

# NEVADA COMMISSION ON ETHICS

## ANNUAL REPORT OF THE EXECUTIVE DIRECTOR



FISCAL YEAR 2005

Stacy M. Jennings, MPA  
*Executive Director*



State of Nevada  
**COMMISSION ON ETHICS**

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*Chairman*  
Caren Jenkins, Esq.  
*Vice Chairman*

*Members:*  
Timothy Cashman  
William Flangas, P.E.  
Mark A. Hutchison, Esq.  
George Keele, Esq.  
James Kosinski, Esq.

June 30, 2005

Members of the Nevada Commission on Ethics:

*Nevada Administrative Code* 281.053(2) requires the Executive Director to report on the state of the affairs of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year. This report is presented to meet the requirements therein.

Fiscal Year 2005 has been both busy and productive for your staff. In addition to the challenges of an ever-burgeoning request for opinion caseload the Commission was audited by the Fiscal Division of the Nevada Legislative Counsel Bureau, worked diligently to prepare the next biennial budget for consideration by the 2005 Nevada Legislature, participated in the 2005 legislative session, and relocated its Carson City office.

The staff appeared before the legislative Interim Finance Committee in September, 2004, and received approval and funding for a new legal research staff person based in a new Las Vegas office to serve the rapidly growing population in Clark County. The Executive Director is especially appreciative of Governor Kenny Guinn and his staff for their support in this effort, and to members of the Nevada Legislature for providing these essential resources during the middle of a budget cycle.

It has been my pleasure to serve as your Executive Director for the past three years. With this report, be assured your staff continues its commitment to preserving the integrity of ethics law in the State of Nevada. The staff truly appreciates your continued support and confidence.

Respectfully submitted,

Stacy M. Jennings, MPA  
Executive Director

# ANNUAL REPORT FISCAL YEAR 2005

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# Nevada Commission on Ethics

as of June 30, 2005

## Chairman

Rick R. Hsu, Esq., (R) \*  
Reno  
Term: 07/01/04 – 06/30/08

## Vice Chairman

Caren Jenkins, Esq. (D) \*\*  
Carson City  
Term: 10/01/03 – 09/30/07

## Members

Vacant \*\*  
Term: 10/01/05 – 09/30/09

Timothy Cashman (D) \*  
Las Vegas  
Term: 06/11/04 – 10/31/07

William Flangas, P.E. (D) \*  
Las Vegas  
Term: 10/01/03 – 09/30/07

Mark A. Hutchison, Esq. (R) \*  
Las Vegas  
Term: 01/06/04 – 06/30/07

George M. Keele, Esq. (R) \*\*  
Minden  
Term: 10/01/03 – 09/30/07

James Kosinski, Esq. (D) \*\*  
Reno  
Term: 07/01/04 – 06/30/08

\* Appointed by Governor

\*\* Appointed by Legislative Commission

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## **Commission Mission:**

The mission of the Nevada Commission on Ethics is to enhance the faith and confidence that the people of the State of Nevada have in the integrity and impartiality of public officers and employees by:

- enforcing guidelines set forth by the Legislature to separate the roles of persons who are both public servants and private citizens; and
- ensuring that public officers and public employees retain the public trust by exercising their powers and duties for the sole benefit of the people of the State of Nevada.

## **Commission Description:**

The Commission on Ethics was established by the Nevada Legislature in 1975, and is charged with ensuring the public trust in elected and appointed public officers and employees. The Commission performs four main functions in this role:

1. Interpreting and providing guidance to public officers and employees on the provisions of Nevada Revised Statutes 281.411 through 281.581 (Ethics in Government Law);
2. Investigating and adjudicating third-party ethics complaints against public officers and employees for violating the provisions of NRS 281.411 through 281.581;
3. Educating public officers and employees regarding ethical provisions and prohibitions under Nevada law; and
4. Accepting financial disclosure statements of certain public officers.

The Commission is an independent legislative-executive commission of state government which serves in a quasi-judicial capacity. Pursuant to NRS 281.455, the Commission has eight members, four of which are appointed by the Legislative Commission and four of which are appointed by the Governor. The members serve four-year terms.

Of the four members named by each appointing authority, at least two must be former public officers and one must be an attorney. All Commissioners must be Nevada residents. Not more than four members of the commission may be members of the same political party, and not more than four members may be residents of the same county. In this way, the Commission was designed to provide a fair division between political parties, to avoid favoritism to any single party, and to provide an equitable balance between the urban and rural areas.

While serving on the commission, NRS 281.455 prohibits Commissioners from: 1) holding another political office; 2) being actively involved in the work of any political party or campaign; and 3) communicating directly with a member of the legislative branch on behalf of someone other than himself or the commission for compensation.

## Commission History:

The Nevada Legislature adopted its first Ethics in Government Law in 1975. Three public officers challenged the constitutionality of the financial disclosure provisions of the law as unconstitutionally vague and an overbroad intrusion upon their right to privacy. John Sheehan, then Executive Director of the Department of Taxation; Jerome Mack, then Chairman of the Nevada Tax Commission; and Harley Harmon, then a member of the Nevada State Board of Finance, took the case to the Nevada Supreme Court where on April 29, 1976 the Court voided the financial disclosure provisions of the law. Further, the Court ruled the entire Ethics in Government Law invalid by presuming the Legislature would not have passed the remaining portions of the law without the provisions for financial disclosure (*Dunphy v. Sheehan*, 92 Nev. 259, 549 P.2d 322 1976).

