



**STATE OF NEVADA  
COMMISSION ON ETHICS**

**EXECUTIVE DIRECTOR'S REPORT TO THE COMMISSION**

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DATE: August 10, 2016  
TO: Commissioners  
FROM: Yvonne M. Nevarez-Goodson, Esq., Executive Director  
SUBJECT: Proposed Temporary Regulations

The Commission has noticed a public hearing under NRS 233B to consider public comment and adopt the enclosed temporary regulations of the Commission set forth in NAC Chapter 281A. The Notice of Public Hearing, Notice of Intent to Act Upon a Regulation and a draft of the proposed amendments to NAC 281A were properly posted in accordance with the Nevada Open Meeting Law (NRS 241) and the Nevada Administrative Procedures Act (NRS 233B) not later than 30 days before this scheduled public hearing.

The Commission held the statutorily-mandated public workshop related to these temporary regulations at its properly noticed meeting on June 15, 2016. No public comments were provided, and the Commission moved to schedule a public hearing to consider further public comment and act upon the regulations.

The Commission further agreed to pursue these regulations as a temporary rather than permanent measure to ensure the effectiveness of the proposed changes to the procedures of the Commission, including motion practice, withdrawals, jurisdictional appeals and hearings. The temporary regulations also afford the opportunity to await anticipated legislative changes during next Legislative Session which may affect case management and investigative processes prior to establishing permanent regulations. The enclosed temporary regulations will expire in November 2017 unless the Commission later adopts these amendments through a formal permanent regulation next year. Temporary regulations which are properly adopted in accordance with NRS 233B have the same effect of law as permanent regulations during the timeframe in which they are effective.

The proposed temporary regulations revise procedures and timelines consistent with 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 regulation will amend various provisions of NAC Chapter 281A to streamline case management and investigatory and hearing processes related to first-party (advisory) and third-party (complaint) requests for opinion, including without limitation, jurisdictional appeals, motion practice before the Commission, hearing requirements and requirements for withdrawing, reconsidering or rehearing certain matters.



**STATE OF NEVADA  
NEVADA COMMISSION ON ETHICS**

**NOTICE OF INTENT TO ACT UPON A REGULATION**  
**AND**  
**NOTICE OF PUBLIC HEARING**  
**TO RECEIVE COMMENTS ON THE**  
**ADOPTION, AMENDMENT OR REPEAL OF TEMPORARY REGULATIONS**

The Nevada Commission on Ethics will hold a public hearing on:

Wednesday, **August 17, 2016**  
9:00 A.M.

at the following locations  
via video conference:

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

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

The purpose of the hearing is to receive comments from all interested persons on the temporary adoption, amendment or repeal of regulations that pertain to Chapter 281A of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation.

The proposed regulation reflects 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 regulation 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.

2. Either the terms or substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

The proposed regulation amends provisions related to jurisdictional determinations, motions, withdrawals and hearings related to first-party (advisory) and third-party (complaints) requests for opinion. The proposed regulation establishes consistent practice and procedure with new statutory provisions and clarifies the process for determining jurisdiction of the Commission, submitting motions, withdrawing requests and presenting evidence and witnesses during hearings.

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3. The estimated economic effect of the regulation on the business which it is to regulate and on the public.
  - a. Both adverse and beneficial effects

The Commission does not regulate any business in the State of Nevada. Its jurisdiction is limited to the conduct of public officers and employees of State and local government. The proposed regulation streamlines and clarifies the manner in which the public may file requests for opinions with the Commission. Through improved processes, the Commission will also save operational costs.

- b. Both immediate and long-term effects

Please see explanation in Section 3.a above.

4. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.

The Commission staff analyzed whether the proposed regulation could cause any small business any economic burden and determined that jurisdiction of the Commission is limited to public officers and employees such that small businesses could not be affected. See attached Statement regarding Small Business Impact.

5. The estimated cost to the agency for enforcement of the proposed regulation.

The proposed regulation will not incur any cost for enforcement of the proposed regulation. To the contrary, the proposed regulation will streamline various jurisdictional and procedural processes and save staff time and Commission costs, including, without limitation costs of paper copies and mailing.

6. A description or a citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulation does not overlap or duplicate that of any other state, local, or federal government agency.

7. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulation is not required pursuant to federal law.

8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The proposed regulation does not include provisions which are more stringent than a federal regulation.

9. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed regulation of the Nevada Commission on Ethics may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form to:

Yvonne M. Nevarez-Goodson, Esq. Executive Director <b>Nevada Commission on Ethics</b> 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703
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Written submissions must be received by the Nevada Commission on Ethics on or before **August 8, 2016**. If no person who is directly affected by the proposed regulation appears to request time to make an oral presentation, the Nevada Commission on Ethics may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and regulations will be available at the Nevada Commission on Ethics at 704 W. Nye Lane, Suite 204, Carson City, Nevada 89703, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

- The Nevada Commission on Ethics at 704 W. Nye Lane, Carson City NV 89703
- State Library and Archives at 100 North Stewart Street, Carson City, NV 89701
- Blasdel Building, 209 E. Musser Street, Carson City
- Washoe County Administration Building, 1001 East 9<sup>th</sup> Street, Reno
- Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas
- The Nevada Commission on Ethics' website: [ethics.nv.gov](http://ethics.nv.gov)
- The Nevada Legislature's Administrative Regulations Notices website: [leg.state.nv.us/App/Notice/A/](http://leg.state.nv.us/App/Notice/A/)
- State of Nevada Public Notice Website: [notice.nv.gov](http://notice.nv.gov)

This notice has also been posted at the following locations:

CHURCHILL COUNTY LIBRARY  
553 SOUTH MAINE ST  
FALLON NV 89406

DOUGLAS COUNTY LIBRARY  
1625 LIBRARY LANE  
MINDEN NV 89423

ELKO COUNTY LIBRARY  
720 COURT ST  
ELKO NV 89801

ESMERALDA COUNTY LIBRARY  
FOURTH & CROOK ST  
P O BOX 430  
GOLDFIELD NV 89013-0430

EUREKA COUNTY LIBRARY  
80 SOUTH MONROE ST  
PO BOX 293  
EUREKA NV 89316

HUMBOLDT COUNTY LIBRARY  
85 EAST 5<sup>TH</sup> ST  
WINNEMUCCA NV 89445

LANDER COUNTY/BATTLE MTN  
BRANCH LIBRARY  
625 SOUTH BROAD ST  
BATTLE MTN NV 89820

LAS VEGAS-CLARK COUNTY  
LIBRARY DISTRICT HQ  
833 LAS VEGAS BLVD NO  
LAS VEGAS NV 89101-2062

LYON COUNTY LIBRARY  
20 NEVIN WAY  
YERINGTON NV 89447-2399

LINCOLN COUNTY LIBRARY  
63 MAIN ST  
PIOCHE NV 89043

MINERAL COUNTY LIBRARY  
FIRST & A ST  
P O BOX 1390  
HAWTHORNE NV 89415

NYE COUNTY  
TONOPAH PUBLIC LIBRARY  
167 CENTRAL ST  
PO BOX 449  
TONOPAH NV 89049-0449

PERSHING COUNTY LIBRARY  
1125 CENTRAL AVE  
LOVELOCK NV 89419

STOREY COUNTY  
TREASURER/CLERK'S OFFICE  
DRAWER D  
VIRGINIA CITY NV 89440

WASHOE COUNTY LIBRARY  
301 SOUTH CENTER ST  
PO BOX 2151  
RENO NV 89505

WHITE PINE COUNTY LIBRARY  
950 CAMPTON ST  
ELY NV 89301

**PROPOSED TEMPORARY REGULATION OF  
THE NEVADA COMMISSION ON ETHICS**

August 17, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4, NRS 281A.290.

A REGULATION relating to ethics in government; revising provisions relating to the procedures of the Commission on Ethics and the staff of the Commission; revising provisions relating to motions that may be filed with the Commission; revising provisions related to jurisdictional appeals to the Commission in Third-Party Requests for Opinion; and providing other matters properly relating thereto.

**Section 1.** NAC 281A.070 is hereby amended to read as follows:

281A.070 “[~~Principal o~~]*Office* of the Commission” means the office of the Commission designated by the Commission pursuant to [NAC 281A.190](#) as the office in which the business of the Commission must be primarily conducted.

**Sec. 2.** NAC 281A.180 is hereby amended to read as follows:

281A.180 In addition to any other duties of the Executive Director required by this chapter or [chapter 281A](#) of NRS, or as otherwise imposed by the Commission, the Executive Director shall:

1. Pursuant to paragraph (e) of subsection 1 of [NRS 281A.240](#), create a curriculum for training and conduct training for public officers and ~~[employers of]~~public employees on the requirements of this chapter, [chapter 281A](#) of NRS and previous opinions of the Commission that have been determined by the Commission to have broad educational value.

2. At the first meeting of the Commission of each new fiscal year, report to the Commission on the state of the fiscal, regulatory and legislative matters and any other business matters of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year.

3. Adhere to the policies and procedures adopted by the Commission for its internal governance and external dealings.

**Sec. 3.** NAC 281A.190 is hereby amended to read as follows:

281A.190. ~~[1.—The Commission will designate which office of the Commission will serve as the principal office of the Commission.]~~

~~[2.]~~ The business of the Commission must be primarily conducted in the ~~[principal]~~ office of the Commission, including, without limitation, the submission of any documents and any requests for an opinion from the Commission.

**Sec. 4.** NAC 281A.255 is hereby amended to read as follows:

281A.255 1. Each written communication or document filed with the Commission must:

- (a) Be on the form provided by the Commission;
- (b) Be submitted in the manner prescribed on the form; and
- (c) Include any:
  - (1) Duplicate copy required to be included with the form, as specified on the form; and
  - (2) Necessary exhibits in a form and format, including, without limitation, digital or electronic format, which is reasonably accessible to the Commission.

2. Except as otherwise provided in [NRS 281A.410](#) and [281A.500](#), the Commission will consider a written communication or document which is required to be filed with the Commission to have been filed with the Commission on the date on which the communication or document is received at the ~~[principal]~~ office of the Commission.

