



State of Nevada  
**COMMISSION ON ETHICS**

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Carson City, Nevada 89706  
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June 30, 2009

Members of the Nevada Commission on Ethics:

I wish to thank the Commission and staff for their cooperation during my service as the Executive Director of the Ethics Commission. I have enjoyed serving in the position and will miss being part of this important work. I regret that I cannot continue in the job due to family concerns.

Nevada Administrative Code 281A.180.2 requires that the Executive Director report on the fiscal, legislative and regulatory matters and any other business of the Commission for each fiscal year. The report must include the goals for the coming year.

The following is the report for fiscal year 2008-2009.

Respectfully submitted,

Patricia D. Cafferata, Esq.  
Executive Director

# ANNUAL REPORT FISCAL YEAR 2009

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## **Business and Administrative Matters:**

### **Commission:**

The membership of the Nevada Commission on Ethics (NCOE) changed during this fiscal year. Commissioners Rick Hsu and Jim Kosinski's terms expired at the end of fiscal year 2008. Governor Jim Gibbons appointed Erik Beyer to replace Hsu and the Legislative Commission appointed Jim Shaw to replace Kosinski.

Mark Hutchison was elected Chair and Tim Cashman was elected Vice Chair at the July meeting. Later, Commissioners Randy Capurro and Tim Cashman resigned at different times during the year. The Legislative Commission appointed John Marvel to replace Capurro. The Governor appointed Gregg Gale to a fill Cashman's term, effective July 1, 2009.

After Cashman resigned, George Keele was elected to replace Cashman as Vice Chair.

### **Staff:**

Mike Vavra began his employment as the Investigator for the Commission in August 2008.

### **Website:**

The Commission's website was updated and redesigned by Mike Vavra. The Commission's website contains general information about the Commission and staff, opinions and panel determinations, forms, and training information. The financial disclosure statements of public officials, judges and judicial candidates are also posted on the website.

The website was accessed 744,414 times from July 1, 2008 through May 31, 2009 with an average number of monthly visits of 67,674. The average number of hits per day was 2,215. The average number of visitors who visited the site once during a month was 2,011. The website experienced the highest number of hits in the month of August.

## **Statistics of Activities:**

### **Acknowledgment of Ethical Standards Forms:**

Pursuant to NRS 281A.500, two-hundred-seventy-two-public officers filed Acknowledgment of Ethical Standards forms with the Commission this year. Eleven more Acknowledgments were filed this year over the previous year.

## Disclosure of Representation Forms:

Pursuant to NRS 281A.410, eighteen public officers filed Disclosure of Representation and Counseling of Private Persons before a Public Agency forms with the Commission this year. Five more disclosures forms were filed this year over last year.

## Financial Disclosure Statements:

Pursuant to NRS 281A.600 and NRS 281A.610, the Commission received a total of 583 Financial Disclosure Statements from appointed public officers and judges. Judges filed 196 statements and appointed public officers filed 387. All Financial Disclosure Statements were posted to our website.

In addition, 51 people filed Financial Disclosure Statements who were not required to file such statements.

The names of 136 public officers who failed to file or filed their financial disclosure statements late were forwarded to the Secretary of State's office, pursuant to NRS 281A.600(4).

## Litigation:

The Commission has three pending cases before the courts. They are as follows:

*Carrigan v. Comm'n on Ethics,*  
Nevada Supreme Court, Case Number 51920

Sparks City Councilman Mike Carrigan filed a Petition for Judicial Review of Request for Opinions Nos.06-61, 06-62, 06-66 and 06-68 in the First Judicial District Court of Nevada. The Court found in the Commission's favor in May 2008. Carrigan appealed the decision. General Counsel Adriana Fralick gave oral argument at the Nevada Supreme Court on March 3, 2009. A decision has not been rendered.