The 1977 Nevada Legislature enacted Assembly Bill 450, which declared it public policy of the State of Nevada that a public office is a public trust and shall be held for the sole benefit of the people. Further, that public officers and employees must commit themselves to avoid conflicts between their private interests and those of the general public whom they serve. Codified as *Nevada Revised Statutes* 281.411 through 281.581, the Ethics in Government Law sets forth a code of ethical standards and prohibits activities in which a public officer or employee could use their position in government to gain personally or financially. The law also creates the Nevada Commission on Ethics to enforce the code.

Though the enforcement process results in the assessment of civil penalties for willful violations of ethics laws, the Commission is also required by NRS 281.551 to refer elected public officers for removal or impeachment. For the majority of elected public officers, the Commission has discretion regarding a referral for removal from office by a district court upon the finding of one willful violation of ethics laws; however, upon the finding of three willful violations, the Commission must refer the elected public officer for removal by a district court.

Legislators and public officers elected to positions established by the Nevada Constitution are held to a higher standard. Upon finding one willful violation of ethics laws, the Commission must refer these public officers for consideration of impeachment proceedings.

In September 2004, the Commission found State Controller Kathy Augustine willfully violated ethics laws three times and filed a report regarding same with the Nevada Assembly. Governor Kenny Guinn convened a special session of the Nevada Legislature in November 2004, and the Nevada Assembly unanimously passed articles of impeachment. The Nevada Senate found Controller Augustine guilty of one of the three articles of impeachment and issued a formal censure in early December. Ms. Augustine was the first public officer to be referred for removal or impeachment by the Commission, and was also the first public officer in Nevada history to be impeached.

## **Statutory Authorization:**

The Commission on Ethics enforces the provisions of *Nevada Revised Statutes* Chapter 281 - known as the Ethics in Government Law (see NRS 281.411 through 281.581). Commission regulations can be found in *Nevada Administrative Code* Chapter 281.

In establishing the Commission on Ethics, the Nevada Legislature declared its intent in NRS 281.421:

- “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 to avoid conflicts between his private interests and those of the general public whom he serves.
2. The legislature finds 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.
  - (c) Members of the legislature serve as “citizen legislators” who have other occupations and business interests. Each legislator has particular philosophies and perspectives that are necessarily influenced by the life experiences of that legislator, including, without limitation, professional, family and business experiences. Our system assumes that legislators will contribute those philosophies and perspectives to the debate over issues with which the legislature is confronted. The law concerning ethics in government is not intended to require a member of the legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.”

## **Request for Opinion Caseload:**

Approximately 43 percent of all written requests for opinion received by the Commission originate from southern Nevada (33 of 76 written complaints). The majority of requests for opinion are ethics complaints. In Fiscal Year 2005, only 9 percent of requests for opinion sought advisory guidance from the Commission.

Additionally, the number of purely frivolous complaints filed with the Commission has declined. In Fiscal Year 2003, only 26 percent of filed complaints met the statutory jurisdictional requirements for investigation. In Fiscal Year 2004, this percentage rose to 48 percent. In Fiscal Year 2005, 58 percent of filed complaints have proceeded to the investigation stage.

	Actual FY 2004	Actual FY 2005	Projected FY 2006	Projected FY 2007
Opinion requests received	67	76	95	100
Percent of requests for opinion filed which are investigated	48%	58%	53%	55%
Percent of investigations completed in 45 days	18%	0%	25%	50%
Percent of Commission opinions under judicial review	13%	10%	8%	6%
First-party advisory opinion requests	15	7	25	25
Third-party opinion requests (ethics complaints)	51	69	70	73
Campaign practices opinion requests	1	0	n/a	n/a
Requests for opinion pending	18	28	-	-

Each incoming complaint must be reviewed by legal counsel to determine whether the person is in fact a public officer or employee pursuant to statute, and to evaluate the essence of the complaint prior to accepting jurisdiction. Some complaints must be returned to the requestor because the Commission lacks jurisdiction to investigate. The reasons for this could vary – the subject does not meet the definition of a public officer or employee, the complaint does not have sufficient credible evidence to open an investigation, or the complaint does not allege a violation of the ethics in government law (rather, it might allege an open meeting law violation or an elections law violation). Often, it takes significant staff time to review each incoming complaint and to either accept jurisdiction or to officially decline jurisdiction. This is an area where limited staff resources have resulted in a backlog.

Jurisdiction Backlog	Number of No Jurisdiction Determinations	Range of Days Between Filing Date and Notification of No Jurisdiction Mailed	Average Number of Days to Send No Jurisdiction Letters
Calendar Year 2002	20	1 to 3 days	Less than 2 days
Calendar Year 2003	49	1 to 25 days	14.5 days
Calendar Year 2004	50	1 to 115 days	35 days

Once the Commission accepts jurisdiction, the Executive Director has 45 days to complete an investigation and convene a panel proceeding to evaluate her recommendations regarding just and sufficient cause pursuant to NRS 281.511(3). Due to the increased volume of incoming requests for opinion, the Commission staff has not met its 45-day statutory timeframe for investigations in any cases during the past fiscal year. It is envisioned that, with the additional two staff positions, the staff will be able to clear our backlog in cases and meet the statutorily mandated timeframes for investigations.



<b>Investigations Backlog</b>	<b>Average Days Between Filing Date and Panel Proceeding</b>	<b>Range of Days Between Filing Date and Panel Proceeding</b>	<b>Percent of Investigations Taking Greater Than 45 Days *</b>
<b>Calendar Year 2002</b>	60 days	26 to 95 days	40 percent
<b>Calendar Year 2003</b>	71 days	28 to 157 days	42 percent
<b>Calendar Year 2004</b>	178 days	46 to 342 days	100 percent

\* Presently, the Commission has 28 open investigation files. It is projected that none of these cases will be investigated within 45 days.

