

NEVADA COMMISSION **ON ETHICS**

2011-2012

Annual Report

of the Executive Director

as required by NAC 281A.180(2)



Caren Cafferata-Jenkins, Esq.
Executive Director



State of Nevada
COMMISSION ON ETHICS

704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • FAX (775) 687-1279

July 18, 2012

Commissioners:

The Nevada Administrative Code 281A.180(2) requires the Executive Director, at the first Commission meeting of each fiscal year, to make a report of the fiscal, legislative and regulatory matters and any other business of the Commission undertaken in the prior fiscal year. This document satisfies the requirement for fiscal year 2011 – 2012.

Fiscal year 2011-2012 focused on the past, present and future. Both Commissioners and staff were preoccupied with getting caught up, evaluating Commission processes and determining a path for the Commission's future. The agency had fallen nearly 24 months behind in writing and issuing its opinions. A thorough review of the relevant statutes, regulations, structure, operations, policies and procedures was overdue. The Commission needed to consider the staff structure and Commission processes related to Requests for Opinion. The agency's operations hit "critical mass" and action became necessary.

As ever, in 2011-2012, the dedicated volunteer Commissioners and the committed agency staff rallied to meet the challenges of the day. Additionally, the Nevada Legislature's Interim Finance Committee and the Executive Branch Board of Examiners, led by Governor Brian Sandoval, acted to assist the Commission to fulfill its duty to the public.

The need for this dramatic response stems from a continued crushing caseload, a marked rise in the complexity and adversarial stance of matters brought before the body, and the Commission's (and the State's) reduced budget and minimal staffing levels of recent years. Despite these challenges, the Commission and its staff continue doing their best with the available funding. However, the NCOE's ability to maintain even the current, barely-adequate service levels has become impossible with a 5-member staff. The Commission requires at least one, if not two additional staff members to provide the statutorily required and proper response to public inquiries about the Ethics in Government Law and to enhance and maintain the public's trust in Nevada governments.

Among the objectives identified in the last annual report was the expectation that the Commission gain ground with its opinion and digest backlog. This report outlines just how much we have accomplished and sets forth plans to continue that trend. This progress is even more remarkable considering the enormous extra work undertaken with evaluating, diagnosing and implementing the systemic organizational changes that the Commission has undertaken this fiscal year.

Congratulations, and thank you. I trust that each of you will continue to advocate zealously for clear statutes, adequate authority and reasonable funding for the Commission with Executive and Legislative decision-makers. I extend personal gratitude for the leadership, advice, feedback and support you have offered to me and to the Commission staff during these trying times. Our Commission and staff morale has experienced ups and downs, but, for the most part, we all have worked well toward one common goal - - maintaining and enhancing the public's trust in the integrity and impartiality of government.

I hope this annual report meets with your approval.

Respectfully submitted,

Caren Cafferata-Jenkins

Caren Cafferata-Jenkins, Esq.
Executive Director

CCJ/abm



NEVADA COMMISSION ON ETHICS

Annual Report

2011-2012

as required by NAC 281A.180(2)

Business and Administrative Matters

Commission:

In fiscal year 2011-2012, Nevada Commission on Ethics Chairman Erik Beyer and Vice-Chairman Paul H. Lamboley, Esq. led the Commission. Additional members included Governor appointees Gregory J. Gale, Magdalena Groover and Keith A. Weaver, Esq. and Legislative Commission appointees Timothy Cory, Esq., James M. Shaw and John W. Marvel. Commissioner Marvel resigned in February 2012 and the Legislative Commission appointed John C. Carpenter to fill Mr. Marvel's unexpired term. See generally, Exhibit 1, which includes a list of current Ethics Commission members and provides an historic glimpse at the Commission's composition over the years..

Two-meeting days per month has become the Commission's norm rather than the exception, due to the heavy caseload the Commission must address. Commissioners meet in-person for each contested hearing in which witnesses are summoned or where credibility is at issue. However, to minimize travel costs, the agency has engaged in video teleconferenced meetings for business matters and first-party hearings. Telephone meetings have been the standard for subcommittee and investigatory panels. Again, to conserve financial resources, many of these meetings other than the full Commission meetings are audio-recorded, and are only transcribed when a need arises.

Commissioner investment has hit an all-time high, with an average of 20 hours per month required to satisfy the requirements of the position. An additional 3 hours per month is required of the Chairman and Vice Chairman of the Commission for involvement in opinion writing, leadership and planning.

In 2011-2012, the Commission celebrated its 35th anniversary and held a dinner to which every past Commissioner and staff person was invited. The evening's program developed into an historic account of the progress of the Commission, told through anecdotes of those who attended. Those who attended will recall an evening

full of pride and a lot of good fun. See Exhibit 2 hereto, containing some interesting and historic information compiled for the event.

Staff:

Executive Director Caren Cafferata-Jenkins, Esq. and Commission Counsel Yvonne M. Nevarez-Goodson, Esq. remained as the Commission's appointed professional staff. Employees Michael E. Lawrence, Senior Investigator (and volunteer Webmaster), Janet E. Jacobsen, Senior Legal Researcher and Executive Assistant Valerie M. Carter also continued their valued service.

Public Information:

This year public access to Commission Opinions was enhanced by the inclusion of opinions in the "Official Nevada Law Library From the Source" legal research CD published by the Legislative Counsel Bureau. The CD is a tool used by many attorneys and others in the state, and provides a powerful search engine much more robust than the Google search engine used on our website.

