



STATE OF NEVADA  
COMMISSION ON ETHICS

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE REQUEST FOR OPINION  
CONCERNING THE CONDUCT OF  
JARED SHAFER, former Public Administrator, Clark County.

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Opinion No. 04-01

This matter came before the Nevada Commission on Ethics (hereinafter the "Commission") for hearing on April 13, 2005, pursuant to a Request for Opinion filed on January 2, 2004, pursuant to NRS 281.511(2)(b), and a determination on December 28, 2004, by a Commission panel finding just and sufficient cause for the Commission to hold a hearing on the matter and render an opinion on whether Clark County Public Administrator Jared Shafer's conduct violated the provisions of NRS 281.481(1), NRS 281.481(2), NRS 281.481(5), and/or NRS 281.481(10).

The issues before the Commission in this matter are limited to the following:

1. With regard to a *Petition for Special Co-Letters of Administration* in the matter of the estate of Charles Williams, deceased, which Mr. Shafer signed on January 2, 2003, and which was filed with the Clark County District Court on January 6, 2003; an *Order* of the Clark County District Court entered on January 6, 2003, appointing Mr. Shafer as a special co-administrator of the estate; and *Letters of Special Administration* issued to Mr. Shafer on January 8, 2003, pursuant to the court's *Order*:

a. Did Jared Shafer, as the Clark County Public Administrator, “seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties,” in violation of NRS 281.481(1)?

b. Did Jared Shafer, as the Clark County Public Administrator, “use his position in government to secure or grant unwarranted<sup>1</sup> privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person”<sup>2</sup> in violation of NRS 281.481(2)?

c. Did Jared Shafer, as the Clark County Public Administrator, “use information that he acquired through his public duties or relationships, which information by law or practice was not at the time available to people generally, to further the pecuniary interests of himself or any other person or business entity” in violation of NRS 281.481(5)?

d. Did Jared Shafer, as the Clark County Public Administrator, “seek other employment or contracts through the use of his official position” in violation of NRS 281.481(10)?

2. If the conduct of Jared Shafer, as the Clark County Public Administrator, related to any of the above issues amounted to a violation of the referenced statute, was the violation “willful” pursuant to NRS 281.4375 as limited by NRS 281.551(6)?

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<sup>1</sup> As used in NRS 281.481(2), “unwarranted” means without justification or adequate reason.

<sup>2</sup> As used in NRS 281.481(2) and NRS 281.501, “commitment in a private capacity to the interests of that person” means a commitment to a person (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in (a) through (d).

3. If the conduct of Jared Shafer, as the Clark County Public Administrator, related to any of the above issues is deemed a “willful” violation of any of the referenced statutes, does the willful violation warrant the imposition of a civil penalty or any other action pursuant to the provisions of NRS 281.551?

Notice of the hearing was properly posted and served. Jared Shafer was present with his counsel, R. Gardner Jolley, Esq., and provided sworn testimony. The following individuals appeared as witnesses and provided sworn testimony: Elyse M. Tyrell, Esq.; Don W. Ashworth, Probate Division Commissioner, Eighth Judicial District Court; Terry Coffing, Esq., of the Nursing Home Justice Center in Las Vegas.

#### **STIPULATED FACTS**

The parties stipulated to the following facts:

1. NRS 253.010(2) provides that Public Administrators are elected every four (4) years at general election and enter upon the duties of their office on the first Monday of January after their election.

2. Jared Shafer was appointed in 1979 to fill an unexpired term of the Clark County Public Administrator and was first elected to that office of Clark County Public Administrator in the 1982 general election. He was thereafter re-elected to five (5) additional terms, serving over 20 years.

3. Jared Shafer’s duly elected successor entered upon the duties of Clark County Public Administrator on Monday, January 6, 2003, pursuant to statute. Jared Shafer’s term expired on that date.

