory-opinion hearing.¹ The Commission considered the request for an advisory opinion, information provided by Harris that she affirmed as true, and publicly available information.

Harris seeks an opinion from the Commission regarding the applicability of the Ethics Law and its “cooling-off” requirements to her potential service as an independent non-executive board member for the board of a company (“Parent Company Board”) that owns a gaming company (“Gaming Company”). Gaming Company, Parent Company Board and any associated subsidiaries are not licensed in Nevada or regulated by the NGCB.² After fully considering Harris’ request and analyzing the facts, circumstances and information presented by Harris, the Commission deliberated and advised Harris of its decision that the provisions of NRS 281A.550(2) and (3) apply to her as the former Chair of the NGCB.

However, Harris’s anticipated employment with Parent Company Board is not within the scope of the restrictions established in NRS 281A.550(2) and does not implicate NRS 281A.550(3). Further, Harris is advised that NRS 281A.410(1)(b) prohibits her for one year from providing any private consultation on or representation of issues that were under consideration by the NGCB during her tenure with the agency, which

¹ The following Commissioners participated in this opinion: Chair Lau, Vice-Chair Weaver and Commissioners Duffrin, Gruenewald, Lowry, O’Neill, Wallin and Yen. In consultation with Commission Counsel, Commissioner Duffrin disclosed a past professional relationship with Harris, which concluded prior to his appointment to the Commission. The concluded relationship does not amount to a commitment in a private capacity pursuant to NRS 281A.065, and does not require disclosure and abstention under NRS 281A.420. Duffrin also reviewed Judicial Cannon 2.11 of the Code of Judicial Conduct and has confirmed that recusal is not required.

² Gaming Company, Parent Company Board and subsidiaries have not been specifically identified. Accordingly, the Commission relies upon the facts Harris’ affirmed to be true and her gaming expertise to confirm that these entities are not in any way licensed or regulated in Nevada.

restrictions apply to Gaming Company and its Parent Company Board. The Commission now renders this final written opinion stating its formal findings of fact and conclusions of law.

The facts in this matter were obtained from documentary evidence provided by Harris. For the purposes of the conclusions offered in this opinion, the Commission's findings of fact set forth below accept as true those facts Harris presented. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.

II. QUESTION PRESENTED

Harris seeks guidance on the application of the Ethics Law to her circumstances and asks whether the "cooling-off" provisions of the Ethics Law set forth in NRS 281A.550(2) or (3) prohibit her, for one year after her separation from service as the Chair of the NGCB, from serving as an independent non-executive board member for Gaming Company's Parent Company Board.

III. FINDING OF FACTS

1. Requester Becky Harris ("Harris") is the former Chair of the NGCB. Governor Sandoval appointed her to serve as the Chair from January 22, 2018 to January 27, 2019, in order to fill the vacancy in the four-year term of former Chair Burnett.
2. Harris acknowledges that the one-year "cooling-off" provisions of NRS 281A.550 apply to her as the former Chair of the NGCB.
3. Harris is over 8 months into the one-year "cooling-off" requirement established in NRS 281A.550 and she seeks guidance from the Commission on how to proceed regarding an unsolicited opportunity presented to her by Gaming Company several months after the conclusion of her appointment with the NGCB.
4. Gaming Company, the Parent Company Board and all related subsidiaries are not currently regulated by the NGCB. Gaming Company was established and is operating in another country, and only recently has expanded into other jurisdictions located in the United States.
5. After Harris' appointment expired with the NGCB, Gaming Company asked her whether she would consider becoming an "independent non-executive board member" for its Parent Company Board. In this position, Harris would not be a member of the executive management team but would be a member of the Parent Company's Board of Directors that provides independent oversight over Gaming Company.
6. Gaming Company advised Harris that they are interested in her serving as an independent non-executive board member because the existing directors of Parent Company Board recently undertook a search process to identify and appoint an additional independent non-executive director. Given Gaming Company's recent expansion into the United States, the Directors were looking for candidates who are: (1) U.S. based; (2) have experience, background and knowledge of the United States sports betting and gaming industry; and (3) have knowledge of the U.S. sports betting and gaming regulatory and compliance landscape.