The Commission's website (<http://ethics.nv.gov>) continues to offer information about the Commission and its staff, allows the public to read and search Nevada's Ethics in Government Laws, the Commission's regulations, Commission opinions and panel determinations. It also allows public access to the Commission's forms and instructions for requests for opinion.

The Commission adopted a new Public Information Policy this fiscal year. Recognizing that the existing policy was out-of-date, staff developed an updated policy to address the many public information requests the staff receives. See Exhibit 4, attached to this Annual Report.

According to our visitor statistics, the Commission's website receives approximately 1000 visits per month, or a few over 30 hits each day with the average visitor looking at four different pages.

2011-2012 Website User Demographics:

[Ethics.nv.gov](http://ethics.nv.gov) received at least a few visitors from each of the 50 states, with over 80% of visits from Nevada, followed by a large number from California and Washington D.C. Nevada-based visitors were distributed as follows:

- 37% Las Vegas
- 30% Reno
- 15% Carson City

The remaining 20% of users logged on from 36 locations throughout the State and from as far away as Canada, Brazil, Russia, Germany, Italy and India.

2011-2012 Pages/documents viewed:

Among the most visited pages were the pages related to Commission Documents (Opinions), Agendas & Minutes and Commission Members. A large number of visitors viewed NCOE statutes and regulations on the website.

2011-2012 How visitors got to our site:

While most visitors reached the website by searching for "Ethics Commission" on Google - 44%, many directly typed our website address into a web browser - 27%. Others came via "referral" (e.g., typing "Ethics Commission" in NV State website) - 6%.

Offices:

The Commission's staff and office is located at:

704 West Nye Lane, Suite 204
Carson City, Nevada 89703
775-687-5469 - telephone
775-687-1279 - fax

Our Senior Investigator works from a small non-public office in the Grant Sawyer State Office Building in Las Vegas.

Commission Activities

The Commission undertakes a variety of activities throughout the year: responding to Requests for Opinion (RFOs) from the public and, public officers and employees; accepting filings by public officers; and offering education regarding the scope of the Ethics in Government Law and its enforcement. These activities further the mission of the Commission to enhance and maintain the public's confidence in the integrity and impartiality of Nevada's state and local governments.

1. Respond to RFOs regarding the Ethics in Government Law.

Requests for Opinion Submitted to the Commission:

	2007-08	2008-09	2009-10	2010-11	2011-12
First-Party Advisory RFO	13 59%	14 31%	27 50%	27 37%	31 60%
Third-Party RFO	9 41%	31 69%	27 50%	46 63%	21 40%
Rejected (no jurisd. or insuff. evid.)	33	50	55	41	51
TOTAL	55	95	109	114	103

The total number of requests for opinion filed with the Commission in 2011-12 was **103**, which is 11 fewer than last year.

The Commission received **31** requests for first-party advisory opinions in 2011-12, 4 more than last year. Additionally, the Commission received **21** third-party requests, and conducted full investigations and either held or will hold Investigatory Panel Hearings for each request. If the Panel finds the request meets the statutory standard of evidence, the RFO proceeds to a full public hearing. See Exhibit 3 for a graphic representation of the life of a third-party request for opinion.

One interesting statistic may be the ratio of first-party opinion requests to the total number of RFO's the Commission accepted. If that percentage is high, and the percent of third-party public "complaints" is lower, the Commission can conclude that the level of public trust in the integrity of government has increased. It may also show that the Commission has served public officers and employees who seek to maintain that public trust by avoiding conduct that violates the statutes.

However, the ratio fluctuates between odd- and even-numbered years. This fluctuation may be attributable to the cycle of the general elections, which take place in even-numbered years. Public scrutiny of elected and appointed public officers is heightened during campaign cycles, and a number of requests for opinion may be triggered by those running for election to public office in November of even-numbered years and those who take office in January of odd-numbered years.

The Executive Director, in consultation with Commission Counsel, rejected **51** requests in 2011-2012, either due to the Commission having no jurisdiction over the subject matter of the request (either the allegation did not involve NRS 281A, did not involve a public officer or public employee, or was filed by an incarcerated person (NRS 281A.440(3))), or the requester failed to provide a minimal level of evidence to support the allegations.

This number reinforces the need for additional public education about the scope and authority of the Nevada Commission on Ethics. A need may exist for more public information about sources of assistance available to disgruntled members of the public, including those whose complaints may be more properly directed to the Office of the Attorney General (either regarding public integrity generally or Nevada's open meeting law), the Nevada Secretary of State (regarding campaign finance), the Commission on Judicial Discipline (regarding judicial ethics), and the like. The public may be bewildered about where to turn for help, and may feel like the government gives them "the runaround" when they have a question or complaint.

In an effort to enhance the public trust, the Executive Director attempts to provide feedback and direct the requester to a more appropriate resource when declining to accept jurisdiction over an RFO.

2. *Accept certain filings required by statute.*

Acknowledgments of Statutory Ethical Standards:

Pursuant to NRS 281A.500, public officers filed **693** Acknowledgment of Statutory Ethical Standards forms with the Commission for Calendar Year 2011, down **120** from 2010. The statute requires elected and appointed public officers to file this acknowledgment within 30 days of taking office. Many public officers are sworn in January of odd-numbered years following a general election in an even-numbered year. As a result, it is not surprising that the number of filings varies widely from year to year.

