



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
For Opinion Concerning the Conduct of  
**Mark Hutchison**, Senator, State of  
Nevada,

Request for Opinion No. **14-43C**

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

**STIPULATED AGREEMENT**

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-43C before the Nevada Commission on Ethics (“Commission”) concerning Mark Hutchison (“Subject”), Senator, State of Nevada, and serves as the final opinion in this matter.

2. **JURISDICTION:** At all material times Subject was an elected member of the Nevada Senate. As a State Senator, Subject is a public officer as defined in NRS 281A.160 and a “State Legislator” or “Legislator” as defined in NRS 281A.165. Within the context of NRS Chapter 281A, the Nevada Commission on Ethics (“Commission”) has jurisdiction over the conduct of public officers pursuant to NRS 281A.280. The Commission’s jurisdiction regarding State Legislators has been limited to conduct outside of the realm of “core legislative functions” and actions not otherwise protected by legislative privilege and immunity by the Nevada Constitution or NRS 41.071. (See *Comm’n on Ethics v. Hardy*, 125 Nev. 285, 212 P.3d 1098 (2009) and NRS 281A.020(2)(d)).

3. **PROCEDURAL HISTORY BEFORE COMMISSION:**

a. On or about April 21, 2014, the Commission received this RFO from a private citizen alleging that Subject failed to comply with NRS 281A.410, requiring public officers to file annually with the Commission disclosures of any representation or counseling of a private person for compensation before an Executive Department agency, by providing the name, the nature of any representation or counseling and the name of the state agency (Annual Representative Disclosure or “ARD”). Subject’s 2013 ARD

listed a client he represented and the nature of the representation before the Commission as “confidential.” The Commission’s investigation, conducted pursuant to NAC 281A.415, revealed that Subject’s 2013 and 2012 ARDs allegedly failed to include various other clients represented before the Commission. Therefore, the Commission’s Executive Director served Subject with an Amended Notice that expanded the allegations to include the 2012 and 2013 ARDs.

b. As required by NAC 281A.410, the Commission provided Subject with notice of the RFO by mail. Pursuant to NRS 281A.440(3), Subject was provided an opportunity to respond to the RFO and, pursuant to NAC 281A.415, Subject was provided the requisite additional time to respond to the Amended Notice.

c. Subject waived his rights to a response and panel determination pursuant to NRS 281A.440, and acknowledges that his status as a public officer imposes a duty to avoid conflicts between his private interests and those of the public he serves to protect the public trust and conform his conduct to NRS Chapter 281A. See NRS 281A.020, NRS 281A.410; see also *In re Woodbury*, Comm’n Opinion No. 99-56 (1999). This Stipulated Agreement promotes and clarifies the goals of the Ethics Law, in particular the ARD disclosure requirements under NRS 281A.410, and serves to educate all public officers similarly situated.

d. In lieu of a panel determination and a hearing, Subject and the Commission now enter into this Stipulated Agreement finding no violation of NRS 281A.020 or 281A.410 or any other Ethics in Government Laws.

4. **STIPULATED FACTS:**

The following events are relevant to this matter:

**Relevant Individuals and/or Entities**

- a) Subject is a member of the Nevada State Senate (Elected November 2012), and is an elected public officer and State Legislator as defined in NRS 281A.160 and NRS 281A.165, respectively.
- b) Subject is a licensed attorney in the State of Nevada, and has an equity interest in the law firm, Hutchison & Steffen, LLC.

- c) In 2012, Subject represented former North Las Vegas Mayor, Shari Buck (RFO 11-63C), for compensation, in a public Third-Party RFO before the Commission.
- d) In 2013, Subject represented Mark Lipparelli, former Gaming Control Board Chairman (“GCBC”), for compensation, in a confidential First-Party RFO before the Commission. (See NRS 281A.440(7) establishing the confidentiality of First-Party RFO).
- e) In 2013, Subject represented Clark County School District (“CCSD”) Trustee Carolyn Edwards (RFO 13-24C), for compensation, in a public Third-Party RFO before the Commission.
- f) In 2013, Subject represented CCSD employee Joyce Haldeman (RFO 13-25C), for compensation, in a public Third-Party RFO before the Commission.