## **Public Education and Information Activities:**

The Commission strongly believes that compliance with Nevada ethics law begins with the provision of effective educational programs and active public information efforts for public officers, employees, and the general public. The Commission accomplishes these goals through the provision of proactive educational programs to increase understanding and compliance with Nevada law among public officers and employees in state, county, and city government, as well as the continued expansion of the Commission web site and the development of electronic publications to educate and inform the public about the Nevada Ethics in Government Law.

The 2005 Nevada Legislature considered legislation which would have mandated newly elected and appointed public officers to complete ethics law training conducted by the Commission within their first six months in public office. The legislation passed the Nevada Assembly, but did not make it out of the Senate Finance Committee. Regardless, statute presently requires the Executive Director to conduct training regarding ethics law and Commission opinions upon the request of any public officer or public employer (see NRS 281.4635(1)(e)). These educational sessions are conducted utilizing a powerpoint presentation, and provide for both personal interaction and participant question and answer sessions. The sessions average between 60 to 90 minutes.

The Commission web site will also be expanded in the near future. By mid-July, the biennial versions of the *Nevada Revised Statutes* dating back to 1977 should be on-line for ethics opinion researchers to utilize in conjunction with previously issued opinions. Additionally, the *Ethics Manual*, *Guide to Nevada's Ethics in Government Law*, and *Guide to Nevada's Financial Disclosure Law* are under revision and will be published on the web site upon completion. The staff is also updating its *Ethics Opinion Digest*, last published in 1996, and will publish the revised *Digest* on-line as well.

In addition to opinions, the last year also saw the publication of panel determinations and just and sufficient cause reports on the web site. Presently the reports are only posted for cases during calendar year 2003 and newer; however, older reports may be posted as well. Additionally, the Commission has electronic versions of all financial disclosure statements filed with the Commission since calendar year 2000, and is working in conjunction with web site

experts at the Secretary of State's office to publish these electronic files to the Commission web site.

	Actual FY 2004	Actual FY 2005	Projected FY 2006	Projected FY 2007
<b>Educational programs held</b>	20	15	20	15
<b>Percent of education programs evaluated as relevant, useful, and well-prepared</b>	94%	95%	96%	97%
<b>Annual web hits</b>	127,511	242,791	133,000	136,000
<b>Average web site hits per day</b>	346	663	550	650
<b>Average web site session length</b>	14 min	14 min	14 min	15 min
<b>Average number of web site users Per day</b>	104	142	125	135
<b>Average percentage of repeat web site users per month</b>	26%	32%	30%	32%

## Legislative Report:

The Nevada Legislature met between February and June, 2005, for its biennial legislative session. Four bills which affect ethics law were passed by the Legislature and enacted by the Governor: Assembly Bill 39, Assembly Bill 64, Assembly Bill 499, and Assembly Bill 500.

Two significant policy changes resulted. First, amendments were made to the provisions of NRS 281.551(6) relating to 'willful' violations of the Ethics in Government Law. This statute provided that ethics violations by public officers or public employees were not willful if said public officer or employee:

1. Relied in good faith upon the advice of the legal counsel retained by the public body or agency;
2. Was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and
3. Took action which was not contrary to a prior published opinion of the Commission.

Assembly Bill 64 shifts the burden from the Commission to the public officer or public employee to establish that all three such actions were taken. Now, a public officer or employee must establish *by sufficient evidence* that he satisfied all three requirements to overcome the new statutory presumption that his actions are willful.

Second, Assembly Bill 499 repeals the provisions of the campaign practices act in its entirety effective October 1, 2005. This act allowed the Commission to accept complaints against a person who:

1. Caused to be published a false statement of fact concerning a candidate;
2. Acted with actual malice in causing the false statement to be published;

3. Acted with the intent to impede the success of the campaign of a candidate; and
4. Impeded the success of the campaign of a candidate.

The statute contained similar provisions regarding persons impeding the success of a ballot measure. Violations were subject to up to a \$5,000 civil penalty.

A complete summary of the bills may be found under Appendix B of this report.

## **Litigation Report:**

The Commission has two legal challenges pending in courts within Nevada.

### Michael Mack v. NCOE

Petition for Judicial Review of *NCOE Opinion No. 03-40*, issued June 16, 2004 to Las Vegas City Councilman Michael Mack. Oral arguments were heard in Clark County District Court on June 28, 2005, which resulted in a ruling for Mr. Mack. The Commission will consider an appeal in this matter.

### Oscar B. Goodman v. NCOE

Petition for Judicial Review of *NCOE Opinion No. 04-05*, issued December 28, 2004 to Las Vegas Mayor Oscar B. Goodman. The petitioner has yet to file his opening brief.

Additionally, two significant court opinions were issued during the past fiscal year.

### Nevada Press Association, et al. v. NCOE

The campaign practices act, contained in NRS 281.477, NRS 294A.345 and 294A.346, allows the Commission to accept complaints against a person who:

- Caused to be published a false statement of fact concerning a candidate;
- Acted with actual malice in causing the false statement to be published;
- Acted with the intent to impede the success of the campaign of a candidate; and
- Impeded the success of the campaign of a candidate.

NRS 294A.346 contains similar provisions regarding impeding the success of a ballot measure.