Disclosures of Agency Representation:

Pursuant to NRS 281A.410, public officers voluntarily filed **14** Disclosures of Agency Representation (an increase of 1) in 2011-12. The number of these filings is relatively steady from year to year.

Financial Disclosure Statements:

January 2012 was the first January in which the Commission was not required to accept Financial Disclosure Statements from appointed public officers. The 2011 Nevada Legislature transferred responsibility for collecting these statements to the Office of the Secretary of State.

3. *Engage in outreach and education regarding Ethics in Government Law.*

Ethics in Government Formal Training Presentations:

2007-08	2008-09	2009-10	2010-11	2011-12
16	10	28	25	18

The Executive Director provided 18 public training sessions for local, regional, state and national governmental entities in 2011-12. Staff and Commissioner travel

in Nevada was severely limited by the availability of funds. However, in response to those constraints, trainings became more efficient, serving larger audiences. Staff sought out conferences and seminars at which the NCOE can reach the most relevant and largest audience possible with the resources it has available.

This year, the Executive Director provided training on the Ethics in Government Law to:

- National Association of Attorneys General
- Nevada Department of Welfare Supervisory Academy
- Nevada Association of School Boards
- Nevada League of Cities and Municipalities
- Nevada Association of Counties
- POOL PACT
- Gaming Control Board staff
- Town of Minden
- State Mining Oversight Committee
- State Board of Equalization
- Southern Nevada Health District
- Charter School boards and the Charter School Advisory Board
- Public Employees Benefits Program Board
- and several others.

Through its training and outreach, the Commission has touched nearly every community in Nevada this year. While no formal tally is available of the number of public officers and public employees in the state, the Commission approximates that Nevada and its political subdivisions employ well over 100,000 persons subject to the Commission's jurisdiction. When the over 4,000 public officers are added, one can appreciate the unwieldy task of the Commission on Ethics.

4. Other activities

The Commission undertook a direct analysis of the efficacy of its approach to processing, investigating, analyzing, hearing and deliberating RFOs. The effort began in part due to the backlog of written opinions, and in part due to the plethora of suggestions it received from the Executive branch, from the Commission's permanent staff, and from its temporary Contract Attorney.

A Subcommittee to Consider Restructuring the NCOE staff discussed the need to add not less than one additional employee to accomplish the work of the Commission and to provide some protections for the Subject of an RFO's entitlement to Administrative Due Process. It determined that separating the "prosecutorial" function and delegating that task to one attorney, leaving the Commission advisor function to the Commission Counsel would make great strides, and simultaneously would allow distribution of the workload more evenly among staff.

The Commission also considered a variety of suggestions to streamline its hearings and deliberations process and to ensure an appropriate level of transparency while maintaining fair and impartial, professional proceedings.

- The Commission attended a private training by a noted Administrative Law Judge who provided a broad overview as well as "how-to" information regarding Administrative Hearings. Commissioner responses to the training were extremely positive.
- Commission Counsel implemented a new process for responding to First-Party Opinion Requests.
- Certain time-saving and efficiency measures were put into place and others were considered for future implementation.

This process will continue into the 2012-2013 fiscal year.

Litigation:

The Commission was a party to several cases this fiscal year:

*Carrigan v. Nevada Commission on Ethics*¹

Supreme Court of Nevada

On remand from the Supreme Court of the United States

The Supreme Court of the United States granted the Commission's Petition for *Writ of Certiorari* in late 2010, and on June 13, 2011, held in favor of the Commission, stating that the First Amendment to the United States Constitution does not shield a legislator from statutory provisions requiring abstention when disqualifying conflicts of interest arise.

The Court remanded the case to the Nevada Supreme Court for entry of a new order not inconsistent with the Supreme Court of the United States' holding. The parties submitted supplemental briefs and, on March 5, 2012, participated in oral arguments. Because Justice Paraguirre recused himself from participating, the Governor designated the Honorable Allan R. Earl, a District Judge of the Eighth Judicial District Court, to sit in his place. The matter remains under submission.

¹ In 2006-2007, Sparks City Councilman Mike Carrigan filed a Petition for Judicial Review of a Commission decision in the First Judicial District Court of Nevada in Carson City. The Court found in favor of the Commission. Carrigan appealed the decision to the Nevada Supreme Court which overturned the decision nearly two years later, stating that the First Amendment to the United States Constitution prevented the Commission from requiring Councilman Carrigan to abstain from voting due to his conflict of interest.

Stark v. Nevada Commission on Ethics

First Judicial District Court of Nevada (Carson City)

Dennis Stark, former Lyon County Manager, filed a petition for judicial review of the Commission's final opinion that Stark violated the Ethics in Government Law by using his government position to benefit his spouse's interests in maintaining her employment position with Lyon County. The parties expect to submit written briefs to the Court in the coming fiscal year.

Tobler v. NCOE

Eighth Judicial District Court of Nevada (Las Vegas)

Boulder City Mayor Roger Tobler filed a petition for judicial review of the Commission's final opinion advising Tobler that his personal and family owned hardware store in Boulder City may sell goods to the City; he had not violated the Ethics in Government Law by using his government position to benefit or influence his hardware store's sales to the City; and he must disclose his and his hardware store's interests before voting to approve the City's purchases from his store. The parties expect to submit written briefs to the Court in FY 2012-2013.