4. Charles Williams lived in Maryland and later moved to Nevada and lived at the Silver Ridge Nursing Home in Las Vegas.

5. Charles Williams died unexpectedly on November 4, 2002.
6. The Clark County Coroner notified Charles Williams' daughter, Terry Williams, of the death.
7. After Charles Williams' death, his son, Charles Williams, Jr., of San Antonio, Texas, contacted Arthur Augustine, Esq., a Texas attorney, regarding bringing a potential wrongful death lawsuit in connection with Charles Williams' death.
8. Attorney Augustine contacted Mark Morrow, Esq., of Nursing Home Justice Center in Las Vegas regarding the wrongful death lawsuit.
9. Attorney Morrow contacted Elyse M. Tyrell, Esq., on January 2, 2003, requesting her to open a probate estate in the death of Charles Williams so that, among other reasons, Charles Williams, Jr., as personal representative of the estate of Charles Williams, could request from Silver Ridge Nursing Home the medical records of Charles Williams.
10. NRS 139.010 prohibits a non-Nevada resident administrator of an estate from being issued letters of administration in Nevada unless a Nevada resident is named as a co-administrator.
11. NRS 139.040 entitles a child of the deceased to be appointed administrator of the estate or to nominate someone to be appointed administrator of the estate.
12. On January 6, 2003, the Clark County District Court granted letters of co-special administration to Jared Shafer and Charles Williams, Jr.
13. Jared Shafer and Charles Williams, Jr., signed employment agreements as co-special administrators of the estate of Charles Williams.

## **FINDINGS OF FACT**

The Commission, after hearing testimony and considering the evidence presented herein, makes the following Findings of Fact:

1. Jared Shafer is the former elected Clark County Public Administrator.
2. The office of public administrator is responsible for processing the estates of persons who die in Nevada and have no known relatives or no relatives who are willing and/or able to act as administrator of the estate of the deceased.
3. The public administrator engages the services of private legal counsel in processing estates referred to the public administrator's office.
4. The long-standing policy of the Clark County Public Administrator, under Mr. Shafer's direction, was to not accept responsibility for estates involving lawsuits or requiring co-administrators.
5. Mr. Shafer is not an attorney.
6. Mr. Shafer received his last paycheck as Clark County Public Administrator on December 20, 2002. On December 19, 2002, he left on vacation and was out of town through the Christmas holidays.
7. It was common knowledge that Mr. Shafer was not seeking re-election to the office of Clark County Public Administrator in the November 2002 general election and that he intended to retire from public office at the end of his term and establish a private fiduciary business.
8. Mr. Shafer believed his term as Clark County Public Administrator ended on December 31, 2002.

9. Mr. Shafer performed no duties as Public Administrator, nor was he present in the Public Administrator's office, after December 19, 2002.

10. On September 16, 2002, on advice of counsel and his certified public accountant and in anticipation of engaging as a private fiduciary in the administration of estates, trusts, and guardianships after retiring from public office, Mr. Shafer filed with the Nevada Secretary of State articles of incorporation for Professional Fiduciary Services, Inc.

11. Mr. Shafer is the sole owner and employee of Professional Fiduciary Services, Inc.

12. Mr. Shafer deposited into Professional Fiduciary Services, Inc.'s corporate bank account \$10,000 in borrowed funds.

13. Mr. Shafer engaged in no activity with regard to Professional Fiduciary Services, Inc., nor did he seek prospective business for the corporation, in September, October, November, or December 2002.

14. In 2002, Mr. Shafer received no requests for his fiduciary services other than for his services as Public Administrator.

15. In January 2003, Mr. Shafer established an office at 4455 South Pecos Road, Suite C, Las Vegas, Nevada 89121 for Professional Fiduciary Services, Inc., and established himself as a private consultant/fiduciary in estate, trust, and guardianship matters. He still conducts his private consultant/fiduciary business from that address.

16. Most of Mr. Shafer's business as a private fiduciary comes from attorneys who have been retained in probate estates.

17. The Nursing Home Justice Center (hereinafter “NHJC”) is a Las Vegas law firm that pursues legal actions against nursing homes on behalf of the estates of deceased victims of negligence and/or wrongful death.

18. Attorney Elyse Tyrell is employed by Patricia A. Trent & Associates (hereinafter the “Trent law firm”), a two-attorney law firm in Las Vegas.

19. Attorney Tyrell has a long-standing professional relationship with NHJC to assist in the legal process related to appointments of special administrators in estates and guardianships in matters concerning incapacitated wards.

