

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE OPINION REQUEST OF BRUCE L. WOODBURY, Clark County Commissioner

This matter came before the Nevada Commission on Ethics (hereinafter "Commission") on Thursday, November 18, 1999, for hearing the first-party opinion request filed by Clark County Commissioner Bruce L. Woodbury, by and through his counsel, Richard A. Wright, Esq., on November 3, 1999. Notice of the hearing was properly served. The hearing was closed, pursuant to NRS 281.511. Following the hearing, Commissioner Woodbury waived his confidentiality rights as to this Opinion Request, pursuant to NRS 281.511(5)(b).

Commissioner Woodbury appeared in person and with his counsel, Richard A. Wright, Esq. David Johnson, an attorney with the Las Vegas law firm James, Driggs, Walch, Santoro, Kearney, Johnson & Thompson (hereinafter the "James Law Firm"), appeared as a witness. The witnesses were sworn, and the Commission heard testimony from Commissioner Woodbury and Mr. Johnson, along with the argument of counsel. Documentation from Commissioner Woodbury was made a part of the record, and, under oath, Commissioner Woodbury affirmed the factual statements in the documents and as presented by his counsel.

DISCUSSION

In light of recent changes to the Nevada ethics laws, Commissioner Woodbury requested the Commission to revisit the issues considered in its previous Opinion No. 98-54. That Opinion required Commissioner Woodbury to disclose his relationship to his son, Rodney Woodbury, and Rodney's relationship to the James Law Firm, which employs him. The Opinion also required Commissioner Woodbury to abstain from participating in and voting upon all matters before the Clark County Commission involving applicants represented by the James Law Firm.

The Commission reviewed its previous opinion (Opinion No. 98-54) relating to disclosure and abstention issues under the pre-1999 provisions of NRS 281.501(2) and NRS 281.501(3). The 1999 Nevada legislature amended NRS 281.501 in Senate Bill 478. Counsel for Commissioner Woodbury argued that SB 478 changed the prior law in two areas pertinent to the facts and issues before the Commission in this Opinion Request No. 99-56:

1. SB 478 changed the applicable standards for disclosure and abstention by adding a definition of "commitment in a private capacity to the interests of others," which is now codified as NRS 281.501(8). Under this new definition, one's "commitment in a private capacity to the interests of others" applies to employers who employ the public officer or members of his or her household (NRS 281-501(8)(c)). Since Rodney Woodbury is not a public officer or a member of Commissioner Woodbury's "household" (as defined in NRS 281.434), Commissioner Woodbury's commitment to Rodney would not extend to Rodney's employer and Commissioner Woodbury would not be required to disclose or abstain on matters where the James Law Firm appeared before the County Commission, merely because his son is employed by that firm.[\[1\]](#)

2. SB 478 broadened the scope of disclosure requirements (NRS 281.501(3)) by requiring a public officer to disclose and inform the public about potential effects which private commitments may have on the public officer's decisions. Under pre-1999 NRS 281.501(3), Commissioner Woodbury may have satisfied his disclosure requirement simply by stating that his son worked for the James Law Firm, since the statute only required disclosure of "the full nature and extent of the ... commitment..." (in Commissioner Woodbury's case, the father-son relationship). Now, the law requires disclosure of the effect which a particular decision would have on Rodney Woodbury's relationship with his employer and his father, and, by extension, the effect which the relationship may have on the particular matter on which Commissioner Woodbury will be voting. Therefore, Commissioner Woodbury argues, the legislature broadened the scope of required disclosures, evincing a policy that focuses on the effect which one's private commitments have on the decision-making process, rather than just on the particular commitments involved. In other

words, commitments) in a private capacity to the interests of others" (as defined in NRS 281.501(8)) must be disclosed, and determinations to abstain must go further by evaluating the extent to which a public officer's or employee's independent judgment may be materially affected by the disclosed commitments. More specific disclosures will inform the public of private commitments which are affected by a particular matter (and votes which benefit a private commitment), while leaving the decision to abstain in the hands of the public official or employee.