7. Harris has the particular experience sought by Gaming Company, because:
 - a. Harris received a Letter of Appointment from the University of Nevada Las Vegas (“UNLV”) to serve as an Academic Fellow in Sports Betting at the International Center for Gaming Regulation, and she served in that capacity from February 2019 to June 30, 2019. On July 1, 2019, UNLV expanded Harris’ credentials at the University. She is now the Distinguished Fellow in Gaming and Leadership at the International Gaming Institute and has expertise in sports betting in U.S. jurisdictions, as well as in regulatory structures in various jurisdictions worldwide.
 - b. Harris is regularly requested as a speaker on gaming matters at conferences around the world. Harris has provided expert commentary on sports betting for the UNLV Gaming Law Journal at the Boyd School of Law in Volume 9, 2018-2019.
 - c. UNLV Boyd School of Law has requested that Harris teach Gaming Regulation/Legislation at the law school in the spring of 2020.
 - d. Harris previously worked on a variety of gaming issues as a State Senator for Nevada.
 - e. Harris holds a Juris Doctorate from J. Reuben Clark School of Law, BYU as well as a Master of Laws (LL.M) in Gaming Law from Boyd School of Law, UNLV.
8. The role of the Parent Company Board is to represent and serve the interests of shareholders by overseeing and appraising Gaming Company’s strategies, policies and performance. This includes overseeing the financial and human resources of Gaming Company to meet its objectives and reviewing management performance. It also includes setting and ensuring compliance with the Company’s values and governance framework (including establishing and observing high ethical standards). The Chief Executive Officer and his/her management team manage the operational aspects of Gaming Company.
9. Gaming Company has represented to Harris that independent non-executive directors of the Parent Company Board are not employees of Gaming Company or affiliated with the company in any other way.
10. Gaming Company is not currently seeking licensure in Nevada; however, it continues to assess opportunities in all jurisdictions located within the United States. Should there be an appropriate opportunity in Nevada, it is anticipated that Gaming Company would assess the requirements to apply for a gaming or other license at the relevant time.
11. Harris had not heard of Gaming Company until they contacted her following the conclusion of her appointment to the NGCB. Harris has not accepted Gaming Company’s offer nor has she agreed to become a member of its Parent Company Board. She advised Gaming Company that she needed to consult with her legal counsel before proceeding.
12. Harris was advised by her private legal counsel that there were no ethical challenges preventing her acceptance of Gaming Company’s offer because the NGCB had no regulatory authority, jurisdiction or oversight for this Gaming

Company and Harris would not be representing Gaming Company, its Board members, or its employees before the NGCB or the Nevada Gaming Commission (“NGC”).

13. If Gaming Company determines to apply for a Nevada Gaming License in the future, the licensing process takes approximately 12 to 18 months.
14. If Harris serves as a non-executive board member for Gaming Company, she would not be appearing before the NGCB or the NGC on behalf of Gaming Company, its board members or employees or any other person during the one-year “cooling-off” period established by NRS 281A.550.
15. Harris acknowledges and will comply with the mandatory provisions of NRS 281A.410(1)(b), which restricts lobbying and counseling of private persons for compensation on any issues that were under consideration during her tenure of public employment with the NGC.

IV. STATEMENT AND DISCUSSION OF RELEVANT ISSUES AND STATUTES

A. OVERVIEW OF ISSUES

The Ethics Law promotes public integrity through the appropriate separation between public duties and private interests by Nevada’s public officers and employees. In furtherance of that mission, the Ethics Law imposes a one-year “cooling-off” requirement against former public officers and employees to prevent these government actors from using any proprietary or regulatory information or relationships belonging to the public to create competitive disadvantages or other misuse of government information in the private sector regulated by the governmental entity. Given the regulatory environment of Nevada’s largest industry, former members of Nevada’s Gaming Control Board and Gaming Commission are subject to heightened scrutiny upon separation from public service.