The Commission received a Third-Party Request for Opinion regarding Mayor Tobler shortly after his First-Party RFO, alleging that Tobler improperly used his government position to benefit his hardware store by influencing the City Manager to enforce the City's informal purchasing policy to guarantee a proportionate share of the City's purchases from his store. In addition, the RFO alleged that Tobler failed to disclose his interests when voting upon the City's payment of claims to his store for the previous two years.

This matter awaits a hearing before the Commission. Tobler filed a Motion to Stay the Commission's hearing pending the outcome of the Petition for Judicial Review of the First-Party RFO. The Court is likely to accept oral argument on this Motion in FY 2012-2013.

Wiideman v. Nevada Commission on Ethics,

Seventh Judicial District Court of the State of Nevada (Ely)
Petition for *Writ of Mandamus*

Wiideman, an inmate in a prison in Ely, Nevada, filed a petition for a *writ of mandamus* to the court challenging the statutory prohibition on the Commission rendering an opinion in response to a request filed by a person incarcerated in a correctional facility in Nevada. See NRS 281A.440(2). On July 27, 2011, the Court denied the Petition for *Writ of Mandamus*.

Wiideman appealed the denial to the Nevada Supreme Court. While awaiting an instruction from the Court, Wiideman passed away. The Commission filed a Notice of

Suggestion of Death, and currently the parties await a Court order dismissing the matter or providing other instruction.

Estate of Williams v. Comm'n on Ethics

United States Court of Appeals for the Ninth Circuit

The Office of the Nevada Attorney General continues to represent the Commission in this matter in the federal courts. The Nevada District Court dismissed Williams' lawsuit against the Commission based on Eleventh Amendment immunity. Williams appealed the dismissal to the Ninth Circuit Court of Appeals. A similar argument awaits the Court's decision.

Fiscal Matters

Commission Budget:

The Commission's actual budget for fiscal year 2011-2012 was \$669,280, which included a one-time \$65,000 allocation from the Interim Finance Committee's Contingency Fund for a temporary contract attorney position to address the backlog of opinions.

Because the Commission derives its funding proportionally from the State General Fund and from local governments based on its caseload, governments participated in a 26%:74% state-to-local government cost-sharing ratio. Of the annual Commission budget, only \$152,309 came from the State General Fund. The Commission received \$451,971 from local governments in Nevada, and the remaining \$65,000 from the IFC Contingency Fund.

Without the contract attorney infusion inflating the overall budget, the agency's operating budget would have equaled that of FY 2006 and FY 2007 when the matters before the Commission and the nature of the deliberations were significantly less complex and the same number of staff handled 40% fewer cases than the current load.

Due to a continuing decline in the State's economy, all State personnel, including that of the Commission, were required to operate with significantly reduced budgets and participate in mandatory unpaid furloughs.

Keeping within the agency's budget has been a true struggle. Certain operational costs simply cannot be trimmed further. Even with the Commission reducing or eliminating travel for its meetings, the in-state travel budget required shifting funds from other categories to cover required expenses. The generous waiver of nearly \$2,000 in Department Cost Allocations allowed the Commission to pay for its required court reporter transcription services. Even with a contract attorney focused entirely

on addressing the Commission's written opinion backlog, insufficient authority is available for adequate staffing to remain current with the load. Needless to say, the agency's budget is in a crisis.

Penalties Imposed:

In 2011-2012, the Commission imposed a total of \$12,000 in civil penalties in three cases. Pursuant to State law, the Commission deposits civil penalties into the State General Fund. One additional sanction imposed in FY 2011 (\$200) went uncollected and was referred to the State Controller for action.

Legislative Matters

In the late part of the fiscal year, the Commission created a Subcommittee to Consider Changes to Chapter 281A. The Subcommittee undertook an exhaustive analysis of the current statutes and compiled a table of proposed changes. Upon review by the Commission as a whole, a large portion of the over 40 suggested changes were forwarded for development into an agency bill draft for potential consideration in the 2013 Legislative Session. Additionally, the Commission will request consideration of adding not less than one additional staff member, an attorney, in the next biennial budget.

The Legislative Commission's Sunset Subcommittee reviewed the Commission on Ethics in 2011-2012. After responding to the Subcommittee's extensive requested information and appearing before the body for significant questioning, the Subcommittee voted to recommend to the 2013 Legislature the continuation of the Commission on Ethics. Of the seven members voting, there were five affirmative and two dissenting votes.

Regulatory Matters

The only regulatory changes that took place this year were those related to the statutory changes made during the 2011 Legislative session.

Goals

Last year's annual report identified several goals. The following remain unachieved - with little progress made, but several modifications and enhancements are provided.

- **Create an interactive web-based training tool.**

While several of the Ethics trainings have been digitally recorded and raw material continues to be compiled, without funding to support the development of a web-based training tool, this goal may never be met.

The Executive Director has been working with the Personnel Division to create some web-based materials, but is far from completing any useable product.

Additionally, the Executive Director has been collaborating with the training personnel at the Department of Employment, Training and Rehabilitation (DETR) to develop a course titled "The Ethics of Excellence" targeting ethics and performance expectations of public employees. Prior NCOE training materials and presentations had been tailored more toward public officers. This new effort will complete the outreach efforts to another sector of the Commission's clientele.

- **Barring extraordinary circumstances, publish written opinions within 40 days of a final determination by the Commission.**

Thanks in large part to the contract attorney's and Commission Counsel's dedication, the 24-month opinion backlog (of over 83 opinions waiting to be written) has been remedied. While abstracts remain to be completed in 24 matters, 59 full opinions have been published in a 5-month period. As of June 30, 2012, the Commission issued written opinions for each RFO heard or addressed through mid-February 2012, when the contract attorney began working. However, with few exceptions, the 18 opinions resulting from decisions rendered since that time remain unwritten.

