



**STATE OF NEVADA**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the First-Party Request for  
Advisory Opinion Concerning the Conduct of  
**Public Officer**, Member, State  
Regulatory Board, State of Nevada,

Request for Opinion No. 11-29A

Public Officer. /

**ABSTRACT OF OPINION**

**I. STATEMENT OF THE CASE**

Public Officer requested this confidential advisory opinion from the Nevada Commission on Ethics ("Commission") pursuant to NRS 281A.440(1) regarding the propriety of his 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"). A quorum<sup>1</sup> of the Commission heard this matter on April 14, 2011. Public Officer appeared at the hearing and provided sworn testimony.

At the conclusion of the hearing, and after full consideration of the facts, circumstances and testimony presented, the Commission deliberated and orally advised Public Officer of its decision that the Ethics Law does not require Public Officer to disclose his former pecuniary interests concerning ABC Corporation or to abstain from voting on any ABC

Corporation matters that come before the State Regulatory Board ("Board") because Public Officer has not provided legal services to or collected legal fees from ABC Corporation since January 2009. Further, the Commission advised that it could only address Public Officer's obligations under the Ethics Law as defined in Chapter 281A of the NRS and that interpretation of his obligations under Nevada Attorney General Opinion No. 95-19 was beyond its jurisdiction.

Public Officer elected to retain confidentiality with respect to this proceeding. Therefore, the Commission publishes this Abstract in lieu of the full opinion.

**II. QUESTION PRESENTED**

Public Officer asks the Commission to advise him of his disclosure and abstention obligations as a member of the Board with respect to matters concerning ABC Corporation, a corporation for which he previously performed legal services. Further, Public Officer requests guidance on

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<sup>1</sup> The following Commissioners participated in this opinion: Chairman Erik Beyer, and Commissioners Gregory J. Gale, CPA, Magdalena M. Groover, George M. Keele, Esq., Paul H. Lamboley, Esq., John W. Marvel, and James M. Shaw.

whether, in matters that come before the Board involving ABC Corporation, he is required pursuant to Nevada Attorney General Opinion No. 95-15 to obtain consent from ABC Corporation and a formal waiver of his disqualification from any groups intervening in the matter, prior to voting on the matter.

### **III. STATEMENT AND DISCUSSION OF ISSUES AND RELEVANT STATUTES**

#### **A. ISSUES**

Public Officer is a member of the State Regulatory Board ("Board"). The Board routinely considers matters involving or affecting ABC Corporation. Public Officer previously performed legal work for ABC Corporation, but did not represent the company on any matters before the Board or obtain confidential information relating to any such matters. Public Officer has not performed any legal services for ABC Corporation since January 2009.

Specifically referencing Nevada Attorney General Opinion 95-19, Public Officer seeks guidance from the Commission respecting his obligations to disclose, abstain or seek waivers of his disqualification from those participating in matters before the Board involving ABC Corporation.

The Commission lacks jurisdiction, and therefore declines to interpret Public Officer's obligations respecting the Nevada Attorney General Opinion, or the provisions discussed in that opinion from the Nevada Rules of Professional Conduct governing attorneys and the Nevada Code of Judicial Conduct governing bias or disqualification of quasi-judicial officers. Nonetheless, the

Commission is empowered to and will address Public Officer's obligations as a public officer under NRS Chapter 281A to make appropriate disclosures or to abstain from voting when matters implicating a private pecuniary interest come before the Board.

### **B. RELEVANT STATUTES**

#### **1) Public Policy**

NRS 281A.020 provides in part:

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. The Legislature finds and declares that:

(a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.

(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.

Nevada's Ethics Law mandates that public officers hold public office for the public benefit and avoid conflicts of interests. The Ethics Law is concerned with situations involving public officers that create appearances of impropriety and conflicts of interest, as well as

actual impropriety and conflicts to promote the integrity in public service. As a member of the Board, Public Officer holds a public office and must therefore commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves. Whether there would be such conflicts between his public duties as a member of the Board and his private interests must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances.

## **2) Jurisdictional Concerns**

The Commission's jurisdiction is confined to interpreting and applying the Ethics Law as it is set forth in NRS Chapter 281A. See NRS 281A.280(1) (the Commission has jurisdiction over alleged violations of "this chapter"); see *also* NRS 281A.440(1) (authorizing the Commission, upon an appropriate request from a public officer or employee, to render advisory opinions "interpreting the statutory ethical standards" and applying those standards "to a given set of facts and circumstances"). Therefore, the Commission declines to interpret Nevada Attorney General Opinion No. 95-19 and the Nevada Rules of Professional Conduct governing attorneys, or the Nevada Code of Judicial Conduct which that opinion discusses.

## **3) Disclosure**

Under NRS 281A.420(1)(b), when a public officer "has a pecuniary interest" in a matter, the public officer "shall not approve, disapprove, vote, abstain from voting or otherwise act upon [the] matter

. . . without disclosing sufficient information . . . to inform the public of the potential effect of the action or abstention . . . upon the public officer's pecuniary interest."<sup>2</sup>

Public Officer testified that he has not provided any legal services to ABC Corporation since January 2009. Thus, at the time of Public Officer's testimony before the Commission, he had not had any pecuniary interests in ABC Corporation for over two years. The Commission concludes that under these circumstances, where no recent, present or future expectation of any pecuniary interest exists, no obligation to disclose arises under NRS 281A.420(1)(b).

## **4) Abstention**

NRS 281A.420(3) requires a public officer to abstain from voting on a matter "with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by . . . (b) [t]he public officer's pecuniary interest . . . ." Based on the testimony presented by Public Officer respecting the absence of any recent, present or future expectation of personal pecuniary interests in ABC Corporation, the Commission concludes that the independence of judgment of a reasonable person in Public Officer's situation would not be materially affected by his prior association as an attorney representing ABC Corporation

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<sup>2</sup> There are no facts before the Commission indicating that Public Officer either accepted a gift or loan from ABC Corporation or its CEO, or that any matters before the Board that Public Officer might consider involving ABC Corporation would reasonably be affected by Public Officer's commitment in a private capacity to the interest of others. Therefore, neither NRS 281A.420(1)(a) nor NRS 281A.420(1)(c) appear to be implicated in this matter, and the Commission does not address those provisions.

on matters not related to ABC Corporation's appearances before the Board. Therefore, the Commission concludes that under NRS 281A.420(3), Public Officer need not abstain from voting on matters involving ABC Corporation that come before the Board.

#### **IV. CONCLUSIONS OF LAW**

1. At all times relevant to the hearing of this matter, Public Officer was a member of the State Regulatory Board and as such is a "public officer" as defined by NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an advisory opinion in this matter.
3. The Commission's jurisdiction is restricted to interpreting and applying the Ethics Law as set forth in NRS Chapter 281A, and the Commission declines to interpret Nevada Attorney General Opinion No. 95-19, or the Nevada Rules of Professional Conduct governing attorneys and the Nevada Code of Judicial Conduct which that opinion addresses.
4. The testimony before the Commission does not establish a recent, current or future expectancy of a pecuniary interest sufficient to obligate Public Officer to disclose his previous legal association with ABC

Corporation under NRS 281A.420(1)(b), or to abstain under NRS 281A.420(3) from voting on any matters involving ABC Corporation that may come before the Board.

Dated this 4<sup>th</sup> day of October, 2012.

NEVADA COMMISSION ON ETHICS

By: /s/ Erik Beyer  
Erik Beyer  
Chairman