The Commission finds Commissioner Woodbury's reading of SB 478 persuasive. The practical result of the statutory changes is to require more disclosure about the effects of one's private commitments on the decision-making process and fewer instances of mandatory abstention. In other words, where informing the public of the potential effect of one's private commitment to the interests of others is not sufficient to protect the public from decisions which may be based on that private commitment (rather than on the public interest), abstention is also required. That determination must be made by the public officer or public employee, on a case-by-case basis. See the legislative declaration in NRS 281.421(2)(b): "The legislature finds that * * * (b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens." The enhanced disclosures further this legislative declaration and guide the public officer or public employee in his or her decision whether abstention is also required.

In some cases, Commissioner Woodbury's detailed disclosures may show the appropriate separation between his role as a County Commissioner and his role as a father. In other cases, however, abstention may also be required. This reading of SB 478 is consistent with the existing statutory language: disclosure is required whenever a public officer's actions would "**reasonably** be affected by his [private] commitment" to the interests of others (NRS 281.501(3)(b)), while a reasonable person's independence of judgment must "...be **materially** affected by..." that private commitment before abstention is also necessary (NRS 281.501(2)(c)).

Based on the 1999 legislative changes to NRS 281.501, Commissioner Woodbury must make detailed disclosures which satisfy the requirements of NRS 281.501(3) whenever the James Law Firm appears in a representative capacity before the Clark County Commission, since Commissioner Woodbury's actions would **reasonably** be affected by his relationship to his son, Rodney Woodbury (NRS 281.501(3)(b)). These disclosures will be required for as long as Rodney Woodbury is employed by the James Law Firm (and will be required for any other firm which may subsequently employ Rodney Woodbury and appear before Commissioner Woodbury).

However, Commissioner Woodbury's decision whether to abstain on a particular matter (because his relationship to his son may have a **material** effect on a reasonable person's independence of judgment under NRS 281.501(2)(c)) involves a case-by-case evaluation of relevant factors. Such factors include but are not limited to Rodney's compensation arrangements with the James Law Firm; Rodney's responsibilities with the James Law Firm, including client development; Rodney's involvement with the matter which is before the County Commission; Rodney's involvement with the client represented by the James Law Firm (whether or not limited to the issue before the County Commission); and the compensation arrangements of the James Law Firm with the client. Unless such information is made available to Commissioner Woodbury, it will be difficult, if not impossible, for Commissioner Woodbury to make an appropriate disclosure and an informed evaluation of whether to abstain. In these circumstances, Commissioner Woodbury, of course, acts at his peril in two respects: (a) deciding what detailed disclosures will be sufficient to satisfy NRS 281.501(3); and (b) deciding whether the specific matter also warrants abstention under NRS 281.501(2).

Abstention in all such cases would be a safe harbor for public officers and employees. However, the public (and an elected official's constituents) have an interest in matters which come before such officers and employees. Abstention deprives the public and that official's constituents of a voice in governmental affairs. And, public officers and employees should have the opportunity to perform the duties for which they were elected or appointed, except where private commitments would **materially** affect one's independence of judgment. Compliance with disclosure requirements informs the citizenry as to how its public officers and employees exercise their discretion and

independent judgment. And, in exercising their discretion and independent judgment, public officers and employees are accountable to their constituents or their appointing authority. The burden, therefore, is appropriately on the public officer or employee to disclose private commitments and the effect those private commitments can have on the decision-making process, and to make a proper determination regarding abstention where a reasonable person's independence of judgment would be *materially* affected by those private commitments.^[2]

Based on the foregoing discussion, the Commission, after full consideration of the testimony, evidence, and argument, issues the following Findings of Fact, Conclusions of Law, and Opinion:

