



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
For Opinion Concerning the Conduct of
Kelly Sweeney, Former Director of Labor
Relations, Las Vegas Metropolitan Police
Department, Clark County, State of
Nevada,

Request for Opinion No. **15-70C**

Subject. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 15-70C before the Nevada Commission on Ethics (“Commission”) concerning Kelly Sweeney (“Sweeney”), the former Director of Labor Relations at the Las Vegas Metropolitan Police Department (“Department”), and serves as the final opinion in this matter.
2. **JURISDICTION:** At all material times, Sweeney previously served as the Director of Labor Relations at the Department. As such, Sweeney is a former public employee, as defined in NRS 281A.180. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A establishes the Commission’s jurisdiction over the conduct of former public employees pursuant to NRS 281A.280. Accordingly, the Commission has jurisdiction over Sweeney in this matter.
3. **PROCEDURAL HISTORY BEFORE COMMISSION:**
 - a. On or about November 5, 2015, the Commission received this RFO from the Sheriff of the Department, Joseph Lombardo (“Sheriff Lombardo”), alleging that Sweeney violated Nevada’s Ethics Law, specifically NRS 281A.020(1), NRS 281A.400(1), NRS 281A.400(5), and NRS 281A.410, based upon her purported conduct when she became employed by the Las Vegas Police Protective Association (the “Association”) after retiring from the Department.

- b. The Commission did not accept jurisdiction of the allegations regarding potential violations of NRS 281A.020(1), NRS 281A.400(1), and NRS 281A.400(5) because the allegations were not supported by sufficient evidence as required by NAC 281A.400. As required by NAC 281A.410, the Commission provided Sweeney with proper notice of the RFO, stating that the Commission accepted jurisdiction to investigate the allegations regarding violations of NRS 281A.410. Pursuant to NRS 281A.440(3), Sweeney was provided an opportunity to respond to the RFO and did so through legal counsel on February 16, 2016.
- c. On or about June 30, 2016, the Commission issued a Notice of Additional Issues and Facts concerning additional allegations implicating NRS 281A.410(1)(b).
- d. Through counsel, Sweeney submitted a Response to the Notice of Additional Issues and Facts on August 5, 2016.
- e. Sweeney has waived her right to a panel determination pursuant to NRS 281A.440 and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.410(1)(b).
- f. In lieu of a panel determination and a hearing, Sweeney now enters into this Stipulated Agreement acknowledging her duty as a former public employee to commit herself to protect the public trust and conform her conduct to NRS Chapter 281A.

4. STIPULATED FACTS: At all material times, the following stipulated facts were relevant to this matter:

- a. In her former public capacity, Sweeney was employed by the Department between September 2001 and July 2015 as a Senior Analyst, Labor Relations Manager, and Director of Labor Relations.
- b. The Department is a local agency, as defined in NRS 281A.119, and is responsible for all police services within the City limits of the City of Las Vegas, Nevada and unincorporated areas of Clark County, Nevada.

- c. The Association is a private employee organization recognized under the Local Government Employee-Management Relations Act (“Act”) set forth in NRS Chapter 288 and represents active and retired police and corrections officers of the Department. The Association also represents deputy city marshals and municipal court marshals in matters covered by the Act who are employed by or retired from service with the City of Las Vegas.
- d. Pursuant to the provisions of the Act, the Department recognizes the Association as the exclusive representative of eligible Department employees for the purpose of collective bargaining.
- e. During Sweeney’s last 3 years with the Department, she served as the Department’s Director of Labor Relations, supervising six employees and planning and directing the operations of the Labor Relations Section.
- f. Sweeney’s job duties as Director of Labor Relations included:
 - 1) Preparing recommendations and advising Department staff on fact-finding proceedings, disciplinary appeals, grievance/arbitration appeals, negotiation subjects and potential liability;
 - 2) Negotiating collective bargaining agreements (“CBA” or “CBAs”) with unions representing different Department employee groups, including the Association;
 - 3) Conducting training of new Department supervisors on contract administration and disciplinary policies and procedures;
 - 4) Participating in the resolution of employee grievances, including grievances involving Association members; and
 - 5) Administering all CBAs at the Department to ensure compliance with the terms of the agreements.
- g. A Disciplinary Matrix was created in 2001 and is contained in the Managing Employee Performance & Conduct Handbook. The Matrix outlines the discipline and discharge procedures that supervisors and managers at the Department follow when an internal complaint is filed against an employee. The procedures contained in the Disciplinary Matrix are negotiated between the

Association and the Department as a subject of collective bargaining pursuant to NRS Chapter 288. Revisions to the Matrix were considered and agreed upon in February 2008, January 2012 and October 2012.