**Sec. 5.** NAC 281A.265 is hereby amended to read as follows:

281A.265 1. *A subject or the Executive Director may file a motion with the Commission not later than the close of business on the date set by an order issued by the Commission, unless leave is granted otherwise by the Chair.* ~~[Motions related to a third-party request for an opinion may only be made:~~

- ~~(a) After an investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion pursuant to [NRS 281A.220](#); and~~
- ~~(b) Before the hearing on the matter unless the cause for the motion arises for the first time during the hearing on the matter.]~~

2. A motion that is made ~~[before the hearing on the matter]~~ *pursuant to this section* must be in writing and must be filed at the ~~[principal]~~ office of the Commission ~~[not later than the close of business on the date set by an order of the Commission after the investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion.~~

~~3.—A written motion must contain:~~

~~(a) A brief statement of the facts and the points and authorities upon which the motion is based;~~

~~(b) A description of the relief sought; and~~

~~(c) A certificate of mailing which indicates that the motion was served upon all other parties to the matter.]~~

4.3. The Commission, in its discretion, may allow a party making a motion to argue the motion before the Commission.

5.4. The Commission, in its discretion, may allow a party or any other person to respond to a motion.

*5. A written motion or response to a motion must contain:*

*(a) A brief statement of the facts and the points and authorities upon which the motion is based;*

*(b) A description of the relief sought; and*

*(c) A certificate of service which indicates that the motion was served upon all other parties to the matter.*

6. The Chair, in his or her discretion, may accept and rule upon a motion on a matter, except a motion for disposition of a matter, at any time before, during or after the hearing by the Commission on the matter.

7. A motion for rehearing or for the reconsideration of an opinion on a ~~[third-party]~~ request for an opinion issued by the Commission must be filed with the Commission not later than 15 days after the date on which the opinion of the Commission is served.

**Sec. 6.** NAC 281A.275 is hereby amended to read as follows:

281A.275 1. A party in a matter before the Commission may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.

2. At its discretion and with the agreement of the subject of a ~~[third-party]~~ request for an opinion, the Commission may, in lieu of holding a hearing, resolve a matter before the Commission with a stipulation, agreed settlement, consent order or default as authorized pursuant to [NRS 233B.121](#). Such a resolution must be in writing or made by oral statement on the record.

**Sec. 7.** NAC 281A.285 is hereby amended to read as follows:

281A.285 1. ~~[A]~~*In accordance with NRS 281A.300, the Commission may issue and the*

*Executive Director or* subject of a ~~[third-party]~~ request for an opinion may request that a subpoena be issued by filing a written request for a subpoena at the ~~[principal]~~ office of the Commission. A subject of a ~~[third-party]~~ request for an opinion who requests the issuance of a subpoena pursuant to this section shall serve the subpoena in accordance with [NRS 281A.300](#) and pay the costs related to the service of the subpoena.

**Sec. 8.** NAC 281A.300 is hereby amended to read as follows:

281A.300 1. A subject may retain legal counsel to represent him or her *related to any request for opinion, including* during:

1. Any investigation of a third-party request for an opinion; or
2. Any hearing.

**Sec. 9.** NAC 281A.353 is hereby amended to read as follows:

281A.353 1. Except as otherwise provided in subsection 2, a first-party request for an opinion will be heard by the Commission within 45 days after receipt of the first-party request for an opinion by the Commission.

2. If a public officer or public employee who files a first-party request for an opinion cannot appear before the Commission for a hearing on the first-party request for an opinion within 45 days after receipt of the first-party request for an opinion by the Commission, the public officer or public employee may submit a written statement acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. A request for a waiver must be received not later than 7 business days before the expiration of the 45-day period.

3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to *respond to the notice of hearing as provided in such notice or fails to* appear at the hearing scheduled by the Commission within 45 days after receipt of the first-party request for an opinion, the first-party request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

**Sec. 10.** NAC 281A.355 is hereby amended to read as follows:

281A.355 1. *Except as otherwise provided in this section, the subject of a first-party request for opinion may withdraw the first-party request for an opinion by providing a written notice of withdrawal to the Commission before* the Commission ~~[renders an opinion]~~ *holds any hearing* relating to ~~[a]~~ *the* first-party request for an opinion ~~[, the public officer or public employee who filed the first party request for an opinion may withdraw the first party request~~



~~for an opinion by providing a notice of withdrawal to the Commission].~~

*2. The subject of a first-party request for an opinion may seek a withdrawal of the request for opinion at any time by submitting a motion to the Commission supported by good cause, which may include, without limitation, that the anticipated future circumstances or conduct upon which advice is sought has changed.*

**Sec. 11.** NAC 281A.360 is hereby amended to read as follows:

281A.360 The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a first-party request for an opinion. If ~~[the Commission Counsel determines]~~ *it is determined* that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee *not later than 20 days after the date on which the Commission received the first-party request for an opinion*. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be submitted to the ~~[principal]~~ office of the Commission in writing not later than 10 days after the date on which the public officer or public employee ~~[received]~~ *was served* notification.

**Sec. 12.** NAC 281A.365 is hereby amended to read as follows:

281A.365 1. The Chair or presiding officer of a hearing concerning a first-party request for an opinion shall:

(a) Ascertain whether the subject of the first-party request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with [NAC 281A.280](#), to the subject of the first-party request for an opinion and all persons whose testimony will be taken.

2. Except as otherwise provided in subsection 3 of [NAC 281A.353](#), the subject of the first-party request for an opinion must be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the first-party request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the first-party request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during

the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the first-party request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. ~~[Upon the conclusion of the closing comments by the subject of]~~*After the conclusion of a hearing related to* the first-party request for an opinion, the Commission will:

(a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;

(b) ~~[Render-]~~*Issue* an opinion on the matter; and

(c) ~~[Submit a copy of-]~~*Provide* the opinion to the subject.

7. The opinion ~~[rendered-]~~*issued* by the Commission is binding upon the subject of the first-party request for an opinion as to his or her future conduct pursuant to subsection 1 of [NRS 281A.440](#).

8. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

9. The first-party request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the opinion acts in a manner set forth in subsection 7 of [NRS 281A.440](#) to waive the confidentiality of such information.

**Sec. 13.** NAC 281A.403 is hereby amended to read as follows:

281A.403 1. If the Executive Director receives evidence that leads the Executive Director reasonably to conclude that a public officer or public employee may have committed a violation of the Nevada Ethics in Government Law as set forth in [chapter 281A](#) of NRS, the Executive Director may recommend to the Commission that the Commission initiate a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#).

2. A recommendation from the Executive Director pursuant to subsection 1 must:

(a) Be submitted on a form prescribed by the Commission;

(b) Contain a written statement setting forth the information that supports the recommendation; and

(c) Include any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support the recommendation. Such forms of proof may include, without

limitation, any evidence which is offered that corroborates a newspaper article or other media report but may not include a newspaper article or other media report if the article or report is offered as the only evidence to support the recommendation.

3. The Executive Director shall not submit a recommendation to the Commission pursuant to subsection 1 based solely upon:

- (a) A statement other than a sworn statement; or
- (b) An allegation submitted to the Commission with the intent to avoid disclosure of the identity of the person making the allegation, *except as otherwise provided in subsection 9 of [NRS 281A.440](#)*.

4. Upon receiving a recommendation from the Executive Director pursuant to subsection 1, the Commission will:

- (a) Reject the recommendation without prejudice; or
- (b) Accept the recommendation and initiate a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#).

**Sec. 14.** NAC 281A.405 is hereby amended to read as follows:

281A.405 1. The Executive Director shall confer with the Commission Counsel to determine whether:

- (a) The Commission has jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#); and
- (b) The third-party request for an opinion was filed with the Commission in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#).

2. If the Executive Director and Commission Counsel determine pursuant to subsection 1 that the Commission has jurisdiction concerning the third-party request for an opinion and that the third-party request for an opinion was filed in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#), the Executive Director shall notify the requester and the subject of the request of the determination.

3. The Executive Director shall notify the requester of the determination if the Executive Director and Commission Counsel determine pursuant to subsection 1 that:

- (a) The Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to subsection 1; or
- (b) The third-party request for an opinion was not filed with the Commission in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#).

4. A person who receives a notice pursuant to subsection 2 or 3 may request a review by the Commission of the determination made pursuant to subsection 1. Such a request must be submitted to the ~~[principal-]~~office of the Commission in writing not later than 10 days after the date on which the person ~~[received-]~~*was served* notification.

5. Upon receipt of a request for a review pursuant to subsection 4, the ~~[Executive Director shall notify the subject if the request for a review was made by the requester of the third-party request for an opinion, or the requester of the third-party request for an opinion if the request for a review was made by the subject. Such notification must include, without limitation:~~

- ~~(a) The third-party request for an opinion;~~
- ~~(b) The determination of the Executive Director and Commission Counsel made pursuant to subsection 1;~~
- ~~(c) The request for a review made pursuant to subsection 4;~~
- ~~(d) The date on which the Commission will conduct its review; and~~
- ~~(e) Instructions for filing a response to the request for a review, which must be filed not less than 5 business days before the date on which the Commission will conduct its review.~~

~~6.—The-]~~Commission will *hold a confidential hearing to* review ~~[a-]~~*the* determination made by the Executive Director and the Commission Counsel pursuant to subsection 1.~~[on the date provided in the notification made pursuant to subsection 5. Action taken by the Commission pursuant to this subsection is a final decision.]~~ The Commission will:

- (a) Dismiss the matter without prejudice upon a finding that the third-party request for an opinion was not filed in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#);
- (b) Dismiss the matter upon a finding that the Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#); or
- (c) Accept jurisdiction of the matter upon a finding that the third-party request for an opinion was filed in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#) and that the Commission has jurisdiction concerning the third-party request for an opinion pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#).

~~[7]~~**6.** The Executive Director shall:

- (a) Notify the subject and the requester of the third-party request for an opinion, *as applicable*, of the action taken by the Commission pursuant to subsection ~~[5]~~**7**; and

(b) If the Commission accepts jurisdiction of the matter, provide the notification required by [NAC 281A.410](#).

**Sec. 15.** NAC 281A.410 is hereby amended to read as follows:

281A.410 1. Once a third-party request for an opinion has been filed with the Commission by a requester in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#) or initiated on the motion of the Commission and the Commission [~~have-~~has determined that the Commission has jurisdiction over the matter presented in the third-party request for an opinion pursuant to [NAC 281A.405](#), the Executive Director shall forthwith:

(a) Notify the public officer or public employee who is the subject of the third-party request for an Opinion;

(b) Provide the public officer or public employee an opportunity to respond to the allegations contained in the third-party request for an opinion; and

(c) Investigate and proceed in the matter pursuant to [NRS 281A.440](#).

