



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request  
For Opinion Concerning the Conduct of  
**David R. Olsen**, City Attorney, City of  
Boulder City, State of Nevada,

Request for Opinion No. **14-17C**

\_\_\_\_\_ Public Officer. /

#### STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-17C before the Nevada Commission on Ethics (“Commission”) concerning David R. Olsen (“Subject”), City Attorney with the City of Boulder City, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times, David R. Olsen was a public officer, as defined in NRS 281A.160, appointed as the City Attorney for Boulder City, Nevada. 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 the Subject in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

- a. On or about February 25, 2014, the Commission received this RFO from a private citizen alleging that Olsen, by assisting in his son’s legal defense and submitting an affidavit as an expert witness in his son’s lawsuit against Boulder City: 1) failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020); 2) used his position in government to secure unwarranted privileges, preference, exemptions or advantages for his son a person to whom he has a commitment in a private

- capacity to the interests thereof (NRS 281A.400(2)); 3) used information acquired through his position as city attorney that is not generally available to the public to further the pecuniary interest of his son (NRS 281A.400(5)); 4) used government time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer (NRS 281A.400(7)); and failed to abstain from acting on a matter in which abstention is required (NRS 281A.420(3)).<sup>1</sup>
- b. As required by NAC 281A.410, the Commission provided Olsen with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Olsen was provided an opportunity to respond to the RFO.
  - c. Olsen waived his rights to a response and panel determination pursuant to NRS 281A.440, and submitted to jurisdiction of the Commission for consideration, hearing and opinion of the allegations implicating NRS 281A.020(1), 281A.400(2), NRS 281A.400(5), NRS 281A.400(7) and NRS 281A.420(1).
  - d. In lieu of a panel determination and a hearing, Olsen now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to Chapter 281A of the Nevada Revised Statutes.
4. **STIPULATED FACTS:** The following events are relevant to this matter:
- Relevant Persons and/or Entities**
- a. David Olsen (“Olsen”) is the City Attorney for Boulder City, and as such, Olsen is a public officer, as defined in NRS 281A.160.
  - b. Boulder City, Nevada is a political subdivision as defined in NRS 281A.145.
  - c. Brian Olsen (“Brian”) is David Olsen’s son, who was arrested by the Henderson and Boulder City Police Departments and thereafter filed a civil rights complaint naming, among others, Boulder City and Boulder City Police Officer Aaron Johnson.

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<sup>1</sup> Pursuant to NAC 281A.405, the Commission Counsel and Executive Director rejected jurisdiction regarding allegations pertaining to NRS 281A.400(3) for lack of evidence to support the allegations as required by NAC 281A.400. However, an additional allegation of NRS 281A.420(1) pertaining to failing to sufficiently disclose a conflict of interest was determined at the jurisdictional level based upon the facts and circumstances alleged.

- d. Jessica Saur (“Jessica”) was a classmate of Brian Olsen’s during the time period in question regarding his arrest.
- e. Officer Aaron Johnson (“Officer Johnson”) is a member of the Boulder City Police Department and assisted in the arrest of Brian Olsen at his Boulder City residence.
- f. Detective Wayne Nichols (“Detective Nichols”) is a member of the City of Henderson Police Department, and initiated a criminal case against Brian Olsen for an incident that occurred in the City of Henderson.
- g. Cal Potter, Esq., is Brian Olsen’s attorney who filed the Civil Rights Complaint on Brian’s behalf against Boulder City, Officer Johnson, Detective Nichols and City of Henderson.
- h. Marquis Aurbach Coffing is the Pool/Pact contract law firm retained by Boulder City that represented Boulder City and Officer Johnson in the civil rights complaint filed by Brian Olsen.

**Brian Olsen’s Arrest**

- i. During March 2010, Brian was a student at the Euphoria Institute in Henderson, Nevada, studying cosmetology.
- j. In March 2010, Brian received two emails from his fellow classmate, Jessica, which contained nude photos of Jessica. (Illicit photos sent via a cellular phone are known as “sexts” and/or “sexting.”)
- k. During the relevant time period, Brian while at school, borrowed Jessica’s cell phone to call his father, and while he was in possession of the phone, Brian allegedly sent the “sexts” to himself from Jessica’s phone.
- l. On March 30, 2010, Brian was arrested on two charges of violating NRS 200.604, Capturing the Image of a Private Area of Another.
- m. At the request of Henderson Detective Nichols, Boulder City Officer Johnson arrested Brian at his father’s home in Boulder City.
- n. Officer Johnson then transported Brian to the City of Henderson into Detective Nichols’ custody.
- o. Officer Johnson discussed Brian’s arrest with Olsen after the fact.

p. The Clark County District Attorney declined to prosecute Brian for the alleged offenses.