*Comm'n on Ethics v. Warren Hardy,*  
Nevada Supreme Court, Case Number 53064

State Senator Hardy filed a Petition for Judicial Review and an Emergency Motion for Preliminary Injunction and Stay enjoining the Commission from further proceedings in Request for Opinion No. 08-04C filed in the First Judicial District Court. The Court granted the Petition and a Permanent Injunction. The Commission decided to appeal the decision. General Counsel Adriana Fralick gave oral argument at the Nevada Supreme Court on April 20, 2009. On May 21, 2009, the court issued an Order of Affirmance indicating that a published opinion would follow.

*Estate of Charles L. Williams v. Comm'n on Ethics,*  
Federal District Court, CV08-07054GW

This case was filed in Federal District Court Central District of California and has been removed to the Southern Nevada District. The Nevada Attorney General will file a Motion to Dismiss the NCOE and other state defendants.

### Requests for Opinion:

The number of requests for opinion increased over last year. The Commission received 94 requests this year and 70 last year. The requests have become more complex and legally challenging since I became the Executive Director. Often times, the public officers and complainants are hiring attorneys to represent them before the Commission. Any complicated case will have motions filed by the public officer that must be analyzed by the General Counsel.

The Commission received 94 requests for opinion on or from 75 public officials or employees. Sixty-six requests were on or from county and local government officials and 15 requests were on state board members, employees or legislators. The remaining 12 requests were on public bodies or private persons. One complaint was withdrawn and one is pending review by the General Counsel for determination of jurisdiction.

Fourteen requests were for advisory opinions. Of the advisory opinions, eight were from state employees or officers. Of these requests, one request was withdrawn and one is pending a hearing in July. The Advisory Requests from local government officers totaled six. Of these four were from city council members and two were withdrawn.

Of the third-party requests for opinions or ethics complaints (31 total), thirteen were filed against city council members or officials, ten were filed against other local government officials, four were filed against state officials, two were filed against members of general improvement districts, and two were filed against state legislators. The local officials were from Clark, Douglas, Humboldt, Lyon and Washoe counties).

On 50 ethics complaints, the Executive Director, upon consultation with General Counsel, determined the Commission had no jurisdiction. The reasons for finding no jurisdiction were varied. Prisoners filed some complaints, others were filed against public bodies or private citizens and others failed to allege an ethics violation or to supply credible evidence to support the complaint.

Three of these decisions were appealed to a jurisdictional panel. The panels upheld the Executive Director's decision in these matters.

Currently, six ethics complaints are set for hearings in August through October and five are either set for panel proceedings or will be set in July and August.

### Training:

Staff provided 10 training sessions for counties, state agencies and other governmental entities.

## **Fiscal Matters:**

The Commission's original budget for 2008-2009 was for \$256,570 from the General Fund, \$473,868 from the Local Government Cost share, and \$10,061 from General Fund Salary Adjustment for a total of \$740,499. Due to the state's decline in revenues, the Commission's budget was reduced by \$37,661 after adjustments to \$694,777. At the end of the year, the Local Government Cost share is due a refund or credit in the amount of \$77.98.

The Commission collected from three public officials \$6,100 in civil penalties during FY 2008-2009. Pursuant to state law, civil penalties are deposited in the General Fund.

## **Legislative Matters:**

The Commission submitted a Bill Draft Request (BDR) to the 2009 Legislature. Adriana Fralick and I worked closely with the Legislative Counsel Bureau legal division in drafting the Commission's BDR and final bill.

The legislation had two parts. The first part sought to clarify the employment "cooling off" period for public employees and to move this section to the Nevada Ethics in Government Law Nevada Revised Statutes (NRS) 281A. This change will bring public employees and officers under the jurisdiction of the Commission when leaving government employment.

The BDR also proposed to make housekeeping changes to NRS 281A. The BDR became Senate Bill (SB) 104. While SB 104 was not adopted, most of the Commission's proposals were incorporated in SB160. This legislation removed the Ethics Commission's jurisdiction over legislators on "core legislative functions," included a new definition of the meaning of "willful" and changed some deadlines. The bill was passed and signed by the governor and was effective upon approval, except for the sections on legislators. Those sections were retroactive to January 1, 2009.

