



**STATE OF NEVADA
COMMISSION ON ETHICS**

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**MINUTES
of the meeting of the
NEVADA COMMISSION ON ETHICS**

August 17, 2016

The Commission on Ethics held a Public Hearing to receive and consider comments and a public meeting to act upon proposed temporary regulations reflecting amendments to NAC Chapter 281A On Wednesday, August 17, 2016, at 9:00 a.m.

**Nevada Legislative Building
Room 3138
401 S. Carson Street
Carson City, NV 89701**

and via video-conference to:

**Grant Sawyer State Building
Room 4412
555 E. Washington Avenue
Las Vegas, NV 89101**

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. Verbatim transcripts are available for public inspection at the Commission's office located in Carson City.

1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.

Chair Cheryl A. Lau, Esq., called the meeting to order in Carson City, Nevada at 9:00 a.m. Also present in Carson City was Commissioner Barbara J. Gruenewald, Esq. Present in Las Vegas, Nevada were Vice-Chair Keith A. Weaver, Esq., and Commissioners Magdalena Groover, and Dan H. Stewart. Present for Commission Staff in Carson City were Executive Director, Yvonne M. Nevarez-Goodson, Esq., Commission Counsel, Tracy L. Chase, Esq., Associate Counsel, Judy A. Prutzman, Esq. and Executive Assistant, Valerie M. Carter, CPM.

Commissioner John C. Carpenter was excused from this meeting.

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Public Hearing to receive and consider comments from all interested persons regarding the Commission's intent to temporarily adopt, amend or repeal regulations set forth in NAC Chapter 281A to reflect amendments to NRS Chapter 281A made pursuant to Assembly Bill 60 of the 2015 Legislative Session (Chapter 186, 2015 Statutes of Nevada), which includes provisions relating to Commission procedures for jurisdiction, notice and investigations of third-party requests for opinion, confidentiality of certain information and documents, and other matters related thereto. The proposed regulations will also amend various provisions of NAC Chapter 281A to streamline case management and investigatory processes related to first-party and third-party requests for opinion, including without limitation, jurisdictional reviews, motion practice before the Commission and requirements for withdrawing, reconsidering or rehearing matters. The Notice of Intent to Act upon a Regulation, including the terms of the proposed regulation, and Notice of this Public Hearing were posted on Monday, July 18, 2016, in accordance with the provisions of NRS 233B.060 and 233B.0603.

Chair Lau invited Executive Director Nevarez-Goodson to introduce the purpose of the proposed temporary regulations.

Executive Director Yvonne M. Nevarez-Goodson, Esq., first confirmed for the record that the Commission held a workshop to solicit public comments on June 15, 2016, as required under NRS 233B. The purpose of this meeting is for the Commission to hold a public hearing to receive and consider comments from all interested persons. As the Commission did not receive any written public comments prior to the hearing as noticed, and no members of the public appeared at the hearing to provide comment, Executive Director Nevarez-Goodson provided a summary of the proposed temporary regulations for adoption by the Commission.

Executive Director Nevarez-Goodson explained that the Commission agreed to pursue temporary proposed regulations because the Commission seeks to implement and consider new procedures for jurisdictional appeals, motions and pleadings before adopting permanent regulations. The only difference in the procedures between permanent regulations and temporary regulations is that a draft of the regulations need not be provided or reviewed by LCB before the regulations are adopted by the agency and temporary regulations have a temporary, short-term duration. If the Commission wants the temporary regulations to become permanent, it must go through a separate procedure to adopt a permanent regulation before the expiration date. The Commission anticipates long-term, permanent regulatory changes depending on any amendments to NRS 281A during the upcoming 2017 Legislative Session ("legislative session").