**Civil Rights Complaint**

q. On March 1, 2012, after the Clark County District Attorney declined to prosecute Brian, Cal Potter, Esq., filed a Civil Rights Complaint on April 2, 2012, on behalf of Brian against the City of Henderson, Detective Nichols, City of Boulder City, and Officer Johnson.

r. In August 2013, Cal Potter retained Brian's father, David Olsen, in his private capacity as a licensed attorney to serve as an expert witness in the case against the government actors, including Boulder City, the governmental entity that Olsen served as the City Attorney. David Olsen had never appeared as an expert witness in any prior case. David Olsen understood that the scope of his involvement in the case would be limited to legal research and an opinion regarding Brian Olsen's arrest. The work performed by Olsen was to be done at no charge.

s. Olsen reviewed the case, prepared an expert witness report, and Cal Potter prepared an affidavit for Olsen in support of Brian's Motion for Summary Judgment. The affidavit was notarized by Tami McKay, the Deputy City Clerk for Boulder City. Additionally, the Expert Report and Fee Schedule used the facsimile number for the Boulder City Attorney's Office as the facsimile contact for Olsen in Brian's case.

t. Although David Olsen's Schedule of Fees for Services listed a \$1,500 retainer, hourly rate of \$150, daily rate of \$1,500 and deposition minimum of \$2,000, plus expenses, David Olsen received no retainer, hourly fees, daily fees or compensation of any kind for his involvement in the matter. He also received no reimbursement for expenses of any kind incurred in this matter. David Olsen never submitted an invoice for his involvement in this matter. David Olsen was never deposed by any party to the lawsuit, nor did he testify (other than by his affidavit) at any hearing.

u. When Brian's Civil Rights Complaint was filed against Boulder City, the law firm of Marquis Aurbach Coffing was retained as counsel through Pool/Pact to represent Boulder City and Officer Johnson. Under Boulder City's standard procedure, it retains legal representation via Pool/Pact for all such cases.

v. Pool/Pact is the Nevada Public Agency Insurance Pool, and typically represents governmental entities when the entities are sued for alleged civil rights violations.

w. The case was fully litigated with discovery and depositions conducted through the summary judgment stage.

x. Other than his research, affidavit, and Expert Report, David Olsen was not consulted, included or involved in the case.

y. Summary Judgment was ultimately granted for the Defendants.

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

a. Each of the findings of fact enumerated in section 4 is deemed to be true and correct for purposes of this stipulation.

b. Olsen holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of the City of Boulder City).

c. Olsen has a commitment in a private capacity to the interests of his son Brian Olsen. See NRS 281A.065 (2) and (3).

d. Olsen now realizes that he failed in his commitment to avoid conflicts between his personal interests and his public duties (NRS 281A.020) when he allowed himself to be inserted into his son's Civil Rights Complaint against Boulder City as an expert witness. This created an inherent conflict between his public duties to Boulder City and his commitment in a private capacity to his son.

e. Olsen acknowledges he used his position in government to secure unwarranted privileges, preferences, exemptions or advantages for his son, a person to whose interests he has a commitment in a private capacity in violation of NRS 281A.400(2). The "... intent of this statute prohibits a public officer from acting in a manner which creates unwarranted privileges, preferences or advantages

- for a personal interest.” (*In re Public Officer*, Comm’n Opinion No. 12-15A (2012)). Olsen wrongfully used his position in government through his involvement as an expert witness against his own public employer. (See *In re Collins*, Comm’n Opinion 11-78A (2011), holding that a perception that Commissioner Collins “...lobbying efforts would be more effective because he is a Clark County Commissioner...” implicates NRS 281A.400 (2)).
- f. Furthermore, there was no need or justification for Olsen to be an expert witness in this matter as numerous other experts could have been hired to fulfill that role. (See *In re Garner*, Comm’n Opinion No. 14-12C (2014), finding violations for creating the ethical conflict through the public officer’s actions).
  - g. As the City Attorney, Olsen obtained unique knowledge and access to non-public information, including knowledge and information concerning Officer Johnson’s role in the arrest. Olsen disputes using any information he obtained in his role as city attorney in support of his son’s case. There is no dispute however that he did have access to those resources. Along with public information and legal research, Olson drafted an expert report and affidavit that found fault with the City and with Officer Johnson. Because Olsen had access to information acquired through his position as City Attorney that is not generally available to the public and his role as the City Attorney may impart influence in the private lawsuit against the City, Olsen realizes that a hearing on this matter could result in a violation of NRS 281A.400(5).
  - h. Olsen violated NRS 281A.400(7) by using government personnel to benefit his personal or pecuniary interests. Olsen used Boulder City personnel to complete his expert witness report and affidavit in support of Brian Olsen’s Motion for Summary Judgment.
  - i. In this matter, Olsen’s participation as an expert witness against Boulder City and Boulder City’s police force is in direct opposition to his role as City Attorney for Boulder City as his duty to Boulder City is to defend the city, not attack it. Olsen failed to disclose his expert witness status in his son’s Civil Rights Complaint against Boulder City and Officer Johnson to his supervisors, the Mayor and City Council, in violation of NRS 281A.420(1).