- h. The Collective Bargaining Agreement between the Department and the Association (“Department/Association CBA”) that became effective as of July 1, 2014 applies to all Department employees having a regular commissioned Civil Service appointment, excluding administrative employees, supervisory employees, confidential employees, and employees in other recognized bargaining units. Although the term of the Department/Association CBA ended on June 30, 2016, the CBA by its terms remains in full force and effect during negotiations for and until a successor agreement is finalized.
- i. Negotiations between the Department and the Association for a successor Department/Association CBA began in October 2015.
- j. A grievance procedure is established by the Department/Association CBA and applies to the various types of disputes that may arise between the Department and employees. Department employees have the right to appeal grievances in accordance with the terms of the CBA. Depending upon the type of dispute involved, grievances may be resolved by a Labor Management Board selected by the Department and Association or an arbitrator.

Sweeney’s Work at the Association

- k. In August 2015, Sweeney was contacted by Mark Chaparian (“Chaparian”), Executive Director of the Association, to discuss a possible employment opportunity for Sweeney at the Association.
- l. Sweeney commenced employment with the Association on October 5, 2015 as a part-time Director of Employee Relations, reporting directly to Chaparian and assisting the Association’s General Counsel, David Roger, Esq.
- m. Sweeney’s job duties at the Association include:
 - 1) Representing City of Las Vegas Deputies and Municipal City Marshals in grievance proceedings (occupies about 30% of Sweeney’s time).

- 2) Representing Association Members in grievance proceedings, including Labor Management Board (“LMB”) hearings.
 - 3) Responding to Citizen Review Board Complaints against Association members.
 - 4) Representing Association members in Pre-Termination Board hearings.¹
 - 5) Reviewing revised policies and drafting explanatory memoranda for Association members.
- n. The Association’s General Counsel, not Sweeney, was and is responsible for handling arbitration cases and providing legal interpretation of the CBAs for the Association and its members.
 - o. Sweeney is not a member of the Association’s negotiating team.
 - p. Between October 2015 and June 2016, Sweeney represented the Association in LMB cases that involved Association members (i.e. Department employees). It is Sweeney’s position that each of these LMB cases were not under consideration during her tenure at Department as they were not filed with the LMB until after she had retired.
 - q. Sweeney attended an October 27, 2015 meeting between the Department, the Association and two other labor associations to discuss possible changes to the Disciplinary Matrix. The meeting was canceled when the Department objected to Sweeney’s involvement with the Disciplinary Matrix on behalf of the Association.
 - r. On October 28, 2015 Sheriff Lombardo sent a letter to Sweeney expressing his concern that her employment with the Association violated the Ethics in Government Laws contained in NRS Chapter 281A. Sheriff Lombardo requested that the Association implement a screening procedure to ensure Sweeney did not counsel or represent the Association on any issues that were under consideration by the Department during her period of public employment.

¹ To date, Ms. Sweeney has not represented any Association members in Pre-Termination Board hearings.

- s. Pursuant to a confidentiality agreement signed by members of the Executive Board of the Association after this RFO was filed, Board members were not allowed to discuss the Association/Department CBA negotiations with Sweeney. Board members were also not allowed to consult with Sweeney about any grievance or pre-termination cases that were pending when Sweeney was employed by the Department.
- t. On October 28, 2015, General Counsel Roger sent a letter to Sweeney, Chaparian and the members of the Association's Executive Board advising about this RFO and the Ethics allegations against Sweeney. Roger explained that the Association had been diligent in screening Sweeney from participation on any cases that may have been pending when she worked at the Department.
- u. On June 14, 2016, Sweeney was advised of additional facts regarding her participation in LMB cases which potentially implicated NRS 281A.410(1)(b). On June 16, 2016, Sweeney voluntarily ceased participating in—and was screened from—all LMB cases involving Department employees. Sweeney resumed participation on such LMB cases after the one year “cooling-off” period applicable to her employment with the Department ended, which was on July 6, 2016.

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

- a. Each of the stipulated facts enumerated in this Stipulated Agreement are agreed to by the parties.² For purposes of the Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.
- b. Sweeney served as a public employee, which constituted a public trust to be held for the sole benefit of the people of the State of Nevada.
- c. To promote integrity in public service, the Commission is concerned with situations involving former public officers and employees that create the