***The 2012 ARD***

- g) On January 14, 2013, Subject filed his ARD for calendar year 2012 (“2012 ARD”) with the Commission.
- h) In the 2012 ARD, under the Nature of Representation section, Subject stated “Represented one or more clients before the State Bar of Nevada”<sup>1</sup> and “Represented one or more clients before the Nevada Commission on Ethics.” He does not mention the name of his client in either section (Buck).

***The 2013 ARD***

- i) On January 15, 2014, Subject filed his ARD for calendar year 2013 (“2013 ARD”) with the Commission.
- j) The 2013 ARD contained only one disclosure, and stated that the required name of the client and nature of the representation before the Commission was confidential.
- k) The 2013 ARD lacked any reference to more than one matter before the Commission when in fact there were three representation matters before the Commission in 2013 (GCBC, Edwards and Haldeman).

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<sup>1</sup> A public officer is not required to disclose representation before the State Bar, as it is not an Executive Branch Agency.

- l) Subject did not list GCBC's name in order to preserve his client's right to confidentiality of the underlying First-Party RFO, which by law is required to be kept confidential. (NRS 281A.440(7))

**Amended ARDs for 2012 and 2013**

- m) On June 26, 2014, after learning of Commission staff's expectation to provide an Amended Notice to Subject of additional facts and circumstances, Subject, by and through his counsel, filed an Amended 2012 ARD listing the Shari Buck matter and Amended 2013 ARD listing the CCSD matters, Haldeman and Edwards, in a good faith effort to resolve the concern. The Subject understood those matters to have been effectively disclosed by the public nature of those matters.
- n) Subject, however, maintained GCBC's name in confidence until the Commission could confirm the preservation of confidentiality of GCBC's underlying RFO.
- o) Upon confirmation by the Commission through this Stipulated Agreement of continued confidentiality of the underlying RFO, GCBC agreed to allow Subject to disclose his name, and a Second Amended Disclosure was filed on November 19, 2014.

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

- a) Each of the findings of fact enumerated in Section 4 is deemed to be true and correct.
- b) Subject holds public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada.
- c) Subject timely filed 2012 and 2013 ARDs. Upon filing, the Commission accepted the ARDs but did not otherwise review, inform or notify Subject that he failed to provide all of the required information contemplated by NRS 281A.410 to put the public on notice of who he represented, and the nature of the representation before the Commission.
- d) Subject, therefore, was unaware that his ARDs were not in compliance with NRS 281A.410 until the Third-Party RFO was filed in this matter.

- e) Subject has worked diligently and in good faith with the Commission to respond to the RFO, and has been proactive in his attempt to fully clarify and comply with NRS 281A.410 to prevent any future concerns regarding the proper separation of public and private interests pursuant to NRS 281A.020.
- f) Upon the amended notification by Commission staff that the 2012 and 2013 ARDs failed to disclose the names of Buck, Edwards and Haldeman, Subject promptly filed, through counsel, Amended 2012 and 2103 ARDs.
- g) The Amended 2013 ARD did not list the GCBC's name but did accurately identify that the representation was a confidential First-Party Request for Opinion pursuant to NRS 281A.440(7), which requires that First-Party RFOs remain confidential unless waived by the requestor. At the time of filing the amended 2013 ARD, the GCBC had not waived his right of confidentiality and Subject believed he was unable to voluntarily file an amended ARD disclosing the GCBC's name and nature of the representation if it would violate the GCBC's right to confidentiality under the Ethics in Government Law.
- h) This Stipulated Agreement provides further opportunity for the Commission to advise Subject and all other public officers regarding NRS 281A.410 and the requirements of agency representation disclosure.
- i) The ethical catch-22 regarding the ARD requirements was discussed when the disclosure requirement was initially presented to the Legislature. The need for "bright lines" for citizen legislators focused on the need to prevent and avoid conflict, as this legislation is explained.