Much has been accomplished to reduce the waiting period between an oral outcome and issuance of a written Commission opinion, but relief from the burdens of other high priority assignments must be achieved to address this issue. Without an additional attorney to assist with the workload, this goal will not be met.

- **Produce and distribute a comprehensive and up-to-date Digest of Commission Opinions.**

The Commission has not completed a complete Digest of NCOE Opinions since 1998. This year, several dozen cases were digested with the help of interns, and the agency will continue to work toward closing the gap on the digests to be written. However, this task has fallen to the last priority again, due in large part to the lack of available staffing.

Evidently, the Commission is not alone in its failure to address such tasks, as the annotations to the Commission's statutes, with only one or two exceptions, remained unattended to by the Legislative Counsel Bureau. We hope that LCB will allocate some resources to this task in light of the large number of opinions the Commission has recently issued.

Conclusion

The 2012-2013 fiscal year is a turning point for the Commission. The Nevada Legislature will set the course for the future efficacy of the agency by either providing adequate resources to do the job of the Commission, or allow it to struggle to do its work as best as it can.

The staff remains committed to providing high quality, responsive services to the public, including the public officers and public employees of our state, within the limits of each individual's ability and personal obligations. The Commission has a talented staff, and the individual members of the Commission itself are second to none. All of these individuals have committed themselves to maintaining and enhancing the public's trust in our government.

Eliminating the opinion backlog, or at least reducing it greatly, and balancing that task against the continuing demands of the requests for opinion received and administration of the ongoing activities of the agency, is an accomplishment of which the Commission can be very proud. The personal investments of Commission Counsel Yvonne M. Nevarez-Goodson and Contract Attorney Janette M. Bloom to accomplish that task are of special note.

For 2012-2013, no new objectives reasonably can be identified, other than those articulated in the goals section of this document. The Commission staff cannot be reasonably expected to produce any more than it already does. Despite these difficult times, somehow, the work of the Commission continues to be accomplished. Unfortunately, without reasonable and seasonable relief, these dedicated public servants are unlikely to be able or willing to continue to invest the laborious hours they have spent in this fiscal year.

The Commission is hopeful that the outcome of the 2013 Legislative session will be positive, an Ethics in Government champion will be identified, and the challenges the agency has faced will be addressed fully

#

Exhibit 1

COMMISSIONERS

NEVADA COMMISSION ON ETHICS

COMMISSIONERS

as of June 30, 2012

<u>Appointed by the Governor</u>	<u>Appointed by the Legislative Commission</u>
Chairman Erik Beyer, P.E. (R) <i>(07/01/08 – 06/30/12)</i> <i>Former public officer</i>	John C. Carpenter (R) <i>(02/01/11* – 09/30/13)</i> <i>Former public officer</i>
Gregory J. Gale, C.P.A. (D) <i>(07/01/09 – 10/31/15)</i> <i>Former public employee</i>	Timothy Cory, Esq. (R) <i>(10/01/11 - 09/30/15)</i> <i>Attorney</i>
Magdalena Groover (R) <i>(07/01/2011 – 06/30/15)</i> <i>Member-at-l arge</i>	Vice Chairman Paul H. Lamboley, Esq. (D) <i>(05/07/08* – 09/30/16)</i> <i>Attorney</i>
Keith A. Weaver, Esq. (D) <i>(04/26/2011* – 09/30/15)</i> <i>Attorney</i>	James M. Shaw (D) <i>(07/01/08 – 06/30/16)</i> <i>Former public officer</i>

*appointed to fill a prior Commissioner's unexpired term

Staff

Caren Cafferata-Jenkins, Esq.
Executive Director

Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel

Michael E. Lawrence
Senior Investigator

Valerie M. Carter
Executive Assistant

Janet E. Jacobsen
Senior Legal Researcher

Office

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775-687-5469 – telephone 775-687-1279 – fax

ncoe@ethics.nv.gov

HISTORY OF NEVADA COMMISSION ON ETHICS MEMBERS

2011 - 2012

Commission on Ethics

Erik Beyer, Reno, Chairman
Paul H. Lamboley, Esq., Reno, Vice-Chairman
John C. Carpenter, Elko
Tim Cory, Esq., Las Vegas
Gregory J. Gale, Las Vegas
Magdalena Groover, Las Vegas
John Marvel, Carson City
James M. Shaw, Reno
Keith Weaver, Esq., Las Vegas

John Marvel, Carson City, served from October 2009 through January 2012

2010 - 2011

Commission on Ethics

John T. Moran, III, Las Vegas, Chairman
Erik Beyer, Reno, Vice Chairman (Chairman April 2011)
Gregory J. Gale, Las Vegas
Magdalena Groover, Las Vegas
George M. Keele, Minden, Minden,
Paul H. Lamboley, Reno (Vice-Chairman April 2011)
John Marvel, Carson City
James Shaw, Reno
Keith Weaver, Las Vegas

John T. Moran, III, Las Vegas, served from January 2008 through April 2011

2009 - 2010

Commission on Ethics

George M. Keele, Minden, Minden, Chairman
John T. Moran, III, Las Vegas, Vice-Chairman
Erik Beyer, Reno
Gregory J. Gale, Las Vegas
Magdalena Groover, Las Vegas
Mark A. Hutchison, Las Vegas
Paul H. Lamboley, Reno
John Marvel, Carson City
James Shaw, Reno