2. A notification made pursuant to subsection 1 must:

(a) Be in writing and sent to the subject of the third-party request for an opinion by:

(1) Personal delivery;

(2) Certified mail, return receipt requested; or

(3) Overnight delivery service in which proof of delivery is documented.

(b) Include, without limitation:

(1) All information filed by the requester or information upon which the Commission based its motion, as appropriate;

(2) An outline of the process used by the Commission to resolve third-party requests for opinions; and

(3) A form prescribed by the Commission for waiving the time limits set forth in subsections 4, 5 and 6 of [NRS 281A.440](#).

3. The subject of a third-party request for an opinion may, within the time limit set forth in subsection 3 of [NRS 281A.440](#), file with the Commission a written response to the allegations contained in the third-party request for an opinion. If the subject of a third-party request for an opinion files with the Commission a waiver of the time limits set forth in subsections 4, 5 and 6 of [NRS 281A.440](#), the Executive Director may, for good cause shown, authorize one or more extensions, of not more than 30 days each, of the time limit set forth in subsection 3 of [NRS 281A.440](#) for the subject to file a written response to the allegations contained in the third-party

request for an opinion.

**Sec. 16.** NAC 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in [NRS 281A.440](#), until the conclusion of the proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter:

(a) The Commission will not confirm or deny whether a third-party request for an opinion has been filed by a requester, or initiated upon the motion of the Commission, against a public officer or public employee; and

(b) All information related to the third-party request for an opinion in the possession of the Commission and its staff is confidential.

2. Upon the conclusion of the proceedings of an investigatory panel on a third-party request for an opinion, any information related to the third-party request for an opinion, except the investigative file of the Commission as described in subsection ~~[16]~~17 of [NRS 281A.440](#), is a public record available for public review during normal business hours at the ~~[principal]~~ office of the Commission.

**Sec. 17.** NAC 281A.425 is hereby amended to read as follows:

281A.425 ~~[The]~~[All](#) proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion are confidential and closed to all persons except the staff of the Commission.

**Sec. 18.** NAC 281A.450 is hereby amended to read as follows:

281A.450 1. Before the Commission holds a hearing concerning a third-party request for an opinion, the Commission must serve the subject with advance written notice of the hearing at least 10 days before the date on which the hearing is scheduled to commence which includes the date, time and location of the hearing.

2. The written notice required pursuant to this section must comply with:

(a) The requirements for notice set forth in subsection ~~[10]~~11 of [NRS 281A.440](#); and

(b) Except as otherwise provided in this chapter and [chapter 281A](#) of NRS, the requirements for notice set forth in provisions concerning the adjudication in contested cases in [chapter 233B](#) of NRS.

3. A written record of the final determination of the investigatory panel issued pursuant to [NAC 281A.440](#) may serve as the written notice required pursuant to this section if it includes the date, time and location of the hearing and otherwise complies with the requirements set forth

in this section.

4. Notice shall be deemed complete upon delivery personally to the subject or by mailing the notice by certified mail or overnight delivery service to the last known address of the subject.

**Sec. 19.** NAC 281A.455 is hereby amended to read as follows:

281A.455 The procedures for obtaining and granting a continuance of a hearing concerning a third-party request for an opinion are as follows:

1. The date or time of the hearing may be continued for a reasonable time by the ~~[Executive Director]~~ *Chair*:

(a) Upon the written petition of the *Executive Director or his/her designee or the* subject for good cause shown; or

(b) By stipulation of the subject and the ~~[Commission, acting through the]~~ Executive Director *or his/her designee*.

2. A continuance will not be granted unless it is made in good faith, is reasonably necessary and is not sought merely for delay or by reason of inexcusable neglect of the subject.

**Sec. 20.** NAC 281A.460 is hereby amended to read as follows:

281A.460 1. The Chair or presiding officer of a hearing concerning a third-party request for an opinion shall:

(a) Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered in accordance with [NAC 281A.280](#) to all persons whose testimony will be taken.

(c) Exclude from the hearing all witnesses scheduled to testify except during the testimony of the witness. To preserve the integrity of the process and the evidence presented during a proceeding, the Chair or presiding officer may request all witnesses not to discuss the case with any person *other than the legal counsel of the witness* during the pendency of the proceeding.

(d) Hear and rule on any procedural motions, approve any stipulations and address any administrative details.

(e) ~~[Designate a member of the staff of the Commission]~~ *Direct the Executive Director or his/her designee* to present the third-party request for an opinion, the response to the third-party request for an opinion by the subject and the determination of the investigatory panel concerning whether there is just and sufficient cause for the Commission to render an opinion in the matter.

- (f) Allow the subject to present opening comments.
- (g) *Direct the Executive Director or his/her designee to*  ~~[C]~~ call and question any witnesses ~~[;]~~ *and* present any evidence on behalf of the Commission concerning the third-party request for an opinion ~~[; and allow any member of the Commission to question such witnesses]~~.
2. The subject may remain present during the hearing.
  3. The subject may question any witnesses.
  4. Upon the conclusion of the presentation of any evidence and the examination of any witnesses *by the Executive Director of his/her designee* on behalf of the Commission, the Chair or presiding officer shall request the subject to proceed with the introduction of evidence and calling of witnesses on his or her behalf.
  5.  ~~[The]~~ *Any member of the Commission may question the Executive Director or his/her designee, the* subject, any witnesses or any counsel retained by the subject  ~~[may be questioned by the member of the Commission]~~ at any time during the proceeding.
  6. Upon the conclusion of the presentation of evidence *and the examination of any witnesses by the Executive Director or his/her designee, the* subject *and any member of the Commission,*  ~~[and the examination of any witnesses,]~~ the Chair or presiding officer shall allow the *Executive Director or his/her designee and the* subject to present closing comments.
  7.  ~~[Upon the conclusion of the closing comments by the subject,]~~ *After the conclusion of the hearing, the* Commission will:
    - (a)  ~~[d]~~ *Deliberate* the issues of fact presented at the hearing, make a determination of the findings of fact, *and* apply the applicable law to the findings of fact; ~~[and]~~
    - (b)  ~~[render an]~~ *Issue an* opinion concerning whether the subject  ~~[has]~~ violated any of the provisions of [chapter 281A](#) of NRS *and whether any violation was a willful violation; and*
    - (c) *Issue the opinion to the subject.*
  8. Upon a finding of a willful violation of any of the provisions of [chapter 281A](#) of NRS, the Commission may impose any civil penalties authorized pursuant to [NRS 281A.480](#) and will impose any other statutory remedies required pursuant to [NRS 281A.480](#).
  9. The Commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.

**Sec. 21.** NAC 281A.465 is hereby amended to read as follows:

281A.465 1. In conducting any hearing concerning a third-party request for an opinion, the rules of evidence of the courts of this State will be followed generally but may be



relaxed at the discretion of the Commission.

2. The Chair or presiding officer may exclude immaterial, incompetent, cumulative or irrelevant evidence or order that the presentation of such evidence be discontinued.

3. ~~[A-]~~*The Executive Director or his/her designee and the* subject may object to the introduction of evidence if *the Executive Director or his/her designee or the* subject:

(a) Objects to such evidence promptly; and

(b) Briefly states the grounds of the objection at the time the objection is made.

4. If an objection is made to the admissibility of evidence, the Chair or presiding officer may:

(a) Note the objection and admit the evidence;

(b) Sustain the objection and refuse to admit the evidence; or

(c) Receive the evidence subject to any subsequent ruling of the Commission.

**Sec. 22.** NAC 281A.480 is hereby amended to read as follows:

281A.480 1. Except as otherwise provided in subsection 2, a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#) will be heard by the Commission within 45 days after receipt of the request by the Commission.

2. If a public officer or public employee who requests an opinion pursuant to subsection 6 of [NRS 281A.550](#) cannot appear before the Commission for a hearing on the request within 45 days after receipt of the request by the Commission, the public officer or public employee may submit a written statement acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. Such a request must be received not later than 7 business days before the expiration of the 45-day period.

3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to *respond to the notice of hearing as provided in such notice or fails to* appear at the hearing scheduled by the Commission within 45 days after receipt of the request for an opinion, the request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

**Sec. 23.** NAC 281A.485 is hereby amended to read as follows:

281A.485 ~~[At any time before-]~~*I. Except as otherwise provided in this section, the subject of a request for opinion filed pursuant to subsection 6 of [NRS 281A.550](#) may withdraw the*

*request for the opinion by providing a written notice of withdrawal to the Commission before the Commission ~~[renders an opinion]~~ holds any hearing relating to ~~[a]~~ the request for an opinion~~[ filed pursuant to subsection 6 of NRS 281A.550, the public officer or public employee who filed the request for the opinion may withdraw the request by providing a notice of withdrawal to the Commission].~~*

*2. The subject of a request for an opinion filed pursuant to subsection 6 of NRS 281A.550 may seek a withdrawal of the request for the opinion at any time by submitting a motion supported by good cause, which may include, without limitation, that the anticipated future circumstances or conduct upon which advice is sought has changed.*

**Sec. 24.** NAC 281A.490 is hereby amended to read as follows:

281A.490 The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a request for an opinion filed pursuant to subsection 6 of NRS 281A.550. If ~~[the Commission Counsel determines]~~ *it is determined* that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee *not later than 20 days after the date on which the Commission received the request for the opinion*. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be filed to the ~~[principal]~~ office of the Commission in writing not later than 10 days after the date on which the public officer or public employee ~~[received]~~ *was served* notification.

**Sec. 25.** NAC 281A.495 is hereby amended to read as follows:

281A.495 1. The Chair or presiding officer of a hearing concerning a request for an opinion filed pursuant to subsection 6 of NRS 281A.550 shall:

(a) Ascertain whether the subject of the request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with NAC 281A.280, to the subject of the request for an opinion and all persons whose testimony will be taken.