20. On the morning of January 2, 2003, Attorney Tyrell received a telephone call from Mark Morrow, Esq., then one of the managing members and minority shareholders of NHJC in Las Vegas.<sup>3</sup> Mr. Morrow requested immediate assistance from Attorney Tyrell in securing an in-state co-special representative to open an estate on behalf of an out-of-state relative of the decedent, Charles Williams, namely Charles Williams, Jr., so that NHJC could request medical records related to a wrongful death claim.

21. Time is of the essence in opening an estate and appointing a special administrator when a wrongful death action is implicated so the plaintiff may quickly protect the estate’s assets, collect the medical records of the deceased, and locate and interview potential witnesses.

22. The Trent law firm wished to identify an in-state co-administrator quickly to establish an estate in the matter of Charles Williams on behalf of NHJC, which hoped to obtain medical records to support its intended wrongful death lawsuit. The Trent law firm had extensive experience working with Mr. Shafer in matters concerning special administration when he was the Clark County Public Administrator, and knew that after he left office as Public

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<sup>3</sup> Mr. Morrow is no longer associated with NHJC and no longer resides in Nevada. Mr. Morrow is not a Nevada-licensed attorney.

Administrator, he intended to be available in a private capacity as a fiduciary in estate and guardianship matters. At the time, the Trent law firm knew of limited other candidates who could act in that capacity.

23. On the morning of January 2, 2003, following the telephone call from Mr. Morrow of NHJC, the Trent law firm, through Attorney Tyrell and/or Attorney Trent, contacted Mr. Shafer to ask if he was available and willing to act as the in-state co-administrator in an urgent estate matter.

24. On January 2, 2003, the Trent law firm believed that Mr. Shafer's term as Clark County Public Administrator had concluded on December 31, 2002, and that he was available to provide services in a private capacity as a fiduciary.

25. Mr. Shafer and Charles Williams, Jr., signed a Petition for Special Letters of Co-Administration on January 2, 2003. The petition was filed in District Court, Clark County, Nevada, and the court entered an order granting the Special Letters of Co-Administration, on January 6, 2003.

26. On January 8 and January 15, 2003, Letters of Special Administration were issued to Mr. Shafer and Charles Williams, Jr., as Special Co-Administrators of the estate of Charles Williams.

27. A person petitioning the court for letters of administration in an estate matter has no authority to act as an administrator of the estate until the court has issued letters of administration to the administrator and the administrator has taken the oath of office and met the statutory bonding requirements.

28. At the direction of his legal counsel (Attorney Tyrell), Mr. Shafer signed a contract with NHJC retaining the law firm to represent Mr. Shafer, as co-administrator of the



estate of Charles Williams, in the estate's wrongful death claim against Silver Ridge Health Care Center. The contract is undated.

29. Charles Williams, Jr., signed an identical contract with NHJC on January 2, 2003.

30. On January 2, 2003, Terry Coffing, Esq., was managing partner and president of Marquis & Aurbach, a Las Vegas law firm. He also provided legal services to, and was a minority shareholder of, NHJC. Mr. Coffing is now the managing member of NHJC.

31. On January 2, 2003, Mr. Coffing believed that Mr. Shafer's term as Clark County Public Administrator had concluded on December 31, 2002, and that he was available in a private capacity as a fiduciary.

32. On January 29, 2003, through legal counsel, Mr. Shafer and Charles Williams, Jr., as Special Co-Administrators of the estate of Charles Williams, filed with the Court a Petition seeking authority to enter into a legal services contract with NHJC.

33. Mr. Shafer has been involved in no other cases with NHJC in his capacity as a private fiduciary.

34. The estate of Charles Williams was never referred to the Clark County Public Administrator's office for administration, nor was it the type of case that Mr. Shafer, as the Public Administrator, would have accepted based on his long-standing policy to not take on estates involving lawsuits or requiring co-administrators.

35. Don W. Ashworth is the Clark County Probate Commissioner. He was appointed to that position fourteen years ago by the Clark County District Court judges.

36. In his role as Clark County Probate Commissioner, Mr. Ashworth worked with Mr. Shafer in his capacity as Public Administrator for many years.

37. The Clark County Probate Commissioner processes uncontested petitions for appointment of special administrators and co-administrators of estates. The Clark County Probate Commissioner processes approximately 100 cases and 50 *ex parte* matters each week.