Mark A. Hutchison, Las Vegas, served from January 2004 through February 2010

2008 - 2009

Commission on Ethics

Mark A. Hutchison, Las Vegas, Chairman
Timothy Cashman, Las Vegas, Vice-Chairman
Erik Beyer, Reno
Randall V. Capurro, Las Vegas
George M. Keele, Minden (Chairman beginning 1/2009)
John Marvel, Carson City
John T. Moran, III, Las Vegas
James M. Shaw, Reno
Paul H. Lamboley, Reno

Timothy Cashman, Las Vegas, served from June 2004 through December 2008

Randall V. Capurro, Las Vegas, served from October 2005 through August 2008

2007 - 2008

Commission on Ethics

Mark A. Hutchison, Las Vegas, Chairman
Timothy Cashman, Las Vegas, Vice-Chairman
Randall V. Capurro, Las Vegas
Rick R. Hsu, Reno
Caren Jenkins, Carson City
James Kosinski, Reno
George M. Keele, Minden
Paul H. Lamboley, Esq., Reno
John T. Moran, III, Las Vegas

Caren Jenkins, Esq. served from September 2003 through December 2007

2006 - 2007

Commission on Ethics

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

2005 - 2006

Commission on Ethics

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

2004 - 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
Thomas Sheets, Las Vegas, served as Chair from July 2003, through December 2003

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 Kosinski, 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
R. 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
Janice Pine, Reno

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 adopted in 1985 created a single ethics commission for both the legislative and executive branches of government. Prior to 1985, both executive and legislative branch ethics commissions operated independently of one another.

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

Exhibit 2

***Information Compiled in Celebration of the
Commission's 35th Anniversary
November 16, 2011***

COMMISSION ON ETHICS

ANCIENT HISTORY 1971 - 1985

In 1971, the Nevada Legislature adopted Assembly Concurrent Resolution No. 39, sponsored by Assemblymen Lowman, Smith, Frank, Young, Wilson, Ronzone, Hafen and Swallow:

WHEREAS, there is a crisis of confidence in government and in the established institutions of our land; and

WHEREAS, the survival of this democracy rests not upon force but upon consensus which results when people have continued faith and confidence in the integrity and judgment of their public officers and employees at all levels of government; and

WHEREAS, Public officers and employees are the servants and agents of the people who are bound by the constitution of this great state to enact, execute and interpret the laws for the protection, security and benefit of the people; and

WHEREAS, the faith and confidence of the people in their government and institutions is jeopardized whenever public officers and employees are involved in conflicts between their private interests and those of the general public whom they serve; and

WHEREAS, public officers and employees of the State of Nevada are presently without adequate guidelines for separating their roles as private citizens from their roles as public servants, and the laws regarding conflict of interest are an uncoordinated patchwork; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, that the legislative commission is directed to make a study of the important problem of conflicts of interest at all levels of government, including the legislature of the State of Nevada, and to report the results of such study and any recommendations for proposed legislation to the 57th session of the legislature.

The Legislative Commission appointed Assemblymen M. Kent Hafen and Nick Lauri, and Senators Lee E. Walker and C. Clifton Young to study the matter. On December 21, 1972, the study committee reported its findings, along with suggested legislation. But no ethics measures were adopted in the 1973 legislative session.

In 1974, Assemblyman Joe Dini attended a three-day legislative seminar at the Eagleton Institute for Government Ethics in Boston, MA. On his return to Nevada, with the assistance of then-Speaker Keith Ashworth, Dini introduced nearly 20 ethics measures in 1975. Not one of those measures passed. In 1977, Dini introduced one consolidated ethics bill which passed into law. The next year, the Nevada Supreme Court declared the law unconstitutional. The 1979 Legislature created an Executive Ethics Commission and a Legislative Ethics Commission which operated (or failed to operate) separately until 1985, when funds were allocated and a unified Nevada Commission on Ethics became operational. That body continues to function today.

TONIGHT'S HONOREES

As a place of contemplation (a calm and reasonable place amid the conflicts of interest, public posturing and allegations of graft and corruption) and of introspection (related to enhancing and maintaining the public trust), the Commission on Ethics may be likened to a public park. Applying that metaphor, individuals, including appointed **Commissioners, have provided exemplary service, and the following are here this evening:**

CONCEPT and ARCHITECTURE: Assembly Speaker Joseph E. Dini, Jr.
CHANGE ORDERS: U.S. Senator Richard H. Bryan
PLANNING: Larry Struve, 1983 - 85
DESIGN: Michael F. Mackedon, 1985 - 93
FOREMAN: Thomas "Spike" Wilson, 1991 - 97
PERMITTING: Scott Scherer, 1997 - 98
SHADE TREES: James Todd Russell, 1999 - 2003
OPEN SPACE: Rick R. Hsu, 2000 - 08
ANIMAL CONTROL: Caren Jenkins, 2003 - 07
PLAYGROUND: George M. Keele, 2003 - 11
PUBLIC ART: Mark A. Hutchison, 2004 - 10
WATER FEATURES: Timothy Cashman, 2004 - 08

Additionally, **NCOE staff was instrumental in shaping the Commission's history,** and the following Executive Directors are present tonight:

TOPIARY ARTISTS:
Stacy (Jennings) Woodbury, 2003 - 06
Adriana G. Fralick (Acting E.D. twice), 2005 - 09
Patricia D. Cafferata, 2007 - 09
Caren Jenkins, 2009 to present

NCOE LANDMARK 2011

In the Spring of 2011, after an adverse ruling from the Nevada Supreme Court, the NCOE presented oral argument before the nation's highest court - the **Supreme Court of the United States** - that a legislator's vote is not "speech" protected by the First Amendment to the Constitution of the United States in Nevada Commission on Ethics v. Carrigan. On June 13, 2011, U.S. Supreme Court Justice Antonin Scalia, writing for the majority, reversed the Nevada Supreme Court's decision and held that a legislator has no personal First Amendment right to speak (or vote) when acting in his representative capacity. The case clarified that, in certain circumstances, ethics bodies **throughout the nation** may require a legislator with a conflict of interest to abstain from voting.

In Memoriam

Cheryl Player informed us of the passing of **Ronald Player** on August 11, 2010. Ronald Player served on the Nevada Commission on Ethics from 1979 through 1984, and told his wife many stories of his experience. He would have enjoyed this event.

Dorothy H. Huffey informed us of the passing of **Paul H. Huffey** on June 19, 2011.

Paul Huffey was appointed Chair of the Nevada Commission on Ethics in 1983 by then-Governor Richard H. Bryan, and regularly expressed frustration with the Commission's lack of power to back up its decisions in the 1980's. His widow states that he took his task very seriously. He would not have missed tonight's festivities!

Exhibit 3

The life of a Third-Party Request For Opinion

Formal Request for Opinion (RFO) filed with the Nevada Commission on Ethics
 (Staff determines jurisdiction, investigates and makes recommendations to Investigatory Panel)

RFO rejected if not legally sufficient or Commission lacks jurisdiction

RFO is legally sufficient and Commission has jurisdiction

Investigatory Panel finds no just & sufficient cause

Investigatory Panel finds just & sufficient cause to have full Commission hearing

RFO dismissed

Public hearing scheduled before Commission

Commission finds no violation

Ethics Commission finds that Conduct violated statute

Commission renders written opinion

Commission determines if violation was "willful"

Violation not "willful"

Violation "willful"

Commission renders written opinion

Commission considers imposing a civil penalty

Commission imposes civil penalty

Commission imposes **NO** civil penalty

Commission renders written opinion

Final Commission opinion is *subject to judicial review* under Nevada Administrative Procedure Act (NRS Chapter 233B)

Due Process

- * Notice of complaint must be provided in writing.
- * Subject must be given an opportunity to respond.
- * Proceedings are confidential until panel decision.
- * Proceedings become public after panel.
- * Panel members cannot further participate.
- * Notice of hearing must be provided.
- * Subject must be allowed representation & allowed to respond and present evidence.
- * Decision subject to judicial review.

Exhibit 4

***Commission on Ethics
Public Records Policy
Adopted 2011-2012***



**STATE OF NEVADA
COMMISSION ON ETHICS**

704 West Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
<http://ethics.nv.gov>

**NEVADA COMMISSION ON ETHICS
POLICY ON ACCESS TO PUBLIC RECORDS**

Purpose: To comply with the Nevada Public Records Act (Chapter 239 of NRS).

Policy Statement:

1. Access to Public Records. It is the policy of the Nevada Commission on Ethics ("Commission") to provide the public access to public records unless a record is confidential pursuant to NRS 281A.440.

Staff shall make every effort to accommodate each request for non-confidential documents in a timely manner, however, to maintain the efficiency of the agency, staff time and effort must not be monopolized to address public records requests to the detriment of regular duties. The Commission will respond to public records requests as quickly as practicable. Archived records may require up to thirty (30) days to be identified, requested and retrieved from storage before the documents may be reviewed by Commission staff. Requesters must allow a reasonable time for documents created more than two (2) years prior to the request.

2. Confidential Records. Pre-hearing documents which reflect the opinions, recommendations, investigation, advice or thought processes of Commissioners or staff regarding a hearing or any part of reaching decisions made or to be made in a

hearing are, and remain, confidential pursuant to NRS 281A.440. In addition to information specifically designated as confidential by NRS 281A the Commission acknowledges *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 798 P.2d 144 (1990) limited the provisions of the Nevada Public Records Act. This common law limitation requires an agency to balance the public interest in disclosure against the public interest served by nondisclosure to determine whether information is confidential.

The Commission may deny any request for information if, on balance, the public interest in nondisclosure outweighs the public interest in disclosure. A request for public records shall state the reason for the request so the Commission can weigh the public interest in disclosure.

3. Standard Fees for Copies Responding to Public Records Requests. A summary of the Commission's fees is attached hereto as Exhibit "A." Fees will be estimated based on the request and must be paid before the request is filled. The actual cost of responding to the public records request shall be charged. In the absence of specific information showing actual cost, the attached fee schedule shall apply. Copy fees are charged separate from and in addition to any fee for extraordinary use of Commission personnel or technology. Documents that have already been scanned onto the Commission's server may be provided via email at no charge. Requests for documents that are not already scanned onto the Commission's server or that predate the Commission's scanning process may be charged a scanning fee. Copies of current agendas, minutes or proposed regulations shall be provided electronically at no cost. At the discretion of the Executive Director

or her designee, fees for providing public information to the news media, government or other members of the public may be waived.