The plaintiffs sought a determination (1) that NRS 294A.345 is facially invalid under the First and Fourteenth Amendments of the United States Constitution as an impermissible prior restraint of protected speech; (2) that NRS 294A.345 is unconstitutionally overbroad because it permits punishment of protected speech; (3) that NRS 294A.345 and NRS 281.477 violate due process; (4) that NRS 294A.345 violates the Equal Protection Clause of the Fourteenth Amendment; and (5) that NRS 294A.345 violates separation of powers. The plaintiffs were the Nevada Press Association and its executive director, the American Civil Liberties Union and its executive director, the Nevada Republican Liberty Caucus and its chairperson, the *High Desert Advocate* (a newspaper) and its editor, and three elected officials: Chris Giunchigliani, Wendell Williams, and Bob Beers. The defendants were the Nevada Commission on Ethics and its members in their official capacities. The parties filed cross-motions for summary judgment.

On March 26, 2005, the U.S. District Court in Las Vegas rendered a decision regarding the constitutionality of the provisions of the campaign practices act in the matter of *The Nevada*

*Press Association, et. al, v. Nevada Commission on Ethics, et. al.* In his decision, Judge Lloyd George declared that violations of NRS 294A.345 vis-à-vis the process established pursuant to NRS 281.477 violate the due process guaranteed under the 14th Amendment of the U.S Constitution. Therefore, the statute was declared unconstitutional on its face, and the Commission was enjoined from enforcing the statute. Judge George also raised concerns regarding the Commission as the enforcement body for such violations. The Commission did not appeal the order.

Subsequent to issuance of the George order, the 2005 Nevada Legislature passed Assembly Bill 499, which repeals the campaign practices statute in its entirety effective October 1, 2005.

*Nevada Commission on Ethics v. Ballard, et al.*

Nevada Supreme Court appeal regarding a district court order concluding that the Nevada Commission on Ethics lacked the power to (1) determine whether a political candidate's financial disclosure statement was adequate, or (2) seek fines against any of the respondents who timely filed a statement. First Judicial District Court, Carson City; William A. Maddox, Judge. Nevada Supreme Court opinion issued December 17, 2004.

Respondents were candidates for public office in Nevada's 2002 general election. Under NRS 281.561(1), each respondent was required to file a financial disclosure statement with the Commission. NRS 281.571(1) prescribes the statement's contents: length of residency, sources of income, real estate holdings, names of creditors, gift information, business holdings, and the titles of any public offices held at the time. The Commission distributed "Financial Disclosure Statement" forms that elicited this information.

Instead of filling out the forms and providing the information requested, each respondent filed with the Commission a "Notice in lieu of Statement of Financial Disclosure" and/or simply wrote on the form, "I plead the 5th" or "See Notice." The notices were nearly identical to each other, asserting that the Commission is "violative of unalienable God given rights" and part of a conspiracy to "establish a Civil Religion." The notices also provided various commentary upon or questions regarding the statutorily required information. For instance, the notices stated that only gold or silver is "income," and that the signatory respondent had no income to report because he or she had received no gold or silver. The notices also asked the Commission to define the symbol "\$," to indicate whether real property "under the control of the Federal government" is "under the jurisdiction of the State of Nevada," and to indicate whether the form's reference to "this state" is to "Nevada, a state of the union or the corporate STATE OF NEVADA?"

The Commission found that respondents violated NRS 281.561 and notified respondents that they were subject to civil penalties under NRS 281.581 for failing to file financial disclosure statements. Following a hearing to consider any requests to waive or reduce the penalties, the Commission voted to seek a judicial declaration as to whether respondents' filings were statutorily sound.

Ultimately, the Commission petitioned the district court under NRS 43.100 to examine and determine the Commission's authority to decide whether respondents had filed financial disclosure statements and to impose civil penalties against respondents. Respondents opposed the petition. The district court concluded that the Commission's authority was limited to reviewing the filings for timeliness, and that any authority to determine the adequacy of a filing

would need to be granted by the Nevada Legislature. Consequently, the district court ruled that the Commission could not fine any respondent who timely filed a “financial disclosure document.” The Commission appealed.

The Nevada Supreme Court concluded the Commission was vested by statute with the power to determine the adequacy of a candidate’s financial disclosure statement. Further, the high court concluded the Commission had the power to seek the statutorily-accrued civil penalties against respondents. Respondents’ Notices in Lieu of Statement of Financial Disclosure and related filings were so devoid of the necessary information that they could not be considered financial disclosure statements.

Respondents contended that they cannot be penalized because the disclosure statutes are unconstitutional. Specifically, respondents argued the statutes are vague, have a chilling effect on respondents’ rights of religion, speech and assembly, and violate the Fourth and Fifth Amendments to the United States Constitution. The Court found these arguments lacked merit.

First, “[t]he vagueness doctrine is based upon the principle that ‘a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.’” There is nothing vague about statutes that require a candidate for public office to “file with the Commission . . . a statement of financial disclosure” that recites “length of residence,” “source[s] of income,” “real estate [interests],” “name[s] of . . . creditor[s],” “gifts,” “business entity [interests],” and “public offices presently held,” and that impose a civil penalty on “[a] candidate . . . who fails to file his statement of financial disclosure in a timely manner.”

Second, respondents offered no evidence to show that the financial disclosure statutes had a chilling effect on the exercise of any First Amendment rights. Consequently, the Court did not reach the issue.

Finally, the financial disclosure statutes do not implicate Fourth and Fifth Amendment concerns. Respondents are required to file financial disclosure statements only if they run for public office, a purely voluntary act.

Because the Commission had the statutory authority to determine whether respondents’ filings qualified as financial disclosure statements and to seek civil penalties against respondents, the Nevada Supreme Court ultimately reversed the district court’s order.