38. Before a special administrator or co-administrator of an estate is issued letters of special administration, the Clark County Probate Commissioner reviews the petition to determine whether, on its face, it meets statutory criteria, including the requirements concerning residency of the special administrator and notice requirements.

39. Letters of special administration are issued by the Clerk of the District Court in accordance with an Order of the District Court signed by the District Court judge.

40. Special letters of administration or co-administration are properly issued to the first qualified heir to file a petition seeking letters of administration.

41. By law, special letters of co-administration automatically terminate when a regular administrator is appointed for the estate.

42. The authority of a special administrator to act is limited to the special circumstances and authority provided in the Letters of Special Administration.

43. The fees charged against the estate by the administrator of the estate (whether the Public Administrator or a private fiduciary) must be approved by the District Court.

44. Mr. Shafer ultimately billed the estate of Charles Williams \$1,000 as Special Co-Administrator; however, Mr. Shafer has received no payment for his services.

45. On January 2, 2003, Probate Commissioner Ashworth believed that Mr. Shafer's term as Clark County Public Administrator had concluded on December 31, 2002, and that Mr. Shafer was available in a private capacity as a fiduciary.

## CONCLUSIONS OF LAW

1. Pursuant to NRS 253.010(2), until his elected successor took office on the first Monday of January 2003 (i.e., January 6, 2003), Jared Shafer was the elected Clark County Public Administrator. He is, therefore, a former public officer as defined in NRS 281.4365.

2. The Commission has jurisdiction to render an opinion in this matter pursuant to NRS 281.465 and NRS 281.511, Subsection 2(b).

**WHEREFORE**, based upon a preponderance of the evidence in this matter, on majority vote,<sup>4</sup> the Commission renders the following Opinion:

### OPINION

**1. NRS 281.481(1).**

Public officers and public employees are prohibited from seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in their position to depart from the faithful and impartial discharge of their public duties. NRS 281.481(1).

On January 2, 2003, in response to the telephone call from Attorney Tyrell, Mr. Shafer signed the *Petition for Special Co-Letters of Administration* in the matter of the estate of Charles Williams. On that date, Mr. Shafer, Attorney Tyrell, and the other witnesses who testified in the matter reasonably believed that Mr. Shafer's term of office as Clark County Public Administrator had concluded on December 31, 2002. There was no evidence or testimony presented to the contrary. Their belief, however, was erroneous. Pursuant to NRS 253.010(2), Mr. Shafer's term of office did not conclude until the first Monday in January 2003 (i.e., January 6, 2003) when his

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<sup>4</sup> The majority vote on each issue was as follows:

- NRS 281.481(1): No violation, 4 to 1
- NRS 281.481(2): No violation, 4 to 1
- NRS 281.481(5): No violation, 3 to 2
- NRS 281.481(10): No violation, 4 to 1

duly elected successor “entered upon the duties” of the office of Clark County Public Administrator. On January 2, 2003, Mr. Shafer was technically still a public officer, notwithstanding that he believed otherwise and that he performed no public duties, and expected to perform no public duties, after December 20, 2002, when he received his final paycheck as Clark County Public Administrator and left Las Vegas for vacation. Therefore, on January 2, 2003, Mr. Shafer, at the time a public officer, accepted an “employment, engagement, emolument or economic opportunity” as Special Co-Administrator of the estate of Charles Williams.

However, the facts and evidence presented in this matter include:

- On January 2, 2003, approximately four (4) days remained before Mr. Shafer’s successor took office;
- All witnesses who testified believed that Mr. Shafer had concluded his public duties as Clark County Public Administrator as of December 31, 2002; and
- Mr. Shafer neither undertook nor discharged any public duties after December 20, 2002, when he had received his last paycheck as Clark County Public Administrator and left for vacation.

Nothing in this matter suggests that the act of either seeking to serve as a private fiduciary or accepting the opportunity to serve as a private fiduciary by signing the Petition for Special Co-Letters of Administration on January 2, 2003 would have tended improperly to influence a reasonable person in Mr. Shafer’s position to depart from the faithful and impartial discharge of his public duties as Clark County Public Administrator in violation of NRS 281.481(1). Therefore, the Commission concludes that Mr. Shafer’s conduct does not violate NRS 281.481(1).