4. Extraordinary Fees for Public Records. A summary of the Commission's fees is attached hereto as Exhibit "A." These fees are in addition to any fee authorized by other provisions of this policy. NRS 239.055. If extraordinary use of personnel is required to respond to a public records request, the requester shall be charged a reasonable fee for the extraordinary use of personnel. The fee shall be calculated in one-tenth of an hour increments at the gross hourly wage rate, or portion thereof, of the lowest compensated staff member reasonably available and qualified to respond to the request. The time shall be either the actual time required, or the time it should reasonably have taken to respond to the request, whichever is shorter. No charge shall be assessed for the first thirty (30) minutes of any employee's time. Any time in excess of thirty (30) minutes shall be deemed extraordinary.

Should extraordinary use of technology be required to comply with a public records request, the requester shall be charged the actual cost for the use of the technology, exclusive of overhead.

Prior to responding to a request that requires extraordinary use of personnel or technology, the processing employee shall prepare an estimate of the time required to comply and the Executive Director shall inform the requester of the actual estimated charge. The estimated fees shall be collected before compiling or providing the Commission's response. If the actual expense is less than the estimate, any prepaid balance shall be returned to the requester. Any costs in excess of the

prepaid estimate will be billed with the Commission's responsive documents and must be paid within thirty (30) days of receipt of the related invoice.

5. Certification of Public Records. Upon request, the Commission shall certify that the copies provided are true and correct copies of the records on file in the offices of the Commission as of the date provided. The copy may be certified using any legally recognized form of certification. NRS 240.100 authorizes notary fees for certification of copies. A summary of the Commission's fees is attached hereto as Exhibit "A." Each requested certification shall be subject to a separate notary fee. An unsigned acknowledgment containing the same information may be provided at no charge.

6. Postage. All public record request responses will be delivered via U.S. Mail or via email unless otherwise requested. Actual costs related to delivery of the Commission's response will be charged to the requester.

This policy was adopted by a vote of the Commission on November 16, 2011, and continues in force until it is amended or revoked.

Date:

_____/s/_____
Caren Jenkins, Esq. Executive Director

EXHIBIT "A"
TO
NEVADA COMMISSION ON ETHICS
POLICY ON ACCESS TO PUBLIC RECORDS

FEES FOR COPIES OF PUBLIC RECORDS

Pursuant to Nevada Revised Statutes Chapter 239 and the Nevada Commission on Ethics ("Commission") Policy on Access to Public Records, the following is the Commission's schedule of fees for copies of public records, where not otherwise set by state or federal law or regulation.

The first thirty (30) minutes of labor/personnel time to fill the request are provided at no charge. Subsequent labor will be charged pursuant to the policy concerning extraordinary use of personnel.

The first five (5) single sided copies will be provided at no charge. After the first five (5) pages, five cents (\$.05) per page will be charged for single sided copies and seven cents (\$.07) per page for double sided copies on standard letter or legal sized paper. Copies on larger size paper will be charged at a higher rate. Copies of documents or photographs in color shall be charged at fifty cents (\$.50) per side.

Copies provided on compact discs/DVDs shall be charged at five dollars (\$5.00) per disc.

Current agendas, minutes or proposed regulations are available electronically at no charge.

Email copies of existing scanned documents shall be available at no per page charge. Scanning charges of two cents (\$.02) per page shall apply to documents not already scanned at time of request.

Requests requiring extraordinary use of personnel will be charged a fee equal to the gross hourly wage of the individual employee reasonably available and qualified to fill the request in six (6) minute increments (one tenth (1/10th) of one hour). This fee shall not include the first thirty (30) minutes of that employee's time responding to the request.

Copies of records provided via other media not specified herein shall be charged at actual cost.

Certification of copies shall be available at two dollars and fifty cents (\$2.50) per document. An acknowledgment that the response provided contains the true and correct copies of all documents responsive to the public records request will be provided at no additional cost.

You will be provided an estimate of costs before your request is filled. Estimated fees must be paid before the request is filled. Any costs in excess of the estimate will be invoiced and provided with the responsive documents. Any balance must be paid within thirty (30) days of the requester's receipt of the invoice.

NRS 239.053 Additional fee for transcript of administrative proceedings; money remitted to court reporter; posting of sign or notice.

1. If a person requests a copy of a transcript of an administrative proceeding that has been transcribed by a certified court reporter, a governmental entity shall charge, in addition to the actual cost of the medium in which the copy of the transcript is provided, a fee for each page provided which is equal in amount to the fee per page charged by the court reporter for the copy of the transcript, as set forth in the contract between the governmental entity and the court reporter. For each page provided, the governmental entity shall remit to the court reporter who transcribed the proceeding an amount equal to the fee per page set forth in the contract between the governmental entity and the court reporter.

2. The governmental entity shall post, in a conspicuous place at each office in which the governmental entity provides copies of public records, a legible sign or notice which states that, in addition to the actual cost of the medium in which the copy of the transcript is provided, the fee charged for a copy of each page of the transcript is the fee per page set forth in the contract between the governmental entity and the court reporter.

(Added to NRS by 1997, 2385)

Sunshine Reporting Services (aka Litigation Services) Transcript fees:

- **\$4.50 PER PAGE AND \$1.00 PER EXTRA PAGE FOR STANDARD DELIVERY**
- **CD: \$25.00**
- **OUTSIDE SALE COPIES:\$2.00**

The current contract is in effect through May 31, 2013