2. Except as otherwise provided in subsection 3 of NAC 281A.480, the subject of the request for an opinion must be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the request for an opinion to:

(a) Present opening comments;

- (b) Present any evidence on his or her own behalf; and
  - (c) Examine any witnesses on his or her own behalf.
4. The subject of the request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.
5. Upon the conclusion of the presentation of evidence by the subject of the request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.
6. ~~[Upon the conclusion of the closing comments by the subject of]~~*After the conclusion of a hearing related to* the request for an opinion, the Commission will:
- (a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;
  - (b) ~~[Render]~~*Issue* an opinion on the matter; and
  - (c) ~~[Submit a copy of]~~*Provide* the opinion to the subject.
7. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.
8. The request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the request for an opinion acts in a manner set forth in subsection 7 of [NRS 281A.550](#) to waive the confidentiality of such information.

**Sec. 26.** NAC 281A.500 is hereby amended to read as follows:

281A.500 ~~[A]~~*Unless directed by the Chair otherwise, at* least 1 week before the date on which the Commission is scheduled to hold a hearing ~~[on a matter]~~*related to a request for an opinion pursuant to this Chapter*, the Executive Director shall provide to the Commission:

- 1. A statement of the matter that sets forth the issues to be determined at the hearing;
- 2. A list of any witnesses and their expected testimony; and
- 3. Any other information which the Executive Director deems necessary to assist the Commission in hearing the matter

**Sec. 27.** NAC 281A.505 is hereby amended to read as follows:

281A.505 ~~[A]~~*The Executive Director or his/her designee or the* subject may submit a motion to disqualify a member of the Commission from participating in a hearing for good cause.

- 2. Except as otherwise provided in this subsection, a motion to disqualify a member of the Commission must comply with the procedures concerning motions before the Commission

which are set forth in [NAC 281A.265](#). A motion to disqualify a member of the Commission which is submitted pursuant to subsection 1 must be ruled upon by the Commission as a whole.

3. In considering a motion to disqualify a member of the Commission, the Commission will consider any grounds that would justify the disqualification of a judge pursuant to Rule 2.11 of the Nevada Code of Judicial Conduct.

4. If the Commission approves a motion to disqualify a member of the Commission, the necessary quorum to act upon and the number of votes necessary to act upon a matter before the Commission is reduced as though the member who is disqualified was not a member of the Commission.

**Sec. 28.** NAC 281A.510 is hereby amended to read as follows:

281A.510 Except as otherwise provided in [NRS 281A.440](#) and [NAC 281A.365](#), [281A.460](#) and [281A.495](#), the [~~Commission~~]*Chair* will determine[~~-, as it deems appropriate,~~] the order of proceedings for a hearing and will inform the parties thereof before the hearing commences.

**Sec. 29.** NAC 281A.520 is hereby amended to read as follows:

281A.520 1. Except as otherwise provided in [NRS 281A.440](#) and [NAC 281A.365](#), [281A.460](#) and [281A.495](#), the Commission will provide the subject of a hearing before the Commission with the opportunity to appear and testify before the Commission and participate in the hearing. The subject of the hearing may be represented by counsel, hear the evidence presented to the Commission, respond and present evidence and testimony on his or her own behalf, examine and cross-examine witnesses, and make arguments.

2. The [~~Commission~~]*Executive Director or his/her designee* will question witnesses at the hearing, *and any member of the Commission may question witnesses, the Executive Director, or his/her designee, and counsel for the subject at the hearing.*

**Sec. 30.** NAC 281A.555 is hereby amended to read as follows:

281A.555 1. Any person may submit a written petition to the Commission at the [~~principal~~]office of the Commission to adopt, file, amend or repeal any regulation of the Commission.

2. A petition submitted pursuant to subsection 1 must include, without limitation:

(a) The name and address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed, including, without limitation, the text of the proposed language of the regulation to be adopted, filed, amended or repealed;

- (c) The reason for the adoption, filing, amendment or repeal of the regulation; and
- (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The Commission may decline to act upon a petition submitted pursuant to this section if the petition does not contain the information required pursuant to subsection 2.

4. The Commission will:

(a) Review and make a decision concerning the petition at the next scheduled meeting of the Commission in which consideration of the petition is feasible following the receipt of the petition; and

(b) Notify the petitioner in writing of the decision of the Commission concerning the petition within 30 days after the petition is considered by the Commission

**Sec. 31.** NAC 281A.560 is hereby amended to read as follows:

281A.560 1. Except as otherwise provided in this section, the Commission will make public records of the Commission available for inspection and copying in accordance with the provisions of [chapter 239](#) of NRS.

2. Except as otherwise provided in this section, to obtain copies of a transcript concerning a matter that was recorded by the Commission, a person must file a written request at the ~~[principal]~~ office of the Commission and make arrangements directly with the court reporter.

3. The Commission will not authorize a court reporter to provide copies of a transcript concerning a matter that was recorded by the Commission to a person seeking such a transcript pursuant to subsection 2 unless the contents of the proceedings concerning that matter may be disclosed to that person pursuant to the provisions of [chapter 281A](#) of NRS and [NAC 281A.250](#) to [281A.310](#), inclusive.

4. A court reporter shall not provide to a person copies of a transcript concerning a matter that was recorded by the Commission or any other documents unless the court reporter has received written permission from the Commission.

5. The Commission may waive all or a portion of the cost of obtaining copies of public records made available pursuant to subsection 1 if the person requesting the copies files a written request for such a waiver at the ~~[principal]~~ office of the Commission and the Commission determines that:

(a) The copies requested are reasonable in quantity; and

(b) The person requesting the copies is a party to a matter before the Commission and does not have the financial ability to pay for all or a portion of the cost of the copies.

**Sec. 32.** NAC 281A.615 is hereby amended to read as follows:

281A.615 1. The following documents must be on the form provided by the Commission and submitted in the manner prescribed on the form:

- (a) A disclosure of representation and counseling required pursuant to [NRS 281A.410](#); and
- (b) An acknowledgment of the statutory ethical standards required pursuant to [NRS 281A.500](#).

2. The form for each document specified in subsection 1 is available at the ~~[principal]~~ office of the Commission and on the Internet website of the Commission.

CHERYL A. LAU, ESQ.  
Chair

KEITH A. WEAVER, ESQ.  
Vice-Chair



YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director

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**STATEMENT REGARDING SMALL BUSINESS IMPACT**  
**(NRS 233B.0608 and 233B.0609)**

I, Yvonne M. Nevarez-Goodson, being the duly appointed Executive Director of the Nevada Commission on Ethics, do hereby certify that, to the best of my knowledge or belief:

1. The proposed temporary regulations reflect amendments to NRS Chapter 281A made pursuant to Assembly Bill 60 of the 2015 Legislative Session (Chapter 186, 2015 Statutes of Nevada), which include 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 temporary regulations will also amend various provisions of NAC Chapter 281A to streamline case management and investigatory processes, including without limitation, jurisdictional reviews, motion practice before the Commission and requirements for withdrawing, reconsidering or rehearing matters.

2. The proposed temporary regulations are not likely to: (a) impose a direct or significant economic burden upon a small business, or (b) directly restrict the formation, operation or expansion of a small business. (NRS 233B.0608(1)).

3. Commission staff analyzed whether the proposed temporary regulations could cause small business any economic burden, and none of the proposals were found to directly or significantly affect business in Nevada.

4. The Nevada Ethics in Government Law in NRS and NAC Chapters 281A does not directly govern or affect any small business in Nevada. Rather, the Commission and the Ethics Law govern only the conduct of public officers and employees to ensure that they commit themselves to avoid conflicts between their private interests and those of the general public whom they serve. Based on the foregoing, Commission staff concluded that the proposed temporary regulations will have no effect on small business. (NRS 233B.0608(3)).

5. Comment by small business has not been solicited or summarized. Because small businesses generally are not likely to be affected by the adoption of these proposed temporary regulations, no assessment of the burden or economic impact can be completed. (NRS 233B.0608(2)(a)).

Respectfully submitted,

DATED: 4/28/16

/s/ Yvonne M. Nevarez-Goodson  
YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director

## (Proposed Amendments for Temporary Regulation (2016))

### CHAPTER 281A - ETHICS IN GOVERNMENT

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### First-Party Requests for Opinions

- [281A.350](#) Requirements for consideration by Commission.
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### Opinions Concerning Employment of Certain Former Public Officers or Employees by Regulated Businesses

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### General Procedures for Hearings

- [281A.500](#) Executive Director to provide information to Commission.
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- [281A.615](#) Requirements for submission of disclosure of representation and counseling and acknowledgement of statutory ethical standards.

### REVISER'S NOTE.

[NAC 281.005](#) to [281.242](#), inclusive, have been renumbered and moved to [chapter 281A](#) of NAC in accordance with chapter 195, Statutes of Nevada 2007, at page 641, which required the related provisions of [chapter 281](#) of NRS to be renumbered and moved to [chapter 281A](#) of NRS.

## GENERAL PROVISIONS

**NAC 281A.010 Definitions.** ([NRS 281A.290](#)) As used in this chapter, unless the context otherwise requires, the words and terms defined in [NAC 281A.020](#) to [281A.105](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.005)

**NAC 281A.020 “Chair” defined.** ([NRS 281A.290](#)) “Chair” means the Chair of the Commission.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98)—(Substituted in revision for NAC 281.011)

**NAC 281A.023 “Commission” defined.** ([NRS 281A.290](#)) “Commission” means the Commission on Ethics.

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008)

**NAC 281A.025 “Commission Counsel” defined.** ([NRS 281A.290](#)) “Commission Counsel” means the legal counsel to the Commission appointed by the Commission pursuant to [NRS 281A.250](#).

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.0151)

**NAC 281A.033 “Executive Director” defined.** ([NRS 281A.290](#)) “Executive Director” means the Executive Director appointed by the Commission pursuant to [NRS 281A.230](#).

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008)

**NAC 281A.034 “First-party request for an opinion” defined.** ([NRS 281A.290](#)) “First-party request for an opinion” means a request for an opinion filed pursuant to subsection 1 of [NRS 281A.440](#).

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

**NAC 281A.035 “Hearing” defined.** ([NRS 281A.290](#)) “Hearing” means a hearing concerning:

1. The merits of a third-party request for an opinion;
2. A first-party request for an opinion; or
3. A request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#).

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.016)

**NAC 281A.045 “Investigate” defined.** ([NRS 281A.290](#)) “Investigate” means to examine and inquire into a matter and to marshal evidence according to those methods and employing those services that the Executive Director determines are reasonable and necessary under the relevant facts and circumstances presented by the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.0163)

**NAC 281A.047 “Investigatory panel” and “panel” defined.** ([NRS 281A.290](#)) “Investigatory panel” or “panel” has the meaning ascribed to it in [NRS 281A.108](#).