2. *NRS 281.481(2).*

Public officers and public employees are prohibited from using their position in government to secure or grant unwarranted<sup>5</sup> privileges, preferences, exemptions or advantages for themselves, any business entity in which they have a significant pecuniary interest, or any person to whose interests they have a commitment in a private capacity.<sup>6</sup> NRS 281.481(2).

Mr. Shafer received his last paycheck as Clark County Public Administrator on December 20, 2002. He reasonably believed that his term of office as Clark County Public Administrator concluded as of December 31, 2002. All other witnesses who testified before the Commission believed likewise. Under those circumstances, on January 2, 2003, Mr. Shafer did not use the Clark County Public Administrator's office to secure a benefit for himself by agreeing to act as Special Co-Administrator of the estate of Charles Williams after his services were sought by individuals who likewise believed he no longer was in office. No evidence or testimony was presented in this matter to conclude otherwise. Without evidence that a public officer has actually used his public office to secure for or grant to himself a benefit, no provision in the Ethics in Government Law prevents the public officer from preparing to enter private life at the end of his public service.

The Commission, therefore, finds no evidence that Jared Shafer used his position as the elected Clark County Public Administrator to secure or grant unwarranted privileges, preferences, exemptions, or advantages for himself or his private fiduciary business with regard

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<sup>5</sup> "Unwarranted" means without justification or adequate reason.

<sup>6</sup> "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501. NRS 281.501, Subsection 8: "... 'commitment in a private capacity to the interests of others' means a commitment to a person: (a) who is a member of his household; (b) who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity; (c) who employs him or a member of his household; (d) with whom he has a substantial and continuing business relationship; or (e) any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection."

to his activities related to being appointed a Special Co-Administrator in the Charles Williams estate. Therefore, Mr. Shafer's conduct does not violate NRS 281.481(2).

**3. NRS 281.481(5).**

If, through his public duties or relationships, a public officer or public employee acquires any information which by law or practice is not at the time available to people generally, he is prohibited from using the information to further his pecuniary interests or those of any other person or business entity. NRS 281.481(5).

The testimony and evidence in this matter indicates that all of the information regarding the need for an in-state Special Co-Administrator in the Charles Williams estate was directed to Mr. Shafer in his capacity as a private fiduciary. No evidence exists to substantiate the allegation that Mr. Shafer acquired any information that was not at the time available to people generally by virtue of his position as Clark County Public Administrator, nor that the Clark County Public Administrator's Office ever received information regarding the estate of Charles Williams.

Therefore, Mr. Shafer did not improperly use any information to further his pecuniary interests by accepting appointment as a Special Co-Administrator in the Charles Williams estate in violation of NRS 281.481(5).

**4. NRS 281.481(10).**

Public officers and public employees are prohibited from seeking other employment or contracts through the use of their official positions. NRS 281.481(10).

Mr. Shafer received his last paycheck as Clark County Public Administrator on December 20, 2002. He reasonably believed that his term of office as Clark County Public Administrator concluded as of December 31, 2002. All other witnesses who testified before the Commission believed likewise. Without evidence that a public officer has actually used his

public office to seek other employment or contracts, no provision in the Ethics in Government Law prevents the public officer from preparing to enter private life at the end of his public service. The Commission received no evidence that Jared Shafer used his position as the elected Clark County Public Administrator to seek other employment or contracts with regard to his activities related to being appointed a Special Co-Administrator in the Charles Williams estate. Therefore, Mr. Shafer's conduct does not violate NRS 281.481(10).

**CONCLUSION**

Based on the foregoing, the Commission finds no violation by Mr. Shafer of NRS 281.481, Subsections 1, 2, 5, or 10.

**NOTE: THE FOREGOING OPINION APPLIES ONLY TO THE SPECIFIC FACTS AND CIRCUMSTANCES DEFINED HEREIN. FACTS AND CIRCUMSTANCES THAT 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: June \_\_10\_\_, 2005.

NEVADA COMMISSION ON ETHICS

By: \_\_\_\_\_/s/\_\_\_\_\_  
Caren Jenkins, Vice Chairman