FINDINGS OF FACT

1. Bruce L. Woodbury is a Clark County Commissioner. In his private capacity, he is an attorney. He is the father of Rodney Woodbury.
2. Rodney Woodbury is an attorney. He passed the Nevada Bar in 1999 and is a first-year associate with the James Law Firm.
3. Rodney Woodbury worked as a clerk at the James Law Firm in the summer of 1998.
4. Rodney Woodbury is not a partner or a shareholder of the James Law Firm, and he is compensated as a salaried employee. He does not have any financial or other interest in any particular matters or clients handled by the James Law Firm, except in the sense that salaried employees generally have an interest in the success of their employers. Rodney Woodbury is not responsible for generating new clients or cases for the James Law Firm and is not assigned to work on matters which involve County Commission appearances. He works in the transaction section for business clients of the James Law Firm.
5. Rodney Woodbury is over 30 years old. Rodney, his wife and his children live in their own home and do not live with Commissioner Woodbury.
6. Some of the partners at the James Law Firm were former law partners of Commissioner Woodbury.
7. From time to time, the James Law Firm represents parties who appear on matters before the Clark County Commission. Its compensation for such matters is on an hourly or flat-fee basis, without any "success fee" or other bonus based on the outcome of any County Commission action.

CONCLUSIONS OF LAW

1. Commissioner Woodbury is a public officer as defined by NRS 281.4365.
2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.511(1).
3. NRS 281.501(1), (2), and (3) establish the disclosure, participation, and voting standards of public officers.

OPINION

Based upon the facts and argument presented, and upon applicable law, whenever the James Law Firm (or any other firm which employs Commissioner Woodbury's son, Rodney Woodbury) appears before the Clark County Commission, Commissioner Woodbury must:

1. disclose sufficient information concerning his commitment to his son to inform the public of the potential effect of his action as required by NRS 281.501(3); and

2. after making such proper disclosure, determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to Rodney, under the circumstances presented in a particular matter. If so, Commissioner Woodbury must also refrain from advocating the passage or failure of the matter and abstain from voting upon the matter, all in accord with NRS 281.501(2).

NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES WHICH DIFFER FROM THOSE IN THIS OPINION MAY RESULT IN AN OPINION CONTRARY TO THIS OPINION. NO INFERENCES REGARDING THE PROVISIONS OF NEVADA REVISED STATUTES QUOTED AND DISCUSSED IN THIS OPINION MAY BE DRAWN TO APPLY GENERALLY TO ANY OTHER FACTS AND CIRCUMSTANCES.

DATED: December 22, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER C. BERNHARD, Chairman

[1] Commissioner Woodbury does not question that disclosure and abstention are required because of the father-son relationship when Rodney has a direct or significant interest in a matter, e.g., if Rodney appeared before the County Commission seeking a variance for property he owned. Commissioner Woodbury asserts, however, that, while he must always disclose the relationship and the effects of any vote on that relationship, he should be permitted to decide whether his commitment to Rodney (and Rodney's interest) are so direct or significant as to also require abstention in a given matter. He argues that the decision to abstain should be made by him on a case-by-case basis, consistent with the public's interest that matters be determined by legitimate policy considerations and not by commitments in one's private capacity. Therefore, he adds, a blanket rule requiring abstention every time his son's employer appears before the Commission is open to abuse: a party who anticipates a negative vote from Commissioner Woodbury would do well to hire Rodney's employer, eliminating that negative vote and, in the process, disenfranchising those Clark County citizens who are represented by Commissioner Woodbury. The better rule is one which holds Commissioner Woodbury accountable, to the Ethics Commission and to the public, for complete disclosures and for the proper exercise of his judgment to abstain or not to abstain, by forcing him to make that judgment after evaluating his private commitments and the effects of his decision on those private commitments.

[2] One other argument advanced by Commissioner Woodbury warrants comment. Counsel for Commissioner Woodbury wrote that an absolute abstention requirement would hinder Rodney in his pursuit of his profession as a lawyer. In other words, the 'successes of the father' should not be visited upon the son. However, NRS 281 does not allow a balancing-of-hardships defense to unethical conduct by public officers. Commissioner Woodbury cannot violate his ethical duties to disclose or abstain, then defend his conduct by asserting that obeying his duties would result in some hardship to his son, Rodney Woodbury (or any other relative). So long as Commissioner Woodbury serves as a Clark County Commissioner, or in any other capacity as a public officer, he is obligated to act ethically, and family members (and others to whom he has private commitments) must accept any resultant hardship. In this case, of course, Rodney Woodbury and the James Law Firm are not affected adversely as to appearances in a representative capacity before any government bodies other than the Clark County Commission and possibly its agencies.