SENATOR WILSON: This bill was discussed and considered by the Commission with an eye not to with the intent at all of limiting what, a system and a principle that's taken seriously in this State and that's the value of a citizen legislature. This bill is offered with the intent and purpose of protecting that institution. And it was our view that the way you protect the institution of a citizen legislature is not to leave public officers subject to a lack of clear rules, a lack of ways of resolving conflicts between private interests and public duty, and you always have them. That's inherent and implicit in a citizen legislature. The way you protect the public officer and the way you preserve the tradition of a citizen legislature, would seem to us, was to deal on the merits of how best to define, how best to advise, how best to prevent and avoid the conflict which later proves embarrassing to the public officer and, in the worst case, compromising of the public institution.

(Assembly Bill 190 – Excerpt of Minutes for Committee on Legislative Functions and Elections on March 5, 1991)

j) NRS 281A.410(5) [formerly NRS 281A.410(3)] mandates:

5. Not later than January 15 of each year, if any State Legislator, member of a local legislative body or other public officer permitted by this section has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Department, he or she shall disclose for each such representation or counseling during the previous calendar year:

- (a) The name of the client;
- (b) The nature of the representation; and
- (c) The name of the state agency.

NRS 281A.410(5) [formerly NRS 281A.410(3)].

- k) The Commission has previously discussed the need for transparency regarding identifying the names of clients and the nature of representation when filing an agency representation form pursuant to NRS 281A.410(5) [formerly NRS 281A.410(3)] stating: “[t]he disclosure is intended to provide transparency about the bodies before which the public officer appears, and the clients who have paid him to appear. The public thus needs to know both the identity of the client and the nature of the representation; neither can remain confidential.” See *In re Public Officer*, Comm’n Opinion No. 10-97A (2012).
- l) Although Subject timely filed his ARDs initially, those ARDs did not fully comply with NRS 281A.410. However, because the Commission accepted the 2012 and 2013 ARDs and did not inform Subject of his non-compliance regarding insufficient disclosure when the forms were filed, the Commission does not find a violation of NRS 281A.410 or NRS 281A.020.
- m) As the Commission has researched this matter internally and reviewed policies of other similarly situated state agencies that require disclosure forms and allow for amendments to those forms, the Commission believes that this stipulated resolution is more in keeping with the general policy of other similarly situated administrative agencies to allow for disclosure forms to be corrected.
- n) Although the Commission finds no violation of the Ethics in Government Law in this matter because of the filing of the amended ARDs, the Commission reiterates that a public officer must disclose the name of the client, nature of

the representation, and name of the state agency, without exception. This includes representation of a client before the Commission regarding First-Party RFOs that are confidential pursuant to NRS 281A.440(7). The purpose of filing an ARD is to inform the public who the public officer has represented, the agency involved and the general topic of the representation. Public policy supports the need for disclosure. The Commission expounded, "... the Ethics Law requires a public officer to disclose certain information about the public officer's private interests. Such disclosures promote accountability and scrutiny of the conduct of government officials and are paramount to transparency and openness in government." (*In re Public Officer*, Comm'n Opinion No. 10-97A (2012)). Furthermore, the Commission put a finer point on disclosure stating: "[t]he disclosure is intended to provide transparency about the bodies before which the public officer appears, and the clients who have paid him to appear." (*See id.*)