## **Public Officer Financial Disclosure:**

The Commission accepts filings of financial disclosure statements by appointed public officers required to file annual financial disclosure statements with the Commission pursuant to NRS 281.559. Any appointed public officer who fails to file a financial disclosure statement, or who files the statement late, is forwarded to the Secretary of State’s office for the assessment of civil penalties pursuant to NRS 281.581.

AB 500, passed by the 2005 Nevada Legislature, amended the definition of public officer such that the exercise of a public power, trust or duty now includes the *administration* of laws and rules of the State, a county or a city rather than the *enforcement* of these laws and rules. The amendment, effective October 1, 2005, appears to broaden the definition of public officers as

compared to the previous language, and will likely require more persons appointed to public office to file a financial disclosure statement with the Commission. Thus, is it anticipated the Commission will receive more financial disclosure statements from appointed public officers during the next biennium.

	Actual FY 2004	Actual FY 2005	Projected FY 2006	Projected FY 2007
<b>Financial disclosure statements filed</b>	452	398	500	500

## **Commission Funding:**

NRS 281.4647 provides that cities and counties with more than 10,000 in population are required to proportionally share in the NCOE funding. The local government assessment is based on the source of the NCOE request for opinion caseload from the previous biennium.

The NCOE is responsible for billing cities and counties on August 1 and February 1 of each year of the biennium. If a city or county fails to pay the assessment, the Commission’s Executive Director is authorized to submit a billing claim to the Department of Taxation, and the Department of Taxation is authorized to deduct the funds from that city or county’s share of the Local Government Tax Distribution Account. The Commission staff experienced no difficulties in collecting the local government cost-share of the NCOE budget during FY 2005.

The funds collected from local government pursuant to NRS 281.4647 are restricted for the enforcement of the ethics in government law, and do not revert to the General Fund at the end of any fiscal year.

Any civil penalties assessed by the Commission for violations of state law are deposited into the State General Fund. The Commission collected \$11,000 in civil penalties during FY 2005.

## **Commission Fiscal Operations:**

The Commission was audited for its FY 2004 accounting and fiscal operations by the Audit Division of the Nevada Legislative Counsel Bureau during the summer and fall of 2004. The audit concluded the Commission had complied with the laws, regulations, and policies significant to the financial administration of the Commission’s activities, and therefore contained no findings or recommendations for changes or improvement. Members of the legislative Audit Subcommittee commented, at the audit hearing, that they had never seen a ‘clean’ audit report and commended the Commission and its staff.

In April of 2005, the Executive Branch’s Department of Administration, Division of Internal Audits gave final approval to the Commission’s internal controls procedures. After working for two-and-a-half years to develop and refine the internal controls procedures, there are presently no recommendations for changes or improvements to the procedures.

The Commission's Las Vegas office was opened in temporary quarters in October, 2004, and is presently in negotiations for permanent office space. Once permanent space is leased, the office will open to walk-in traffic. Additionally, the Commission's Carson City office relocated to larger space within the same office complex in February, 2005, providing much needed conference space and records storage.

The Commission budget is appropriated by the Nevada Legislature each biennium. The next biennium begins July 1, 2005 and ends June 30, 2007. The 2005 Nevada Legislature permanently funded the new Las Vegas office of the Commission and the legal research staff position. Additionally, the Commission will have a new, permanent investigator position effective October 1, 2005, bringing the full-time staff of the Commission to five positions (see Appendix A).

The following represents the appropriated amounts by the Legislature for the biennium.

	FY 2006		FY 2007	
<b>Personnel</b>	\$ 415,662	70.6%	\$ 443,133	74.8%
<b>Out-of-State Travel</b>	\$ 2,450	0.4%	\$ 2,450	0.4%
<b>In-State Travel</b>	\$ 15,222	2.6%	\$ 15,222	2.6%
<b>Operating</b>	\$ 90,351	15.4%	\$ 92,349	15.6%
<b>Equipment</b>	\$ 16,238	2.8%	\$ 0	0.0%
<b>Investigations</b>	\$ 7,247	1.2%	\$ 7,247	1.2%
<b>Court Reporting</b>	\$ 13,312	2.3%	\$ 13,312	2.2%
<b>Information Technology</b>	\$ 20,773	3.5%	\$ 11,308	1.9%
<b>Training</b>	\$ 2,239	0.4%	\$ 2,239	0.4%
<b>Statewide Cost Allocation</b>	\$ 4,750	0.8%	\$ 4,750	0.8%
<b>Purchasing Assessment</b>	\$ 279	0.0%	\$ 273	0.0%
	\$ 588,523	100%	\$ 592,289	100%

## Commission Internal/External Issues Assessment:

An assessment of both internal and external issues impacting the Commission were identified in calendar year 2003 as part of the agency strategic planning process. The following issues were identified as strategic issues, threats, opportunities, and planning assumptions.

## **Commission Strategic Issues**

1. The Commission on Ethics struggles with a public misperception of the Commission mission, jurisdiction, and duties.
2. High turnover in elected and appointed public office creates an on-going need to educate public officers and employees on the provisions of the Ethics in Government Law, as well as the public officer requirement to file annual financial disclosure statements.
3. The 120-day biennial Legislative Session limits the amount of time the Commission has to provide necessary information to educate legislators regarding Commission functions, making it difficult to effect changes in state law.
4. Limited Commission staff coupled with strict timeframes set forth in statute for processing third-party requests for opinion (ethics complaints) stretches the ability of the staff to timely complete investigations and issue reports regarding just and sufficient cause to panels as required under statute.
5. Four-year Commissioner terms may result in frequent turnover on the Commission, and can result in varying policy interpretations of state law.
6. The Commission is one of only a few state Commissions statutorily located between the Legislative and Executive Branches, which causes confusion as to whom the Commission reports.
7. The Commission must balance its role as a part of the Executive Branch (for budget purposes) with its statutory mandate to investigate and adjudicate ethics complaints against public officers and employees in the Executive Branch.