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281A.055)

**NAC 281A.050 “Opinion” defined.** ([NRS 281A.290](#))

1. “Opinion” means an oral or written quasi-judicial decision rendered by the Commission pursuant to [NRS 281A.440](#) or [281A.550](#).

2. The term includes, without limitation, the disposition of a third-party request for an opinion by

stipulation, agreed settlement, consent order or default as authorized by [NRS 233B.121](#).

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0167)

**NAC 281A.060 “Party” defined.** ([NRS 281A.290](#)) “Party” means the subject or his or her counsel, any staff of the Commission who investigate a third-party request for an opinion and any other person who the Commission reasonably determines will be treated as a party in a matter before the Commission. (Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.017)

**NAC 281A.065 “Presiding officer” defined.** ([NRS 281A.290](#)) “Presiding officer” means a member of the Commission appointed by the Chair to preside over a hearing.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.0173)

**NAC 281A.070 “Principal office of the Commission” defined.** ([NRS 281A.290](#)) “Principal office of the Commission” means the office of the Commission designated by the Commission pursuant to [NAC 281A.190](#) as the office in which the business of the Commission must be primarily conducted.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.0177)

**NAC 281A.075 “Proceedings of an investigatory panel” defined.** ([NRS 281A.290](#))

“Proceedings of an investigatory panel” means a review pursuant to [NAC 281A.430](#) and determination by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a matter presented in a third-party request for an opinion. For the purposes of this chapter, the proceedings of an investigatory panel do not constitute a hearing.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.0182)

**NAC 281A.090 “Requester” defined.** ([NRS 281A.290](#)) “Requester” means a person who files with the Commission a third-party request for an opinion.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.0192)

**NAC 281A.100 “Subject” defined.** ([NRS 281A.290](#)) “Subject” means a public officer or public employee:

1. With respect to whom a third-party request for an opinion has been filed;
2. Who files a first-party request for an opinion; or
3. Who files a request for an opinion pursuant to subsection 6 of [NRS 281A.550](#).

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0198)

**NAC 281A.103 “Third-party request for an opinion” defined.** ([NRS 281A.290](#)) “Third-party request for an opinion” means a request for an opinion:

1. Filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#); or
2. Initiated by the Commission on its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#). (Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

**NAC 281A.105 “Vice Chair” defined.** ([NRS 281A.290](#)) “Vice Chair” means the Vice Chair of the Commission. (Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98)(Substituted in revision for NAC 281.021)

**NAC 281A.110 Severability.** ([NRS 281A.290](#))

1. The provisions of this chapter are hereby declared to be severable.
2. If any provision of this chapter is held invalid, or if the application of any such provision to any person, thing or circumstance is held invalid, such invalidity does not affect any other provision of this chapter that can be given effect without the invalid provision or application.  
(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006)—(Substituted in revision for NAC 281.024)

**COMMISSION ON ETHICS**

**Administration**

**NAC 281A.150 Election of Chair and Vice Chair.** ([NRS 281A.290](#)) The Commission will elect a Chair and a Vice Chair from among its members at its first meeting of each new fiscal year.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003)—(Substituted in revision for NAC 281.0245)

**NAC 281A.155 Duties of Chair; delegation of assignments.** ([NRS 281A.290](#)) The Chair:

1. Shall preside over the meetings and hearings of the Commission.
2. May delegate assignments of work to the staff of the Commission as necessary and appropriate, including, without limitation, the scheduling of investigatory panels.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0246)

**NAC 281A.160 Duties of Vice Chair.** ([NRS 281A.290](#)) The Vice Chair shall perform the duties of the Chair during the absence of the Chair.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R038-98, 4-17-98; R102-00, 8-28-2000)—(Substituted in revision for NAC 281.027)

**NAC 281A.165 Vacancy in office of Chair.** ([NRS 281A.290](#)) If the office of Chair becomes vacant, the Vice Chair shall serve as the Acting Chair until the next meeting of the Commission, at which time the Commission will elect a successor to fill the unexpired term of the Chair.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.029)

**NAC 281A.170 Vacancy in office of Vice Chair.** ([NRS 281A.290](#)) If the office of the Vice Chair becomes vacant, a successor will be elected by the Commission at its next meeting to fill the unexpired term of the Vice Chair.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R102-00, 8-28-2000)—(Substituted in revision for NAC 281.035)

**NAC 281A.175 Appointment of temporary Acting Chair or Vice Chair in certain circumstances.** ([NRS 281A.290](#)) If both the Chair and Vice Chair are disqualified or recused from participating in a matter, the Commission may appoint a temporary Acting Chair or Vice Chair, or both, for the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.038)

**NAC 281A.180 Duties of Executive Director.** ([NRS 281A.290](#)) In addition to any other duties of the Executive Director required by this chapter or [chapter 281A](#) of NRS, or as otherwise imposed by the Commission, the Executive Director shall:

1. Pursuant to paragraph (e) of subsection 1 of [NRS 281A.240](#), create a curriculum for training and conduct training for public officers and ~~employers of~~ public employees on the requirements of this chapter, [chapter 281A](#) of NRS and previous opinions of the Commission that have been determined by the Commission to have broad educational value.

2. At the first meeting of the Commission of each new fiscal year, report to the Commission on the state of the fiscal, regulatory and legislative matters and any other business matters of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year.

3. Adhere to the policies and procedures adopted by the Commission for its internal governance and external dealings.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008)—(Substituted in revision for NAC 281.053)

**NAC 281A.190 ~~Principal office of Commission: Designation; primary location for conduct of business.~~ (NRS 281A.290)**

~~1.—The Commission will designate which office of the Commission will serve as the principal office of the Commission.~~

2.—The business of the Commission must be primarily conducted in the **principal** office of the Commission, including, without limitation, the submission of any documents and any requests for an opinion from the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.066)

**NAC 281A.195 Participation of member of Commission in ex parte communication. (NRS 281A.290)**

1. If any member of the Commission participates in an ex parte communication, the member must disclose to the Commission that he or she participated in an ex parte communication.

2. If a member of the Commission discloses that he or she participated in an ex parte communication or the Commission otherwise determines that a member of the Commission participated in an ex parte communication, the Commission may require the member to abstain from participating with the Commission in any hearing or determination to be made by the Commission concerning the matter that was the subject of the ex parte communication.

3. As used in this section, “ex parte communication” means any written or oral communication between a party or a person who has any interest in a matter pending before the Commission, or any agent of such party or person, and a member of the Commission which:

- (a) Is communicated outside the presence of the entire Commission;
- (b) Is not communicated during a formal proceeding of the Commission; and
- (c) Includes any comment, response or argument regarding any:
  - (1) Ongoing investigation by the Commission; or
  - (2) Matter that is pending before the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R048-14, 10-24-2014)—(Substituted in revision for NAC 281.076)

**NAC 281A.200 Meetings of Commission: Majority required; necessary quorum reduced for ineligible member. (NRS 281A.290)**

1. A meeting of the Commission will not proceed without a majority of the appointed and sworn members of the Commission present. Except as otherwise provided in this chapter, a majority vote of the members present and eligible to vote at a meeting is sufficient to carry out all business of the Commission.

2. If the Commission is considering a matter on which a member of the Commission is ineligible to participate pursuant to subsection 4 of [NRS 281A.220](#), subsection 3 of [NRS 281A.420](#) or [NAC 281A.505](#), the necessary quorum to act upon and the number of votes necessary to act upon the matter is reduced as though the member who is disqualified is not a member of the Commission.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R038-98, 4-17-98; R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008)—(Substituted in revision for NAC 281.085)

## General Practice and Procedure Before Commission

### **NAC 281A.250 Provisions governing practice and procedure: Applicability; construction; deviation. (NRS 281A.290)**

1. Except as otherwise provided in subsection 3, the provisions of [NAC 281A.250](#) to [281A.310](#), inclusive, govern all practice and procedure before the Commission.

2. The Commission will liberally construe the provisions of [NAC 281A.250](#) to [281A.310](#), inclusive, to determine all matters before the Commission in a just, speedy and economical manner.

3. For good cause shown, the Commission may deviate from the provisions of [NAC 281A.250](#) to [281A.310](#), inclusive, if the deviation will not materially affect the interests of the subject of the request.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.093)

### **NAC 281A.255 Written communications and documents: Form and manner of submission; copies and exhibits; date of filing. (NRS 281A.290)**

1. Each written communication or document filed with the Commission must:

- (a) Be on the form provided by the Commission;
- (b) Be submitted in the manner prescribed on the form; and
- (c) Include any:

(1) Duplicate copy required to be included with the form, as specified on the form; and

(2) Necessary exhibits in a form and format, including, without limitation, digital or electronic format, which is reasonably accessible to the Commission.

2. Except as otherwise provided in [NRS 281A.410](#) and [281A.500](#), the Commission will consider a written communication or document which is required to be filed with the Commission to have been filed with the Commission on the date on which the communication or document is received at the **principal** office of the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.097)

**NAC 281A.260 Consolidation of matters. (NRS 281A.290)** The Commission may consolidate, in whole or in part, two or more matters into one hearing if the Commission determines that the matters share common facts and issues.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000)—(Substituted in revision for NAC 281.101)

#### REVISER'S NOTE.

Section 36 of LCB File No. R102-00 duplicated former [NAC 281.101](#) (cf. [NAC 281A.260](#)) with minor changes. Thus, former [NAC 281.101](#) (cf. [NAC 281A.260](#)) has been amended during codification to reflect this new language.

### **NAC 281A.265 Motions. (NRS 281A.290)**

1. *A subject or the Executive Director may file a motion with the Commission not later than the close of business on the date set by an order issued by the Commission, unless leave is granted otherwise by the Chair.* ~~Motions related to a third-party request for an opinion may only be made:~~

~~(a) After an investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion pursuant to [NRS 281A.220](#); and~~

~~(b) Before the hearing on the matter unless the cause for the motion arises for the first time during the hearing on the matter.~~

2. A motion that is made ~~before the hearing on the matter~~ *pursuant to this section* must be in writing and must be filed at the **principal** office of the Commission ~~not later than the close of business on the date set by an order of the Commission after the investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion.~~

3. ~~A written motion must contain:~~

~~(a) A brief statement of the facts and the points and authorities upon which the motion is based;~~

~~(b) A description of the relief sought; and~~

~~(c) A certificate of mailing which indicates that the motion was served upon all other parties to the matter.~~

4.3. The Commission, in its discretion, may allow a party making a motion to argue the motion before the Commission.

5.4. The Commission, in its discretion, may allow a party or any other person to respond to a motion.

5. *A written motion or response to a motion must contain:*

*(a) A brief statement of the facts and the points and authorities upon which the motion is based;*

*(b) A description of the relief sought; and*

*(c) A certificate of service which indicates that the motion was served upon all other parties to the matter.*

6. The Chair, in his or her discretion, may accept and rule upon a motion on a matter, except a motion for disposition of a matter, at any time before, during or after the hearing by the Commission on the matter.