Based upon her former service as the Chair for the NGCB, Harris is a public officer as that term is defined in NRS 281A.160 and NRS 281A.180. Harris is over 8 months into the one-year “cooling-off” requirement established in NRS 281A.550(2) and she seeks guidance from the Commission on how to proceed regarding an unsolicited opportunity presented to her by Gaming Company, which is not licensed in Nevada or regulated by the NGCB. Harris acknowledges that NRS 281A.550(2) applies to her as the former Chair of the NGCB and she has no intention of appearing before the NGCB or the Nevada Gaming Commission during the “cooling-off” period. Harris seeks guidance on whether serving as an “independent non-executive board member” for the Parent Company Board of Gaming Company constitutes employment for purposes of NRS 281A.550(2) and whether NRS 281A.550(2) or (3) would apply since Gaming Company is not licensed in Nevada or regulated by the NGCB, and she requests guidance on the applicability of other provisions of the Ethics Law.

B. RELEVANT STATUTES

1. Duty to Avoid Conflicts of Interest

NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. “Cooling-Off” – Accepting Employment

NRS 281A.550(2) and (3) provide:

2. A former member of the Nevada Gaming Control Board or the Nevada Gaming Commission shall not:

(a) Appear before the Nevada Gaming Control Board or the Nevada Gaming Commission on behalf of a person who holds a license issued pursuant to chapter 463 or 464 of NRS or who is required to register with the NGC pursuant to chapter 463 of NRS; or

.....(b) Be employed by such a person,

↳ for 1 year after the termination of the member’s service on the Nevada Gaming Control Board or the Nevada Gaming Commission.

...

3. In addition to the prohibitions set forth in subsections 1 and 2, and except as otherwise provided in subsections 4 and 6, a former public officer or employee of a board, commission, department, division or other agency of the Executive Department of State Government, except a clerical employee, shall not solicit or accept employment from a business or industry whose activities are governed by regulations adopted by the board, commission, department, division or other agency for 1 year after the termination of the former public officer’s or employee’s service or period of employment if:

(a) The former public officer’s or employee’s principal duties included the formulation of policy contained in the regulations governing the business or industry;

(b) During the immediately preceding year, the former public officer or employee directly performed activities, or controlled or influenced an audit, decision, investigation or other action, which significantly affected the business or industry which might, but for this section, employ the former public officer or employee; or

(c) As a result of the former public officer’s or employee’s governmental service or employment, the former public officer or employee possesses knowledge of the trade secrets of a direct business competitor.

3. “Cooling-Off” – Representing or Counseling

NRS 281A.410(1)(b) provides:

In addition to the requirements of the code of ethical standards:

1. If a public officer or employee serves in a state agency of the Executive Department or an agency of any county, city or other political subdivision, the public officer or employee:

...

(b) If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer's or employee's service. As used in this paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

V. DECISION

The Commission has original jurisdiction to interpret and enforce the provisions of the Ethics Law to a given set of facts and circumstances. NRS 281A.280. Because the questions at issue in this matter involve Harris' service as the Chair of the NGCB, the Commission is within its authority to conduct statutory interpretation, in accordance with its interpretive opinions, to determine whether the provisions of NRS 281A.550(2) or (3), or other provision of the Ethics Law, apply to Harris' circumstances.