Executive Director Nevarez-Goodson summarized the amendments being proposed for NAC Chapter 281A as follows:

- NAC 281A.265 – **Motions** – Current provisions authorize motion practice in Third-Party Requests for Opinion only after a panel hearing has issued its determination. However, motions are appropriate and filed for various reasons at various stages in proceedings, including First-Party Requests for Opinions. This amendment would authorize and establish guidelines for such motion practice.
- NAC 281A.353, 281A.355, 281A.480 and 281A.485 - **Withdrawals of Requests for Advisory and "Cooling-Off" Opinions** – This amendment is intended to clarify and define when First-Party Requests for Advisory Opinion or "Cooling-Off" Opinions may be withdrawn and under what circumstances. This amendment will require withdrawal before the Commission commits resources to hearing the matter and issuing the opinion. This clarification is consistent with the Commission's most recent decision on this issue.
- NAC 281A.360, 281A.405 and 281A.490 - **Jurisdictional Appeals** – This amendment is intended to refine provisions that were enacted in NAC Chapter 281A in 2014 that

have resulted in an administrative backlog in handling appeals of staff jurisdictional determinations in third-party cases. The original intent of the 2014 amendment was for the Commission, rather than a Panel, to hear appeals of staff jurisdictional determinations. The 2014 amendment clarified that both a requester and the subject may appeal staff's determination and added more layers of procedure, including notices and opportunities to submit responses. The majority of responses to an appeal include defenses to the allegations which confuse the issues and procedural timing. The proposed regulation also streamlines jurisdiction and appeals in first-party cases. These substantive amendments will maintain the appeal process through a streamlined, preliminary procedure and remove much of the additional administrative work.

- NAC 281A.275, 281A.300, 281A.365, 281A.455, 281A.460, 281A.465, 281A.495, 281A.500, 281A.505, 281A.510 and 281A.520 – **Hearings and Proceedings** - These amendments clarify hearing procedures before the Commission consistent with provisions adopted in AB 60, and confirm the status of the Executive Director, or his/her designee, such as the Associate Counsel, as a party in a third-party case responsible for investigating and presenting evidence to the Commission and providing legal arguments in support of such evidence
- NAC 281A.403 – **Confidentiality** – These amendments confirm the confidentiality of the Executive Director's investigation as clarified in Assembly Bill 60 of the 2015 Legislative Session ("AB 60").

Commissioners Dan H. Stewart and Barbara Gruenewald asked the Executive Director to explain further the purpose of and deadlines for the temporary rulemaking process.

Executive Director Nevarez-Goodson explained that both a temporary and permanent regulation have the same effect of law once adopted, but a temporary regulation expires on November 1 after the regular legislative session concludes. For the Commission to make the temporary regulations permanent, the Commission must proceed under a separate process prior to the expiration of the temporary regulations. Further, given the statutory deadlines for adoption of regulations, the Commission may adopt only a temporary regulation at this time prior to the pending, regular legislative session, and this temporary rulemaking timeframe was established, in part, to allow amendments to the Nevada Administrative Code to become temporarily effective while freeing up the Legislature's resources for the upcoming session.

Separately, the Commission seeks to ensure the proposed amendments in this temporary regulation will work in practice before adopting them as permanent. Therefore, putting the amendments into practice over the next year combined with what may be amended in statute in the legislative session will give the Commission ample opportunity to make any further necessary amendments in a future permanent rulemaking.

4. Pursuant to NRS 233B.061 and 233B.040, Commission to act upon proposed temporary regulations, including adoption of the proposed temporary regulation.

Vice-Chair Keith A. Weaver moved to adopt the proposed regulations. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously.

4. Approval of Minutes of the June 15, 2016 Commission Workshop to Solicit Comments on Proposed Temporary Regulations.

Commissioner Stewart moved to approve the Minutes of the June 15, 2016 Workshop to Solicit Comments on Proposed Temporary Regulations. Commissioner Gruenewald seconded

the Motion. Executive Director Nevarez-Goodson clarified for the record that the minutes before the Commission for approval were for the Commission's June 15, 2016 Commission meeting for the Workshop and not the Commission's separately notice regular Commission meeting on June 15, 2016. The Motion was put to a vote and carried unanimously.

5. Open Session for Public Comment.

No public comment.

9. Adjournment.

Commissioner Gruenewald moved to adjourn the meeting. Chair Lau seconded the Motion. The Motion was put to a vote and carried unanimously. The meeting adjourned at 9:13 a.m.

Minutes prepared by:

/s/ Darci Hayden
Darci Hayden, PP-SC
Senior Legal Researcher

/s/ Yvonne M. Nevarez-Goodson
Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved October 19, 2016:

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

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