7. A motion for rehearing or for the reconsideration of an opinion on a ~~third-party~~ request for an opinion issued by the Commission must be filed with the Commission not later than 15 days after the date on which the opinion of the Commission is served.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.103)

**NAC 281A.270 Discovery.** ([NRS 281A.290](#)) The provisions for civil discovery set forth in [N.R.C.P. 26](#) to [37](#), inclusive, do not apply to matters before the Commission. Upon the request of a party, for good cause shown, the Chair may allow discovery on a matter before the Commission to the extent which he or she deems appropriate. (Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003)—(Substituted in revision for NAC 281.106)

**NAC 281A.275 Stipulations of fact; resolution of matter without hearing.** ([NRS 281A.290](#))

1. A party in a matter before the Commission may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.

2. At its discretion and with the agreement of the subject of a ~~third-party~~ request for an opinion, the Commission may, in lieu of holding a hearing, resolve a matter before the Commission with a stipulation, agreed settlement, consent order or default as authorized pursuant to [NRS 233B.121](#). Such a resolution must be in writing or made by oral statement on the record.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.109)

**NAC 281A.280 Oaths.** ([NRS 281A.290](#))

1. The Chair and Vice Chair, including an Acting Chair and Acting Vice Chair, if any, may administer oaths.

2. A court reporter present at meetings and hearings may administer oaths.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003)—(Substituted in revision for NAC 281.112)

**NAC 281A.285 Subpoenas.** ([NRS 281A.290](#)) ~~A~~ In accordance with NRS 281A.300, the Commission may issue and the Executive Director or subject of a ~~third-party~~ request for an opinion may request that a subpoena be issued by filing a written request for a subpoena at the ~~principal~~ office of the Commission. A subject of a ~~third-party~~ request for an opinion who requests the issuance of a subpoena pursuant to this section shall serve the subpoena in accordance with [NRS 281A.300](#) and pay the costs related to the service of the subpoena.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.1125)

**NAC 281A.290 Testimony in person required; exception.** ([NRS 281A.290](#)) A subject or witness before the Commission shall testify in person, except that the Commission may, for good cause shown, allow a witness to testify by telephone or videoconference.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006)—(Substituted in revision for NAC 281.1127)

**NAC 281A.295 Conduct of persons at meetings and hearings; consequences of improper conduct.** ([NRS 281A.290](#))

1. All persons appearing before, or attending a meeting or hearing of, the Commission shall conduct themselves in a polite, respectful and orderly manner. Smoking is not allowed at any meeting or hearing of the Commission.

2. The Commission will require a person who does not comply with subsection 1 to leave the room where the meeting or hearing is being held, and the person will be barred from attending the remainder of the meeting or hearing.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.1129)

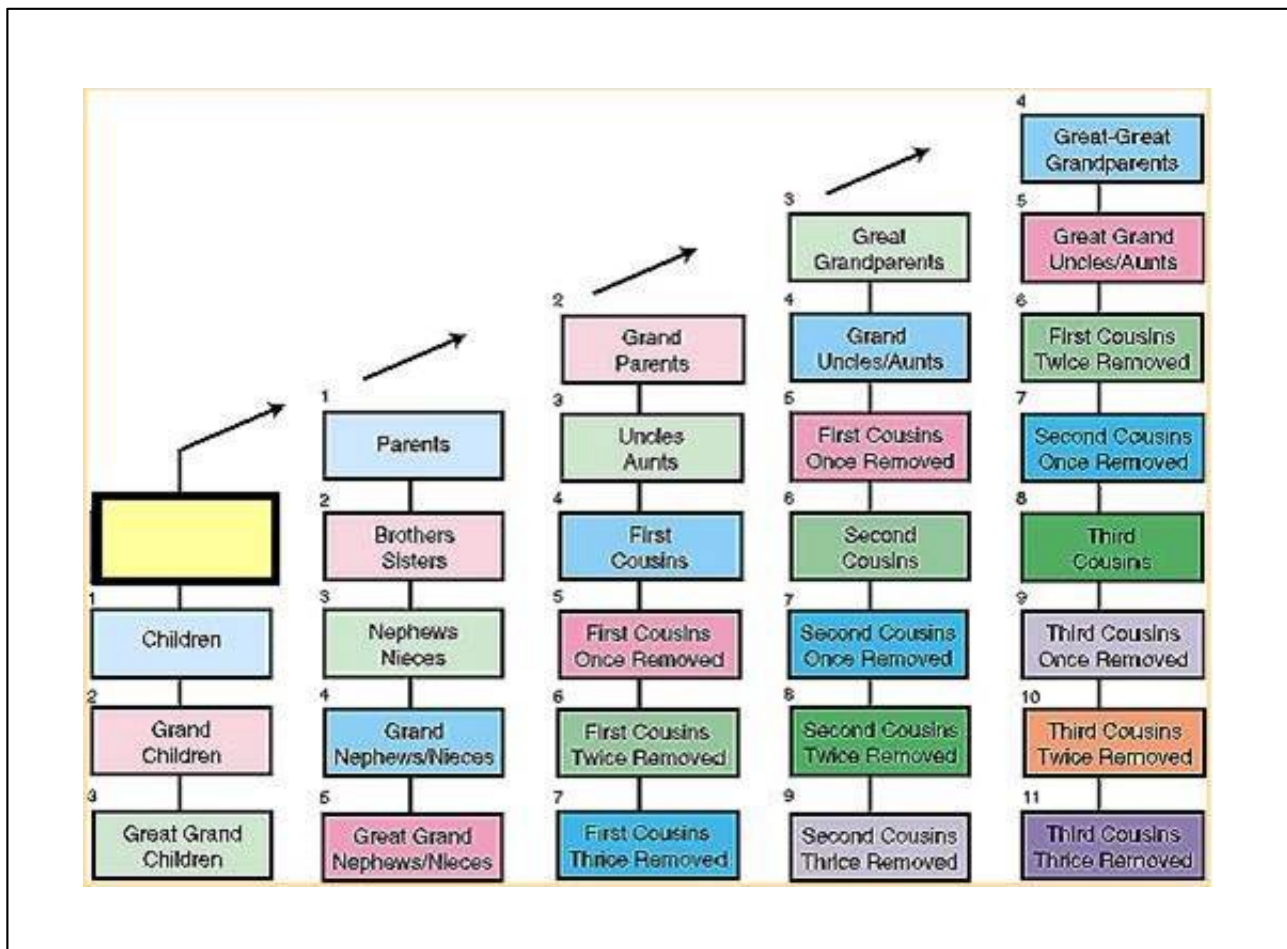
**NAC 281A.300 Representation of subject by legal counsel.** ([NRS 281A.290](#)) A subject may retain legal counsel to represent him or her **related to any request for opinion, including** during:

1. Any investigation of a third-party request for an opinion; or
2. Any hearing.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1131)

**NAC 281A.310 Determination of relationships within third degree of consanguinity or affinity.** ([NRS 281A.290](#))

1. For the purposes of [NRS 281A.065](#), the Commission will determine the relationships of a public officer or employee, or the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity pursuant to the following chart and instructions:





## Consanguinity/Affinity Chart

### **INSTRUCTION:**

#### **For Consanguinity (relationship by blood) calculations:**

Place the public officer/employee for whom you need to establish relationships by consanguinity in the blank box. The labeled boxes will then list the relationship by title to the public officer/employee and the degree of distance from the public officer/employee.

Anyone in a box numbered 1, 2, or 3 is within the third degree of consanguinity.

#### **For Affinity (relationship by adoption, marriage or domestic partnership) calculations:**

Place the spouse or domestic partner of the public officer/employee for whom you need to establish relationships by affinity in the blank box. The labeled boxes will then list the relationship by title to the spouse or domestic partner and the degree of distance from the public officer/employee by affinity.

Spouses are related in the first degree of affinity by marriage and domestic partners are related in the first degree of affinity by domestic partnership. For adoption and other relationships by marriage or domestic partnership, the degree of relationship is the same as the degree of underlying relationship by blood.

2. As used in this section:

(a) “Domestic partner” has the meaning ascribed to it in [NRS 281A.085](#); and

(b) “Domestic partnership” has the meaning ascribed to it in [NRS 281A.086](#).

(Added to NAC by Comm’n on Ethics by R084-08, eff. 9-18-2008; A by R048-14, 10-24-2014)

### **First-Party Requests for Opinions**

**NAC 281A.350 Requirements for consideration by Commission.** ([NRS 281A.290](#)) The Commission will only consider a first-party request for an opinion filed by a public officer or public employee that is on the form provided by the Commission and submitted in the manner prescribed on the form.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.1135)

#### **NAC 281A.353 Scheduling of hearing; effect of failure to appear at hearing.** ([NRS 281A.290](#))

1. Except as otherwise provided in subsection 2, a first-party request for an opinion will be heard by the Commission within 45 days after receipt of the first-party request for an opinion by the Commission.

2. If a public officer or public employee who files a first-party request for an opinion cannot appear before the Commission for a hearing on the first-party request for an opinion within 45 days after receipt of the first-party request for an opinion by the Commission, the public officer or public employee may submit a written statement acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. A request for a waiver must be received not later than 7 business days before the expiration of the 45-day period.