## **Commission Threats**

1. Budget constraints continue to threaten Commission program and operation funding.
2. The Commission has a limited staff, which may make it difficult to respond to fluctuations in workload caused by a large influx of complaints, financial disclosure statement filings, or major litigation.
3. The abolishment of the City of Las Vegas Ethics Commission in December, 2002 placed an additional, unfunded caseload on the Commission.
4. Public misperceptions about the role of the Commission may cause public relations issues with the Legislature, state and local governments, and the media.
5. Budget constraints, both within the Commission and at the local government level, make a proactive educational program regarding the Nevada Ethics in Government law difficult to fund and sustain.

## **Commission Opportunities**

1. Continuation of a proactive educational program regarding the Nevada Ethics in Government law will assist in better compliance with Nevada law and eliminate public misperception about the Commission's mission, jurisdiction, and duties.
2. The biennial session of the Nevada Legislature provides an opportunity to tighten loopholes in Commission statutes and educate legislators about the Commission.
3. Using communications tools such as the Commission web site to promote the Commission's activities provides opportunities to educate public officers, public employees, and the general public regarding the importance of the Commission's functions. We will continue to be on the government forefront of making more information available on-line.



## **Planning Assumptions:**

1. Administrative workloads continue to increase with state and legislative reporting mandates. The Commission must prioritize and focus on essential tasks and efficiently and effectively utilize its limited staff.
2. Budget constraints make utilizing new technology such as videoconferencing, web site publications, and e-mail distribution important to achieve cost savings so that the Commission stays within its legislatively appropriated budget.
3. Implementing new technologies to further streamline Commission workload and develop and maintain a public officer database means more funding will be needed for computer equipment, software upgrades, and employee training.
4. Funding and administering a proactive educational program regarding the Nevada Ethics in Government law is essential to ensure better compliance with Nevada law and eliminate public misperception about the Commission's mission, jurisdiction, and duties.
5. Closely monitoring the agency budget is a critical component of ensuring that the Commission uses its monetary resources in the most efficient and effective manner possible to meet the statutory requirements placed on the agency.
6. Compiling a comprehensive, well-justified budget and preparing an informative and concise budget presentation is essential in ensuring the Commission receives funding sufficient to support Commission goals and programs.

## **Commission Goals:**

Goals, objectives, and performance measures were developed in calendar year 2003 as part of the agency strategic planning process. The goals and objectives are listed below. Performance measures have been previously reported in this publication.

- **Goal 1** - To investigate and adjudicate all requests for opinion filed by public officers, public employees, candidates, and the general public in accordance with the provisions of NRS Chapter 281.

Objective 1: To timely investigate third-party requests for opinion and issue recommendations regarding just and sufficient cause to a Commission panel.

Objective 2: To expedite first-party requests for opinion to ensure timely consideration and rendering of opinions by the Commission.

Objective 3: To timely issue opinions after the Commission renders its decisions, and make such opinions publicly accessible.

Objective 4: To facilitate automation of workflow and streamline Commission operations by providing staff with up-to-date computer equipment, software, and training.

- **Goal 2** – To effectively administer Nevada law by providing educational programs and public information necessary for public officers and employees to be informed regarding compliance.

Objective 1: To provide proactive educational programs to increase understanding and compliance with Nevada law among public officers and employees in state, county, and city government.

Objective 2: To expand the Commission web site and develop electronic publications to educate and inform the public about Nevada Ethics in Government law.

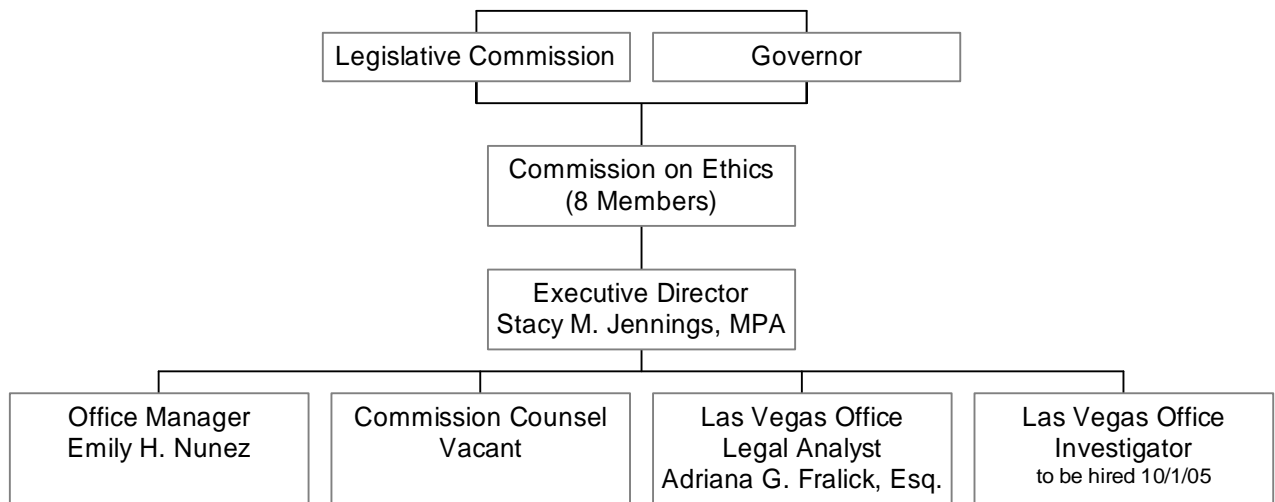
Objective 3: To develop and maintain a public officer database in order to disseminate information about the requirement to file annual financial disclosure statements, and to facilitate better compliance with the statutory filing requirement.