The second part of the Commission's BDR sought the appointment of an Interim Study Committee for an in-depth study of the ethics laws to make recommendations to the 2011 Legislature. This proposal was not adopted by the Legislature.

A budget for FY2009-2010 and FY2010-2011 were required to be prepared this year. Executive Assistant Michelle Ene' and Research Analyst Tami DeVries spent a great deal of time working with the Department of Administration and the Legislature to develop the necessary figures and information.

I testified on numerous occasions at the legislature on the Commission's proposed legislation and budget. All agency budgets were cut for this coming fiscal year, including the Commission's budget. The FY2009-2010 budget is \$704,534 and is \$698,276 for FY 2010-2011. I lobbied successfully for the Legislature to delete the Attorney General Cost Allocation of \$ 54,155 from our budget, but this amount was not restored to the Commission's budget.

## **Regulatory Matters:**

Regulations were proposed by the Commission and submitted to the Legislative Commission in 2008 for review. A public workshop was held on June 19, 2008. The Legislative Commission adopted the regulations (LCB File Number R084-08) on July 17, 2008.

## **Goals:**

The 2008-2009 goals proposed in my Annual Report were met. An Ethics Manual was compiled and is posted on the Commission's updated website.

In addition, the Internal Controls Manual was revised. Finally, the Commission worked to streamline the financial disclosure process by working with the county clerks, the executive, judicial and legislative branches to obtain the correct names and addresses of public officials required to file Financial Disclosure Statements.

While I will not be the Executive Director in 2009-2010, some of the goals that the Commission might consider are: 1) draft new regulations to accompany the changes to the Nevada Revised Statutes (NRS); 2) update all forms, materials and website to reflect the changes to the NRS; 3) develop on on-line ethics training program; 4) create a desk manual for all positions in the agency.

## **Conclusion:**

Several changes to the Commission membership and staff occurred in fiscal year 2007-2008. The workload increased significantly over the previous year. Additionally, many of the cases are legally complicated requiring more work by staff, particularly for Adriana Fralick and Mike Vavra.

Budget cuts forced the Commission to examine all expenses and adjust accordingly. Because the Legislature met this year, the Michelle Ene' and Tami DeVries devoted much of their workday to budgetary matters. I spent time at the Legislature to support the Commission's position. All matters were handled in a timely manner and the Commission was successful at the Legislature, so the year was a success on several levels.

**Nevada Commission on Ethics**  
**Commission Members and Staff:**  
*As of June 30, 2009*

**Chair**

Mark A. Hutchison, Esq. (R) \*  
Clark County  
Term: 07/01/07 – 06/30/11

**Vice Chair**

Timothy Cashman (D) \*  
Clark County  
Term: 11/01/07 – 10/31/2011  
Resigned 01/2009

**Vice Chair (elected 01/2009)**

George M. Keele (R) \*\*  
Douglas County  
Term: 10/1/07 – 9/30/2011

**Members**

Erik Beyer (R) \*  
Washoe County  
Term: 07/01/08 – 06/30/12

John T. “JT” Moran, III.\*  
Clark County  
Term: 01/14/08 – 09/30/11

Paul Lamboley, Esq.\*\*  
Washoe County  
Term: 05/07/08 – 09/30/2011

Jim Shaw (D) \*\*  
Washoe County  
Term: 07/01/2008 – 06/30/12

John W. Marvel (R) \*\*  
Carson City  
Term: 12/16/08 – 09/30/09

Vacancy as of June 30, 2009 \*

\* *Appointed by Governor*

\*\* *Appointed by Legislative Commission*

**Staff**

Patricia D. Cafferata, Esq.  
*Executive Director*

Adriana G. Fralick, Esq.  
*Commission Counsel*

Tami E. DeVries  
*Research Analyst*

Michelle Ené  
*Executive Assistant*

Mike Vavra  
*Investigator*

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*Annual Report of Nevada Commission on Ethics*  
*Fiscal Year 2008-2009*