3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to [respond to the notice of hearing as provided in such notice or fails to](#) appear at the hearing scheduled by the Commission within 45 days after receipt of the first-party request for an opinion, the first-party request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

(Added to NAC by Comm’n on Ethics by R084-08, eff. 9-18-2008; A by R134-10, 10-26-2011)

**NAC 281A.355 Withdrawal.** (NRS 281A.290) ~~At any time before 1. Except as otherwise provided in this section, the subject of a first-party request for an opinion may withdraw the first-party request for an opinion by providing a written notice of withdrawal to the Commission before the Commission renders an opinion~~ holds any hearing relating to a ~~the~~ first-party request for an opinion. ~~the public officer or public employee who filed the first party request for an opinion may withdraw the first party request for an opinion by providing a notice of withdrawal to the Commission.~~

2. The subject of a first-party request for an opinion may seek a withdrawal of the request for opinion at any time by submitting a motion to the Commission supported by good cause, which may include, without limitation, that the anticipated future circumstances or conduct upon which advice is sought has changed.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1145)

**NAC 281A.360 Determination regarding jurisdiction: Conduct by Executive Director and Commission Counsel; notification; request for review by Commission.** (NRS 281A.290) The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a first-party request for an opinion. If ~~the Commission Counsel determines it is determined~~ that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee not later than 20 days after the date on which the Commission received the first-party request for an opinion. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the public officer or public employee ~~received~~ was served notification.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1155)

**NAC 281A.365 Conduct of hearings; action by Commission; effect of opinion; waiver of provisions; confidentiality.** (NRS 281A.290)

1. The Chair or presiding officer of a hearing concerning a first-party request for an opinion shall:

(a) Ascertain whether the subject of the first-party request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with NAC 281A.280, to the subject of the first-party request for an opinion and all persons whose testimony will be taken.

2. Except as otherwise provided in subsection 3 of NAC 281A.353, the subject of the first-party request for an opinion must be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the first-party request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the first-party request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the first-party request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

~~6. Upon the conclusion of the closing comments by the subject of~~ After the conclusion of a hearing related to the first-party request for an opinion, the Commission will:

(a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;

(b) ~~Render~~ Issue an opinion on the matter; and

(c) ~~Submit a copy of~~ Provide the opinion to the subject.

7. The opinion ~~rendered~~ issued by the Commission is binding upon the subject of the first-party

request for an opinion as to his or her future conduct pursuant to subsection 1 of [NRS 281A.440](#).

8. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

9. The first-party request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the opinion acts in a manner set forth in subsection 7 of [NRS 281A.440](#) to waive the confidentiality of such information.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.1175)

### Third-Party Requests for Opinions

#### **NAC 281A.400 Requirements for consideration by Commission; contents; withdrawal. ([NRS 281A.290](#))**

1. The Commission will only consider a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) which is on the form provided by the Commission and submitted in the manner prescribed on the form.

2. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) must contain:

- (a) The original completed form for a third-party request for an opinion;
- (b) Two copies of the completed form; and
- (c) Three copies of all supporting documents and evidence.

3. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) must be accompanied by evidence which supports the allegation that the subject has violated a statutory ethical standard set forth in the third-party request for an opinion and demonstrates that the alleged conduct of the subject would constitute a violation of [chapter 281A](#) of NRS.

4. Once a third-party request for an opinion has been filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#), the requester may only withdraw the third-party request for an opinion with the consent of the Executive Director.

5. A request to withdraw a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#) must be in writing and set forth the specific reasons for requesting the withdrawal of the third-party request for an opinion.

6. As used in this section, "evidence which supports the allegation" means any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support a reasonable belief in the truth of the allegation made in the third-party request for an opinion. The term includes any evidence which is offered that corroborates a newspaper article or other media report. The term does not include a newspaper article or other media report if the article or report is offered as the only evidence to support the allegation.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.186)

#### **NAC 281A.403 Recommendation to initiate request upon motion of Commission. ([NRS 281A.290](#))**

1. If the Executive Director receives evidence that leads the Executive Director reasonably to conclude that a public officer or public employee may have committed a violation of the Nevada Ethics in Government Law as set forth in [chapter 281A](#) of NRS, the Executive Director may recommend to the Commission that the Commission initiate a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#).

2. A recommendation from the Executive Director pursuant to subsection 1 must:

- (a) Be submitted on a form prescribed by the Commission;
- (b) Contain a written statement setting forth the information that supports the recommendation; and
- (c) Include any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such forms of proof that support the recommendation. Such forms of proof may include, without limitation, any evidence

which is offered that corroborates a newspaper article or other media report but may not include a newspaper article or other media report if the article or report is offered as the only evidence to support the recommendation.

3. The Executive Director shall not submit a recommendation to the Commission pursuant to subsection 1 based solely upon:

(a) A statement other than a sworn statement; or

(b) An allegation submitted to the Commission with the intent to avoid disclosure of the identity of the person making the allegation, *except as otherwise provided in subsection 9 of NRS 281A.440.*

4. Upon receiving a recommendation from the Executive Director pursuant to subsection 1, the Commission will:

(a) Reject the recommendation without prejudice; or

(b) Accept the recommendation and initiate a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of [NRS 281A.440](#).

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008; A by R134-10, 10-26-2011)

**NAC 281A.405 Determination regarding jurisdiction or compliance with filing requirements: Conduct by Executive Director and Commission Counsel; notification; review by Commission. ([NRS 281A.290](#))**

1. The Executive Director shall confer with the Commission Counsel to determine whether:

(a) The Commission has jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#); and

(b) The third-party request for an opinion was filed with the Commission in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#).

2. If the Executive Director and Commission Counsel determine pursuant to subsection 1 that the Commission has jurisdiction concerning the third-party request for an opinion and that the third-party request for an opinion was filed in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#), the Executive Director shall notify the requester and the subject of the request of the determination.

3. The Executive Director shall notify the requester of the determination if the Executive Director and Commission Counsel determine pursuant to subsection 1 that:

(a) The Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to subsection 1; or

(b) The third-party request for an opinion was not filed with the Commission in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#).

4. A person who receives a notice pursuant to subsection 2 or 3 may request a review by the Commission of the determination made pursuant to subsection 1. Such a request must be submitted to the ~~principal~~ office of the Commission in writing not later than 10 days after the date on which the person ~~received~~ was served notification.

5. Upon receipt of a request for a review pursuant to subsection 4, the ~~Executive Director shall notify the subject if the request for a review was made by the requester of the third party request for an opinion, or the requester of the third party request for an opinion if the request for a review was made by the subject. Such notification must include, without limitation:~~

~~(a) The third party request for an opinion;~~

~~(b) The determination of the Executive Director and Commission Counsel made pursuant to subsection 1;~~

~~(c) The request for a review made pursuant to subsection 4;~~

~~(d) The date on which the Commission will conduct its review; and~~

~~(e) Instructions for filing a response to the request for a review, which must be filed not less than 5 business days before the date on which the Commission will conduct its review;~~

6. The Commission will hold a confidential hearing to review ~~a~~ the determination made by the Executive Director and the Commission Counsel pursuant to subsection 1. ~~on the date provided~~

~~in the notification made pursuant to subsection 5. Action taken by the Commission pursuant to this subsection is a final decision.~~ The Commission will:

- (a) Dismiss the matter without prejudice upon a finding that the third-party request for an opinion was not filed in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#);
- (b) Dismiss the matter upon a finding that the Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#); or
- (c) Accept jurisdiction of the matter upon a finding that the third-party request for an opinion was filed in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#) and that the Commission has jurisdiction concerning the third-party request for an opinion pursuant to paragraph (a) or (b) of subsection 2 of [NRS 281A.440](#).

~~7 6.~~ The Executive Director shall:

(a) Notify the subject and the requester of the third-party request for an opinion, as applicable, of the action taken by the Commission pursuant to subsection ~~6 5~~; and

(b) If the Commission accepts jurisdiction of the matter, provide the notification required by [NAC 281A.410](#).

(Added to NAC by Comm'n on Ethics by R111-03, eff. 10-30-2003; A by R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.1865)

**NAC 281A.410 Notification of subject after final determination of jurisdiction or compliance with filing requirements; filing of response. ([NRS 281A.290](#))**

1. Once a third-party request for an opinion has been filed with the Commission by a requester in compliance with the requirements of subsections 1, 2 and 3 of [NAC 281A.400](#) or initiated on the motion of the Commission and the Commission ~~have~~ has determined that the Commission has jurisdiction over the matter presented in the third-party request for an opinion pursuant to [NAC 281A.405](#), the Executive Director shall forthwith:

(a) Notify the public officer or public employee who is the subject of the third-party request for an Opinion;

(b) Provide the public officer or public employee an opportunity to respond to the allegations contained in the third-party request for an opinion; and

(c) Investigate and proceed in the matter pursuant to [NRS 281A.440](#).

2. A notification made pursuant to subsection 1 must:

(a) Be in writing and sent to the subject of the third-party request for an opinion by:

(1) Personal delivery;

(2) Certified mail, return receipt requested; or

(3) Overnight delivery service in which proof of delivery is documented.

(b) Include, without limitation:

(1) All information filed by the requester or information upon which the Commission based its motion, as appropriate;

(2) An outline of the process used by the Commission to resolve third-party requests for opinions; and

(3) A form prescribed by the Commission for waiving the time limits set forth in subsections 4, 5 and 6 of [NRS 281A.440](#).

3. The subject of a third-party request for an opinion may, within the time limit set forth in subsection 3 of [NRS 281A.440](#), file with the Commission a written response to the allegations contained in the third-party request for an opinion. If the subject of a third-party request for an opinion files with the Commission a waiver of the time limits set forth in subsections 4, 5 and 6 of [NRS 281A.440](#), the Executive Director may, for good cause shown, authorize one or more extensions, of not more than 30 days each, of the time limit set forth in subsection 3 of [NRS 281A.440](#) for the subject to file a written response to the allegations contained in the third-party request for an opinion.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.188)

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**NAC 281A.415 Investigation of additional issues and facts by Executive Director; provision of additional notice to subject. (NRS 281A.290)**

1. The Executive Director may investigate relevant issues and facts beyond those presented in a third-party request for an opinion in determining his or her written recommendation of whether there is just and sufficient cause for the Commission to render an opinion on the third-party request for an opinion.

2. If the Executive Director includes issues and facts beyond those presented in the third-party request for an opinion in his or her written recommendations which are not included in the notice issued to the subject pursuant to [NAC 281A.410](#), the Executive Director must provide additional notice to the subject of the additional issues and facts and provide the subject with the same opportunity to respond to such issues and facts that is set forth in subsection 3 of [NRS 281A.440](#).