# **Appendix A**

## **Organization Chart**

# NEVADA COMMISSION ON ETHICS

## Taxpayers of Nevada



## **Appendix B**

### **Summary of 2005 Legislative Changes To Nevada Ethics in Government Law**

Stacy M. Jennings, MPA  
*Executive Director*



State of Nevada  
**COMMISSION ON ETHICS**

3476 Executive Pointe Way, Suite 10  
Carson City, Nevada 89706  
(775) 687-5469 · FAX (775) 687-1279

<http://ethics.nv.gov>

Rick R. Hsu, Esq.  
*Chairman*  
Caren Jenkins, Esq.  
*Vice Chairman*

*Members:*  
Timothy Cashman  
William Flangas, PE  
Mark A. Hutchison, Esq.  
George M. Keele, Esq.  
James Kosinski, Esq.

**June, 2005**

***Summary of 2005 Legislative Changes to  
Nevada Ethics in Government Law***

**Assembly Bill 39**

The majority of the provisions of AB 39 relate to local government purchasing laws and contracts entered into under these statutes.

However, AB 39 also requires the Attorney General to defend a state officer or state employee in any proceedings before the Commission on Ethics relating to an ethics complaint. The state officer or employee must submit a written request for counsel to the Attorney General's office, and the Attorney General must determine that the act or omission on which the alleged violation is based appears to be within the course and scope of public duty or employment and must have been performed or omitted in good faith. The requirement to provide counsel is binding on the Attorney General unless the state officer or state employee retains private counsel, or unless the Attorney General tenders the defense of the state officer or state employee to an insurer.

The bill becomes effective July 1, 2005, and is not applicable to ethics complaints submitted prior to July 1, 2005.

**Assembly Bill 64**

Assembly Bill 64 excludes persons elected to the office of supervisor of a conservation district pursuant to NRS 548.285 from the requirement to file a financial disclosure statement under NRS 281.561. The exclusion is retroactive to January 1, 2004, and any civil penalty or fine pending on the effective date of the bill (as a whole, see below) against such an elected supervisor for failing to file a financial disclosure statement is declared void and must not be collected.

Additionally, AB 64 authorizes the Commission on Ethics to either: 1) request representation from the Attorney General's office; or 2) employ outside legal counsel should the Commission's in-house counsel be precluded from participating or be unable to participate in a matter. Previously, the Commission could only ask the Attorney General for representation if in-house counsel had a conflict of interest under NRS 281.501.

Finally, AB 64 amended the provisions of NRS 281.551(6) relating to 'willful' violations of the Ethics in Government Law. This statute provided that ethics violations by public officers or public employees were not willful if said public officer or employee:

1. Relied in good faith upon the advice of the legal counsel retained by the public body or agency;
2. Was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and
3. Took action which was not contrary to a prior published opinion of the Commission.

The current statutory provisions resulted in the Commission, upon finding a violation of ethics law, deliberating regarding the willfulness of the violation. As amended, NRS 281.551(6) leaves the three criteria outlined above in statute but shifts the burden from the Commission to the public officer or public employee to establish that all three such actions were taken. Now, a public officer or employee must establish by sufficient evidence that he satisfied all three requirements to overcome the new statutory presumption is that his actions are willful.

The bill became effective upon by the Governor on June 14, 2005.

### **Assembly Bill 499**

Assembly Bill 499 repeals the provisions of the campaign practices act. The act, found mainly in NRS 281.477 and NRS 294A.345, allowed the Commission to accept complaints against a person who:

1. Caused to be published a false statement of fact concerning a candidate;
2. Acted with actual malice in causing the false statement to be published;
3. Acted with the intent to impede the success of the campaign of a candidate; and
4. Impeded the success of the campaign of a candidate.

NRS 294A.346 contained similar provisions regarding persons impeding the success of a ballot measure. Violations were subject to up to a \$5,000 civil penalty.

On March 26, 2005, the U.S. District Court in Las Vegas rendered a decision regarding the constitutionality of the provisions of the campaign practices act in the matter of The Nevada Press Association, et. al, v. Nevada Commission on Ethics, et. al. In his decision, Judge Lloyd George declared that violations of NRS 294A.345 vis-à-vis the process established pursuant to NRS 281.477 violate the due process guaranteed under the 14th

Amendment of the U.S Constitution. Therefore, the statute was declared unconstitutional on its face, and the Commission was enjoined from enforcing the statute.

AB 499 repeals all statutory provisions relating to the campaign practices act effective October, 1, 2005, and is not applicable to complaints submitted prior to October 1, 2005 or to the jurisdiction, duties, powers, or proceedings of the Commission relating to such conduct.

### **Assembly Bill 500**

Assembly Bill 500 makes numerous revisions relating to elections law and the election process in Nevada. However, AB 500 also revises the definition of a 'public officer' under the Nevada Ethics in Government Law.

Presently, NRS 281.4365 defines 'public officer' as 'a person elected or appointed to a position which is established by the Constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty.' NRS 281.4365 further defines 'the exercise of a public power, trust or duty' as persons whose responsibilities include:

- (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
- (b) The expenditure of public money; and
- (c) The enforcement of laws and rules of the State, a county or a city.

AB 500 amends the definition of public officer such that the exercise of a public power, trust or duty now includes the administration of laws and rules of the State, a county or a city rather than the enforcement of these laws and rules. The amendment appears to broaden the definition of public officers as compared to the previous language, and will likely require more persons appointed to public office to file a financial disclosure statement with the Commission.