² Stipulated Facts do not constitute part of the “Investigative File” as that term is defined by NRS 281A.440(17). All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- appearance of impropriety and conflicts of interest, as well as situations involving actual impropriety and conflicts. See *In re Maltman*, Comm'n Op. No. 12-66A (2012).
- d. The "cooling-off" provisions of the Ethics Law are intended to discourage former public officers and employees from using opportunities, information, relationships, or experience gathered from their former public service to benefit them in their private capacity. See *In re Zingre*, Comm'n Op. No. 14-66A (2014). Therefore, if a former public officer or employee accepts employment with a private person or business, that employee may not share the information that was accessible to or acquired by him during his service with a public agency on any issues which were under consideration by that agency during the period of public service. See *In re Public Officer*, Comm'n Op. No. 87-04 (1987) (interpreting former NRS 281A.410(1)).
 - e. Although Sweeney's employment with the Association was not prohibited by the Ethics Law because the Association was not a business or industry regulated by the Department, she was nevertheless prohibited, for one year following her employment with the Department, from representing or counseling the Association or any other private person upon any issues that were under consideration by the Department during her tenure pursuant to NRS 281A.410(1)(b). See *In re Former Public Employee*, Comm'n Op. No. 13-29A (2013); *In re Public Employee*, Comm'n Op. No. 11-96A (2012).
 - f. NRS 281A.410(1)(b) provides that an "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.
 - g. The Ethics Law seeks to prohibit and protect against the possibility that the Association and any other private entity could benefit in labor relations matters involving the Department by hiring Sweeney, who formerly oversaw the labor relations function at the Department. See, e.g., *In re Former Public Officer*, Comm'n Op. No. 13-29A (2013). Sweeney's former employment with the

Department provides potential benefits to the Association and its members, particularly in the area of labor relations.

- h. Despite Sweeney's good faith effort to avoid working on any issues on behalf of the Association that were under consideration by the Department during her public employment, the preponderance of evidence supports a finding that Sweeney was representing or advising the Association regarding two LMB cases that were under consideration when she worked at the Department. Under the circumstances presented in this RFO, these two LMB cases constituted issues "under consideration" because either (1) the underlying facts at issue in the disciplinary matter occurred during Sweeney's period of employment with the Department; or (2) prior disciplinary matters occurred during her period of employment with the Department that are relevant to the current disciplinary matter (e.g., prior discipline).³
- i. Sweeney's actions are deemed to be a single course of conduct resulting in one violation of NRS 281A.410(1)(b).
- j. Based upon the consideration and application of the statutory mitigating criteria set forth in NRS 281A.475, the Commission concludes that Sweeney's violation in this case should not be deemed a "willful violation" as defined by NRS 281A.170, and the imposition of a civil penalty pursuant to NRS 281A.480 is not appropriate for the reasons that follow:
 - 1) Sweeney has not previously been the subject of any violation of the Ethics Law;
 - 2) Sweeney was not aware that her representation of Association members in LMB cases might implicate the Ethics Law, and she took steps in good faith to mitigate violations when she was notified that her work at the Association may implicate NRS 281A.410. The Commission is satisfied that Sweeney did not intend to violate NRS 281A.410(1)(b).

³ The Commission has not previously had the opportunity to apply the provisions of NRS 281A.410(1)(b) to a similar fact pattern, but now expresses that a disciplinary matter, under the presented circumstances, constitutes an "issue under consideration" for application of the statute.

- 3) Sweeney has been diligent to cooperate with and participate in the Commission's investigation of this matter, as well as the resolution process and has been proactive in her attempt to comply with NRS 281A.410.
- k. Allegations related to other conduct by Sweeney are not supported by sufficient, credible evidence to support a violation of NRS 281A.410 by a preponderance of evidence as required by NRS 281A.480(9), and they are therefore dismissed through this Stipulated Agreement.
- l. This Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to this RFO and the Notice of Additional Issues and Facts 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.
- m. 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 Sweeney.

6. WAIVER:

- a. Sweeney knowingly and voluntarily waives her right to an Investigatory Panel proceeding and a full hearing before the Commission on the allegations in this RFO and the Notice of Additional Issues and Facts (No. 15-70C) and of any and all rights she 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. Sweeney knowingly and voluntarily waives her right to any judicial review of this matter as provided in NRS 281A, NRS 233B, or any other applicable provisions of law.

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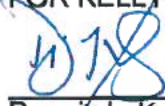
7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of the Commission on October 19, 2016.

DATED this 20 day of October, 2016.


Kelly Sweeney

The above Stipulated Agreement is approved by:

DATED this 24th day of October, 2016.

FOR KELLY SWEENEY, Subject

Dennis L. Kennedy, Esq.
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
Executive Director, Commission on Ethics

DATED this 24th day of October, 2016.


Judy A. Prutzman, Esq.
Associate Counsel

Approved as to form by:

DATED this 24th day of OCTOBER, 2016.


Tracy L. Chase, Esq.
Commission Counsel

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The above Stipulated Agreement is accepted by the Commission.⁴

DATED October 19, 2016

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

By: /s/ Barbara Gruenewald, Esq.
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

By: /s/ Dan Stewart
Dan Stewart
Commissioner

⁴ Sweeney waived her 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.