A. THE "COOLING-OFF" PROVISIONS OF NRS 281A.550(2) AND (3) APPLY TO HARRIS AS A FORMER PUBLIC OFFICER

NRS 281A.550(2) restricts Harris from accepting employment with any gaming company regulated by the State of Nevada or appearing before the NGCB to testify on behalf of such entities for one-year after separation from public service as the Chair of the NGCB. NRS 281A.550(3) is separately enforced and similarly restricts Harris from soliciting or accepting employment from a business or industry whose activities are governed by regulations adopted by the NGCB. Harris acknowledges she is subject to the requirements of NRS 281A.550 by virtue of her public service for the State of Nevada. She also confirms that she will comply with the law and she is not seeking employment with a Nevada regulated gaming entity nor would she appear before the NGCB during the one-year restricted "cooling-off" period set forth in NRS 281A.550. Harris is seeking direction on whether the "cooling-off" statutes or other provisions of the Ethics Law would apply to prohibit her from pursuing or accepting a position as an independent non-executive board member for the Parent Company Board of Gaming Company, which is not a Nevada regulated entity.

1. Service as an Independent Director for the Parent Company Board of a Gaming Company Constitutes Employment for application of NRS 281A.550(2)

In application of NRS 281A.550(2) to the circumstances, there is a threshold question as to whether service as an independent director qualifies as employment within the meaning of the statute. The Commission has established opinion precedent confirming that the engagement as an independent director for a gaming company constitutes employment pursuant to NRS 281A.550(2). See *In re Mulroy*, Comm'n Op. No. 15-40A (2016) ("*Mulroy*"). *Mulroy* sought to serve as the Independent Director for Wynn Resorts and contended that the proposed service created a relationship distinct from that of an employee in the context of being employed for purposes of application of NRS 281A.550(2). The Commission disagreed and applied the plain meaning of the term "employed by" stating:

In Comm'n Opinion 13-09A, the Commission was concerned with "exalting form over substance" in defining "employed by" and "employed from" in the interpretation of NRS 281A.550(2). The Commission considers the nature, scope, and content of the relationship to be determinative, rather than the

“status of the technical form, character or limiting term of the relationship.” (See *id.*) In considering the nature, scope and content of the relationship, the Commission has determined that the term “employed by” “[is] intended to have plain meaning and be construed as to make use of, to use or engage the services of, to work for, or to work, in any form of service or agency on behalf of another for a purpose which implies a request and contract for compensation in the ordinary affairs of business or personal life” (Internal quotations omitted).

Mulroy at pgs. 8-9, citing *In re Public Officer*, Comm’n Op. No. 13-09A (2014).

With respect to the application of the Ethics Law, the Commission perceives no distinction between employment with a regulated entity and serving on an independent board of directors for application of the Ethics Law. Independent Directors perhaps are insulated from conflicts with management; however, they receive compensation and owe fiduciary duties to the company and its shareholders that are sufficient to establish an employment relationship under NRS 281A.550(2). Indeed, Harris confirms these fiduciary duties in explaining her anticipated role as an independent non-executive director, which is to represent and serve the interests of shareholders by overseeing and appraising Gaming Company’s strategies, policies and performance, including overseeing the financial and human resources in order to maintain company objectives and standards. The authority of the Parent Company Board extends to reviewing management performance. As stated in *Mulroy*:

The Ethics Law is concerned with the nature of the relationship and not the formal title or securities law definition of “employment” as it pertains to ethical standards of public servants. In Comm’n Opinion No. 13-09A, the Commission incorporated the service of an independent contractor into the Ethics Law, and this Opinion will do the same for an Independent Director.

Id. at 10.

Harris’ anticipated service as an independent board of director is substantially similar to *Mulroy* and *In re Public Officer*, Comm’n Op. No. 13-09A (2014). Therefore, the Commission confirms that service on an independent board of directors for a gaming company or its parent board of directors constitutes employment for application of NRS 281A.550(2).