The bill becomes effective October 1, 2005.



## **Appendix C**

### **History of**

### **Nevada Commission on Ethics Members**

**HISTORY OF  
NEVADA COMMISSION ON ETHICS MEMBERS**

**2005**

**Commission on Ethics**

Rick R. Hsu, Reno, Chairman  
Caren Jenkins, Carson City, Vice Chairman  
Timothy Cashman, Las Vegas  
William Flangas, Las Vegas  
Mark A. Hutchinson, Las Vegas  
George Keele, Minden  
Jim Kosinski, Reno

*Elizabeth Goff Gonzalez, Las Vegas, served from January through April, 2004*

**2003**

**Commission on Ethics**

Todd Russell, Carson City, Chairman  
William Flangas, Las Vegas, Vice Chairman  
Ernest E. Adler, Carson City  
Merle A. Berman, Las Vegas  
Lizzie R. Hatcher, Las Vegas  
Rick R. Hsu, Reno  
Jim Kosinski, Reno  
Thomas R. Sheets, Las Vegas

*James Rogers, Las Vegas, served from September, 2001, through August, 2002*

**2001**

**Commission on Ethics**

Peter C. Bernhard, Las Vegas, Chairman  
Todd Russell, Carson City, Vice Chairman  
Raymond C. (Skip) Avansino, Jr., Reno  
William Flangas, Las Vegas  
Lizzie R. Hatcher, Las Vegas  
Rick R. Hsu, Reno  
Jim Kozinski, Reno  
R. Hal Smith, Las Vegas

**1999**

**Commission on Ethics**

Mary Boetsch, Reno, Chairman  
Mario G. Recanzone, Fallon, Vice Chairman  
Jud Allen, Reno  
William Bible, Las Vegas  
Hal Smith, Las Vegas  
Joni Wines, Stateline

**1997**

**Commission on Ethics**

Mary Boetsch, Reno, Chairman  
Helen Chisolm, Las Vegas, Vice Chairman  
Jud Allen, Reno  
James J. Guinan, Reno  
Scott Sherer, Las Vegas  
Joni Wines, Las Vegas

**1995**

**Commission on Ethics**

Thomas (Spike) Wilson, Reno, Chairman  
William R. Morse, Las Vegas, Vice Chairman  
Jud Allen, Reno  
Mary Boetsch, Reno  
Helen Chisolm, Las Vegas  
Joni Wines, Las Vegas

**1993**

**Commission on Ethics**

Thomas (Spike) Wilson, Reno, Chairman  
William R. Morse, Las Vegas, Vice Chairman  
George “Bud” Albright, Las Vegas  
Jud Allen, Reno  
Helen Chisolm-Wright, Las Vegas  
Michael F. Mackedon, Fallon

**1991**

**Commission on Ethics**

Thomas (Spike) Wilson, Reno, Chairman  
Barbara Bennett, Reno, Vice Chairman  
George “Bud” Albright, Las Vegas  
Bonnie Jean James, Las Vegas  
Michael Mackedon, Fallon  
William R. Morse, Las Vegas

**1989**

**Commission on Ethics**

Carl Dodge, Fallon, Chairman  
Barbara Bennett, Reno, Vice Chairman  
George “Bud” Albright, Las Vegas  
Bonnie Jean James, Las Vegas  
Michael Mackedon, Fallon  
William R. Morse, Las Vegas

**1987**

**Commission on Ethics**

Carl Dodge, Fallon, Chairman  
Barbara Bennett, Reno, Vice Chairman  
George “Bud” Albright, Las Vegas  
Paul S. Garwood, Reno  
Michael Mackedon, Fallon  
William R. Morse, Las Vegas

*Legislation passed in 1985 created a single ethics commission for both the legislative and executive branches of government. Prior to 1985, there were both executive and legislative branch ethics commissions.*

**1985**

**Executive Ethics Commission**

Paul H. Huffey, Las Vegas, Chairman  
Janice L. Haupt, Las Vegas  
Mills Lane, Reno  
Michael F. Mackedon, Fallon  
Sandra L. Pardo, Las Vegas  
Larry Struve, Carson City

**1983**

**Executive Ethics Commission**

Information not available

**Legislative Ethics Commission**

Manuel J. Cortez, Las Vegas, Chairman  
W. R. (Walt) Martini, Las Vegas  
Ronald W. Player, Sparks  
Roger Teglia, Sparks

**1981**

**Executive Ethics Commission**

Bruno P. Menicucci, Reno, Chairman  
Dominic Daileda, Las Vegas  
C. E. (Dutch) Horton, Ely  
Wilson McGowan, Carson City  
Dennis Simmons, Las Vegas  
Ethel Warren, Reno

**Legislative Ethics Commission**

Manuel J. Cortez, Las Vegas, Chairman  
W. R. (Walt) Martini, Las Vegas  
Ronald W. Player, Sparks  
Roger Teglia, Sparks

1979

**Executive Ethics Commission**

Bruno P. Menicucci, Reno, Chairman  
Dominic Daileda, Las Vegas  
C. E. (Dutch) Horton, Ely  
Wilson McGowan, Carson City  
Dennis Simmons, Las Vegas  
Ethel Warren, Reno

**Legislative Ethics Commission**

Manuel J. Cortez, Las Vegas, Chairman  
W. R. (Walt) Martini, Las Vegas  
Ronald W. Player, Sparks  
Nash M. Sena, Henderson  
Roger Teglia, Sparks  
Robert L. Weise, Carson City  
C. Clifton Young, Reno