- o) In this instance, the disclosure encompasses the who, the where and the why aspect of the representation without the need for the intimate and confidential details of the representation. (See NRS 281A.410(5) [formerly NRS 281A.410 (3)]).
- p) Based on the reading of NRS 281A.410(5), the filing of an ARD in a confidential First-Party RFO does not remove the confidential aspect of the RFO pursuant to NRS 281A.440(7) beyond the name of the client, nature of the representation, and name of the state agency. The statutes read in conjunction permit such a limited disclosure. This level of disclosure "promotes accountability and scrutiny of the conduct of government officials..." (*In re Public Officer*, Comm'n Opinion No. 10-97A (2012)). Disclosure of the names of such clients puts the public on notice of the public officer's potential conflicts of interest.
- q) A public officer who wishes to represent private clients before Executive Branch agencies does so now knowing that he must later disclose that client to the public. Therefore, the public officer would be obligated to inform the client of

his responsibilities as a public officer, and either obtain consent to disclose or refuse the representation.

- r) The Commission recognizes that “any time a lawyer accepts appointment to a commission or other public position and who continues to maintain a private law practice courts the very real possibility that those two occupations may at some point put him or her into a position of actual or potential conflict of interest or duty.” (*In re Public Officer*, Comm’n Opinion No. 10-97A (2012)).
- s) The public has a strong interest in knowing what private activities and pecuniary interests its public officials have where those activities intersect with public functions. The Ethics in Government Law requires transparency. While this requirement may place a small limit on a public officer’s private profession, and limit the public officer’s availability to represent clients such as GCBC, such limitation was deemed an acceptable balance by the Legislature to ensure transparency by public officers. (See Legislative History, Assembly Bill 190, Committee on Legislative Functions and Elections, March 5, 1991).
- t) The Commission uses this opinion to reconcile and harmonize the disclosures required in ARDs under NRS 281A.410(5) and the confidentiality available in First-Party RFOs under NRS 281A.440(7).
- u) The filing of a proper ARD that lists the name of the client, the nature of the representation, and the name of the state agency is required for both Third-Party and First-Party RFOs. However, the filing of a statutorily compliant ARD in a First-Party matter does not lift the veil of confidentiality to the underlying proceedings, which was a concern expressed by Subject. The underlying proceedings in a First-Party RFO remain confidential. The public policy of disclosure is achieved through compliance with NRS 281A.410, and the confidential nature of the underlying matter is preserved through NRS 281A.440(7).
- v) 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.

- w) 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.
- x) The Subject has promptly and readily worked with the Commission to resolve any alleged concerns.

6. **WAIVER:**

- a) Subject knowingly and voluntarily waives his right to an Investigatory Panel proceeding and any related hearing before the Commission on the allegations in this RFO (No. 14-43C) 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) Subject 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 November 19, 2014.

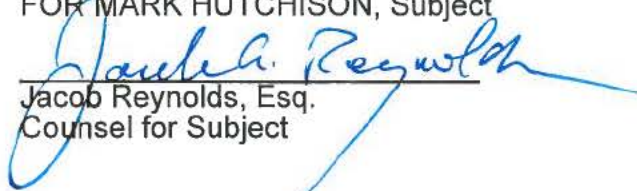
DATED this 25 day of November, 2014.

  
Mark Hutchison, Subject

The above Stipulated Agreement is approved by:

FOR MARK HUTCHISON, Subject

DATED this 25 day of November, 2014.

  
Jacob Reynolds, Esq.  
Counsel for Subject

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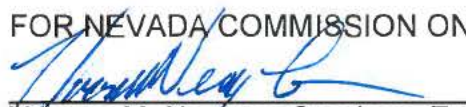
FOR THE EXECUTIVE DIRECTOR,  
Nevada Commission on Ethics

DATED this 8<sup>th</sup> day of December, 2014.

  
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Jill C. Davis, Esq.  
Associate Counsel

FOR NEVADA COMMISSION ON ETHICS

DATED this 4<sup>th</sup> day of December, 2014.

  
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Yvonne M. Nevarez-Goodson, Esq.  
Commission Counsel

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

DATED November 19, 2014.

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

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

By: /s/ John 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

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<sup>2</sup> Hutchison 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.