2. Under the Circumstances presented, NRS 281A.550(2) and (3) do not apply to Employment with an Unregulated Entity

NRS 281A.550(2) and (3) and other provisions of the Ethics Law regulate the conduct of current and former public officers and employees through objective requirements and prohibitions, including restrictions against seeking or obtaining certain private employment following completion of public service. NRS 281A.550(2) establishes a one-year employment restriction applicable to former members of the NGCB if the potential employer is licensed or regulated by NRS Chapters 463 and 464 or a gaming company required to register with the NGC pursuant to NRS Chapter 463. NRS 281A.550(3) has similar restrictions applicable to employment with regulated business or industry if the position held by the former public officer meets its stated requirements. These statutes serve to protect the public trust by reducing and hopefully eliminating the likelihood of occurrence of private conflicts of interest of public officers that wield significant authority over substantial business interests of Nevada’s regulated industry.

Conflicts of interest between public duties and private interests and commitments, including pay-to-play scenarios, are not tolerated in Nevada, as substantiated by the provisions of the Ethics Law, which are tailored to avoid conflicts of interest and protect the public trust in its government.

With respect to the “cooling-off” requirements of NRS 281A.550, the Commission explained in *In re Public Officer*, Comm’n Op. No. 13-09A (2014) as follows:

The provisions of NRS 281A.550(1), (2) and (3) should not reasonably be read or interpreted to prohibit former government employees and officials responsible for regulatory matters from any or all future employment in areas not related to the State regulation, so long as it is not sought for improper purposes or acquired through improper public resources.

(Emphasis added) *Id.*, at 8. Therefore, in addition to considering the statutory requirements of NRS 281A.550, the Commission will contemporaneously consider whether there has been compliance with the provisions of the Ethics Law requiring proper separation between private interests and commitments and public duties. See NRS 281A.065, NRS 281A.400 (Code of Ethical Standards) and NRS 281A.410(1)(b).

Harris confirms that Gaming Company is soliciting her to become an independent board member and is not licensed or regulated in Nevada. She did not seek the position. Instead, Gaming Company inquired whether she would be interested. Harris halted this inquiry to receive guidance to assure compliance with the Ethics Law from the Commission. After completing her due diligence, Harris confirms that it is not known if or when Gaming Company would seek licensure in Nevada as those facts have yet to develop. Harris also confirms that even if Gaming Company sought to become licensed in Nevada, it would take 12 to 18 months, and she is approaching the end of her one-year “cooling-off” period.

Notably, the statutory requirements of NRS 281A.550 do not establish a grace period permitting an exception for the period of time it would take to obtain licensing in Nevada. NRS 281A.550(2) pertains to companies that are licensed or who are required to register with the NGCB. NRS 281A.550(3) applies to regulated companies based upon the public duties performed and authority held by a public officer or employee in performing regulatory matters. The provisions of NRS 281A.550(2) and (3) do not govern companies that are not licensed or otherwise regulated in Nevada. Consequently, these statutes do not apply to Harris’ current circumstances.

In addition, in considering the requirements of the Code of Ethical Standards, the Commission is satisfied that Harris has not used her former public position to seek private employment for Gaming Company or serve as an independent director on the Parent Company board. It has been over 8 months since Harris separated from public service and Gaming Company’s inquiry was unexpected and unsolicited and came after her separation from service with NGCB. The represented facts do not evidence a conflict of interest, such as a pay-to-play scenario, and Harris’ conduct is in compliance with NRS 281A.400.

Nevertheless, should Gaming Company pursue Nevada licensure or become a regulated entity during the remainder of Harris’ one-year compliance period, such facts are likely to change the direction issued in this opinion. Seeking or accepting a position with a company regulated by NGCB within the “cooling-off” period could afford the public officer or employee the ability to instruct and guide the company in navigating Nevada regulatory requirements, thereby, creating an opportunity to yield the public trust and violate the Ethics Law. The Commission recognizes that an ability alone may not result in

improper conduct, but at a minimum, it creates an appearance of impropriety warranting review.