- j. Olsen's conduct constitutes a course of conduct arising out of the same facts and circumstances resulting in a single violation of the Ethics Law, implicating NRS 281A.020(1), 281A.400(2), NRS 281A.400(5), NRS 281A.400(7) and NRS 281A.420(1).
- k. Based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that Olsen's violation in this case should be deemed willful pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 is appropriate in this matter. The Commission took into consideration that:
  - 1) Olsen has not previously been the subject of any violation of the Ethics Law.
  - 2) Olsen and/or his son have not received any personal financial gain as the result of Olsen's conduct in this matter.
  - 3) Olsen has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process.
  - 4) Tami McKay performs notary services generally to the public in Boulder city free of charge. As such, the use of Tami McKay to notarize the affidavit did not result in the use of government personnel any differently than if Olsen had been any other citizen of Boulder City.
  - 5) Olsen has had prior sensitivity to the Ethics Law in his legal representation of other public officers before the Commission.
  - 6) The Commission understands the compelling human factor in this case concerning Olsen's role as a father to defend his son.
- l. However, although appreciating the factors identified in paragraph "k," the family situation created the conflict in this matter between his official duties and private interests. Consequently, Olsen's actions were therefore willful.
- m. Pursuant to NRS 281A.480, Olsen is assessed a total civil penalty of \$1,500 to be paid not later than 90 days after his receipt of the fully-executed Stipulated Agreement in this matter. Olsen may pay the penalty in one lump sum or in



monthly installment payments as he may negotiate with the Commission's Executive Director.

- n. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO 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.
- o. 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 Subject.

6. **WAIVER:**

- a. Olsen knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the full Commission on the allegations in this RFO (No. 14-17C) and of any and all rights he may be accorded pursuant to 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. Olsen knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, NRS 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 Stipulated Agreement during the regular meeting of the Commission on September 10, 2014.

DATED this 2<sup>nd</sup> day of October, 2014.

  
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David R. Olsen

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The above Stipulated Agreement is approved by:

DATED this 7<sup>th</sup> day of October, 2014. Jacob A. Reynolds  
FOR DAVID R. OLSEN, Subject  
Jacob Reynolds, Esq.  
Counsel for Subject

DATED this 13<sup>th</sup> day of October, 2014. Jill C. Davis  
FOR CAREN CAFFERATA-JENKINS,  
Executive Director, Commission on Ethics  
Jill C. Davis, Esq.  
Associate Counsel

DATED this 13<sup>th</sup> day of October, 2014. Yvonne M. Nevarez-Goodson  
FOR NEVADA COMMISSION ON ETHICS  
Yvonne M. Nevarez-Goodson, Esq.  
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.<sup>2</sup>

DATED September 10, 2014.

By: /s/ Paul Lamboley  
Paul H. Lamboley  
Chairman

By: /s/ Gregory J. Gale  
Gregory J. Gale  
Vice-Chairman

By: /s/ Johns C. Carpenter  
John C. Carpenter  
Commissioner

By: /s/ Magdalena Groover  
Magdalena Groover  
Commissioner

By: /s/ Timothy Cory  
Timothy Cory  
Commissioner

By: /s/ Cheryl A. Lau  
Cheryl A. Lau  
Commissioner

By: /s/ James M. Shaw  
James M. Shaw  
Commissioner

By: /s/ Keith A. Weaver  
Keith A. Weaver  
Commissioner

<sup>2</sup> Olsen waived his right to an Investigatory Panel pursuant to NRS 281A.440. Accordingly, this Stipulated Agreement was executed prior to a Panel hearing in this matter and no Commissioner was precluded from participating in this Stipulated Agreement pursuant to NRS 281A.220.