The facts pertaining to Gaming Company seeking Nevada licensure are not yet developed and Commission cannot speculate as to the scope of implications of Gaming Company seeking licensure under Nevada's statutory provisions that govern such regulation. If this scenario becomes a reality, a hearing before the Commission would assist in applying the requirements of the Ethics Law and opinion precedent, including *Mulroy* and *In re Public Officer*, Comm'n Op. No. 13-09A (2014). Preliminarily, the Commission notes that Harris' circumstances appear to differ from those presented in *Mulroy*, because Harris is sought for her gaming expertise and has confirmed by detailing that her future duties would include matters pertaining to gaming operations in her capacity as an independent board director. If the position is accepted, Harris indicates she will be using her gaming experience to oversee and apprise Gaming Company on its strategies, policies and performance. Thus, unless there are facts demonstrating otherwise, the job duties for Gaming Company could be determined to relate to the regulated activity, which would need to be evaluated through a hearing.

Based upon the circumstances, including the fact that Gaming Company is not a Nevada regulated entity, the application of the plain language in NRS 281A.550(2) and the lack of implications to NRS 281A.550(3) and NRS 281A.400, the Commission determines Harris is not currently limited by the Ethics Law in pursuing or holding employment as an independent board director for the Parent Company Board associated with Gaming Company. If there is any change in circumstances, Harris is advised to seek an advisory opinion from the Commission premised upon established facts. See NRS 281A.680 (advisory opinions are rendered on a given set of facts).

B. NRS 281A.410(1)(B) AND (5) LIMITATIONS

With regard to NRS 281A.410(1)(b), this statute does not specifically prohibit Harris' future employment for the Parent Company Board. Instead, the statute imposes a one-year "cooling-off" period from providing consulting services or representation of private persons for compensation on any issue that was under consideration during Harris' term of office with the NGCB. The restrictions set forth in NRS 281A.550(2) serve to conclusively preclude Harris' representation of or appearance before the NGCB on any matter during the one-year "cooling-off" period, which restriction encompasses future employers including Gaming Company, Parent Company Board and subsidiaries. NRS 281A.410 further precludes, for one year, consultation or representation of any private person on any issue that was before the NGCB during her tenure.

VI. CONCLUSIONS OF LAW

1. As the former Chair of the NGCB, Harris is a public officer as defined by NRS 281A.160 and NRS 281A.180.
2. Pursuant to NRS 281A.675 and NRS 281A.550(6), the Commission has jurisdiction to render an advisory opinion in this matter and such opinion may include guidance from the Commission to the public officer or employee under NRS 281A.665.
3. Harris, as the former Chair of the NGCB, is subject to NRS 281A.550(2), restricting certain employment and prohibiting any appearance before the NGCB to testify on behalf of any company licensed or regulated by the provisions of NRS Chapters 463 or 464.

4. As the former Chair for the NGCB, Harris is subject to the “cooling-off” provisions of the Ethics Law and its restrictions prohibiting, for a period of one year, certain employment, contracts and representations by former public officers and employees in their private capacity as it relates to their prior public service. See NRS 281A.550 and NRS 281A.410(1)(b).
5. Harris is advised that pursuing and holding employment as a member of the Parent Company’s Board of Gaming Company does not fall within the scope of the prohibitions delineated in NRS 281A.550(2) because Gaming Company, Parent Company Board and any associated subsidiaries are not regulated or licensed in Nevada.
6. Pursuant to NRS 281A.410(1)(b), Harris may not represent or counsel a private person or entity, including Gaming Company or Parent Company Board, for one year after her separation from public service on any issues that were under consideration by the agency during her tenure of public service.
7. The Commission does not opine on whether it would be improper for Harris to continue employment with the Parent Company Board should it or Gaming Company pursue licensure or be required to register in Nevada during the “cooling-off” period applicable to Harris because those facts are not developed. In this event, Harris is advised to use the Commission’s advisory opinion process pursuant to NRS 281A.675.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.

Dated this 15th day of October, 2019.

NEVADA COMMISSION ON ETHICS

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

By: /s/ Teresa Lowry
Teresa Lowry, Esq.
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

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

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Kim Wallin
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Barbara Gruenewald, Esq.
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By: /s/ Amanda Yen
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