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.189)

**NAC 281A.420 Confidentiality of request; confidentiality and availability of information related to request. (NRS 281A.290)**

1. Except as otherwise provided in [NRS 281A.440](#), until the conclusion of the proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter:

(a) The Commission will not confirm or deny whether a third-party request for an opinion has been filed by a requester, or initiated upon the motion of the Commission, against a public officer or public employee; and

(b) All information related to the third-party request for an opinion in the possession of the Commission and its staff is confidential.

2. Upon the conclusion of the proceedings of an investigatory panel on a third-party request for an opinion, any information related to the third-party request for an opinion, except the investigative file of the Commission as described in subsection ~~16~~ [17](#) of [NRS 281A.440](#), is a public record available for public review during normal business hours at the **principal** office of the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.191)

**NAC 281A.425 Confidentiality of proceedings of investigatory panel. (NRS 281A.290)** **The ~~All~~** proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion are confidential and closed to all persons except the staff of the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.192)

**NAC 281A.430 Considerations of investigatory panel. (NRS 281A.290)** At the proceedings of an investigatory panel on a third-party request for an opinion, the investigatory panel shall consider:

1. The results of the investigation of the Executive Director and the recommendation of the Executive Director regarding whether there is just and sufficient cause for the Commission to render an opinion;

2. The third-party request for an opinion and all related information and material filed with the Commission by the requester or submitted on the motion of the Commission; and

3. The response, if any, of the public officer or public employee who is the subject of the third-party request for an opinion.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.193)

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**NAC 281A.435 Basis for finding by investigatory panel; unanimous finding required for determination that there is not just and sufficient cause to render opinion. ([NRS 281A.290](#))**

1. A finding by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be based on credible evidence.

2. A finding by an investigatory panel that there is not just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be unanimous.

3. As used in this section, “credible evidence” means the minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, that supports a reasonable belief by an investigatory panel that the Commission should hear the matter and render an opinion on the third-party request for an opinion. The term does not include a newspaper article or other media report if the article or report is offered as the only evidence to support the allegation.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—  
(Substituted in revision for NAC 281.194)

**NAC 281A.440 Recording and contents of determination by investigatory panel that there is just and sufficient cause to render opinion. ([NRS 281A.290](#))** A determination issued by an investigatory panel pursuant to [NRS 281A.220](#) which specifies that there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be recorded in writing and include, without limitation:

1. The findings of the investigatory panel; and

2. The statutes upon which the investigatory panel based its determination that there is just and sufficient cause for the Commission to render an opinion.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—  
(Substituted in revision for NAC 281.1945)

**NAC 281A.445 Record of proceedings of investigatory panel. ([NRS 281A.290](#))** The Executive Director shall provide and make arrangements for a written record or audio recording to be made of any proceedings of an investigatory panel.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.195)

**NAC 281A.450 Hearings: Advance written notice. ([NRS 281A.290](#))**

1. Before the Commission holds a hearing concerning a third-party request for an opinion, the Commission must serve the subject with advance written notice of the hearing at least 10 days before the date on which the hearing is scheduled to commence which includes the date, time and location of the hearing.

2. The written notice required pursuant to this section must comply with:

(a) The requirements for notice set forth in subsection ~~10~~ **II** of [NRS 281A.440](#); and

(b) Except as otherwise provided in this chapter and [chapter 281A](#) of NRS, the requirements for notice set forth in provisions concerning the adjudication in contested cases in [chapter 233B](#) of NRS.

3. A written record of the final determination of the investigatory panel issued pursuant to [NAC 281A.440](#) may serve as the written notice required pursuant to this section if it includes the date, time and location of the hearing and otherwise complies with the requirements set forth in this section.

4. Notice shall be deemed complete upon delivery personally to the subject or by mailing the notice by certified mail or overnight delivery service to the last known address of the subject.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—  
(Substituted in revision for NAC 281.197)

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**NAC 281A.455 Hearings: Continuance.** ([NRS 281A.290](#)) The procedures for obtaining and granting a continuance of a hearing concerning a third-party request for an opinion are as follows:

1. The date or time of the hearing may be continued for a reasonable time by the ~~Executive Director~~ **Chair:**

(a) Upon the written petition of the ~~Executive Director or his/her designee or the~~ subject for good cause shown; or

(b) By stipulation of the subject and the ~~Commission, acting through the~~ Executive Director ~~or his/her designee.~~

2. A continuance will not be granted unless it is made in good faith, is reasonably necessary and is not sought merely for delay or by reason of inexcusable neglect of the subject.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.199)

**NAC 281A.460 Hearings: Conduct; action by Commission; waiver of provisions.** ([NRS 281A.290](#))

1. The Chair or presiding officer of a hearing concerning a third-party request for an opinion shall:

(a) Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered in accordance with [NAC 281A.280](#) to all persons whose testimony will be taken.

(c) Exclude from the hearing all witnesses scheduled to testify except during the testimony of the witness. To preserve the integrity of the process and the evidence presented during a proceeding, the Chair or presiding officer may request all witnesses not to discuss the case with any person ~~other than the legal counsel of the witness~~ during the pendency of the proceeding.

(d) Hear and rule on any procedural motions, approve any stipulations and address any administrative details.

(e) ~~Designate a member of the staff of the Commission~~ **Direct the Executive Director or his/her designee** to present the third-party request for an opinion, the response to the third-party request for an opinion by the subject and the determination of the investigatory panel concerning whether there is just and sufficient cause for the Commission to render an opinion in the matter.

(f) Allow the subject to present opening comments.

(g) **Direct the Executive Director or his/her designee to** call and question any witnesses, **and** present any evidence on behalf of the Commission concerning the third-party request for an opinion, and allow any member of the Commission to question such witnesses.

2. The subject may remain present during the hearing.

3. The subject may question any witnesses.

4. Upon the conclusion of the presentation of any evidence and the examination of any witnesses **by the Executive Director or his/her designee** on behalf of the Commission, the Chair or presiding officer shall request the subject to proceed with the introduction of evidence and calling of witnesses on his or her behalf.

5. ~~The~~ **Any member of the Commission may question the Executive Director or his/her designee, the** subject, any witnesses or any counsel retained by the subject ~~may be questioned by the any member of the Commission~~ at any time during the proceeding.

6. Upon the conclusion of the presentation of evidence **and the examination of any witnesses by the Executive Director or his/her designee, the** subject **and any member of the Commission,** ~~and the examination of any witnesses,~~ the Chair or presiding officer shall allow the **Executive Director or his/her designee and the** subject to present closing comments.

7. ~~Upon the conclusion of the closing comments by the subject,~~ **After the conclusion of the hearing,** Commission will:

(a) deliberate the issues of fact presented at the hearing, make a determination of the findings of fact, **and** apply the applicable law to the findings of fact; **and**



~~(b) render an~~ **Issue an** opinion concerning whether the subject **has** violated any of the provisions of **chapter 281A** of NRS **and whether any violation was a willful violation; and**

**(c) Issue the opinion to the subject.**

8. Upon a finding of a willful violation of any of the provisions of **chapter 281A** of NRS, the Commission may impose any civil penalties authorized pursuant to **NRS 281A.480** and will impose any other statutory remedies required pursuant to **NRS 281A.480**.

9. The Commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.201)

**NAC 281A.465 Hearings: Admission and exclusion of evidence. (NRS 281A.290)**

1. In conducting any hearing concerning a third-party request for an opinion, the rules of evidence of the courts of this State will be followed generally but may be relaxed at the discretion of the Commission.

2. The Chair or presiding officer may exclude immaterial, incompetent, cumulative or irrelevant evidence or order that the presentation of such evidence be discontinued.

3. ~~A~~ **The Executive Director or his/her designee and the** subject may object to the introduction of evidence if **the Executive Director or his/her designee or the** subject:

(a) Objects to such evidence promptly; and

(b) Briefly states the grounds of the objection at the time the objection is made.

4. If an objection is made to the admissibility of evidence, the Chair or presiding officer may:

(a) Note the objection and admit the evidence;

(b) Sustain the objection and refuse to admit the evidence; or

(c) Receive the evidence subject to any subsequent ruling of the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.203)

**NAC 281A.470 Failure of subject to appear at hearing or reply to notice. (NRS 281A.290)** If a subject fails to appear at a hearing concerning a third-party request for an opinion which is scheduled by the Commission and a continuance has not been requested or granted, upon an offer of proof by the Executive Director that the subject was given proper notice and upon a determination by the Commission that proper notice was given, the Commission may proceed to consider the case without the presence of the absent subject and may dispose of the matter on the basis of the evidence before it. If the subject fails to appear at the hearing or fails to reply to the notice provided pursuant to **NAC 281A.410**, the alleged violations specified in the determination of the investigatory panel that there is just and sufficient cause for the Commission to render an opinion may be considered as true.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.205)

**Opinions Concerning Employment of Certain Former Public Officers or Employees by Regulated Businesses**

**NAC 281A.475 Requirements for consideration by Commission. (NRS 281A.290)** The Commission will only consider those requests for an opinion filed pursuant to subsection 6 of **NRS 281A.550** that are on the form provided by the Commission and submitted in the manner prescribed on the form.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011; A by R048-14, 10-24-2014)

**NAC 281A.480 Scheduling of hearing; effect of failure to appear at hearing. (NRS 281A.290)**

1. Except as otherwise provided in subsection 2, a request for an opinion filed pursuant to subsection 6 of **NRS 281A.550** will be heard by the Commission within 45 days after receipt of the request by the Commission.

2. If a public officer or public employee who requests an opinion pursuant to subsection 6 of **NRS 281A.550** cannot appear before the Commission for a hearing on the request within 45 days after receipt of the request by the Commission, the public officer or public employee may submit a written statement

acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. Such a request must be received not later than 7 business days before the expiration of the 45-day period.

3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to **respond to the notice of hearing as provided in such notice or** appear at the hearing scheduled by the Commission within 45 days after receipt of the request for an opinion, the request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

**NAC 281A.485 Withdrawal.** (NRS 281A.290) ~~At any time before 1. Except as otherwise provided in this section, the subject of a request for opinion filed pursuant to subsection 6 of NRS 281A.550 may withdraw the request for the opinion by providing a written notice of withdrawal to the Commission before the Commission renders an opinion holds any hearing~~ relating to a **the** request for an opinion filed pursuant to subsection 6 of NRS 281A.550, the public officer or public employee who filed the request for the opinion may withdraw the request by providing a notice of withdrawal to the Commission.

**2. The subject of a request for an opinion filed pursuant to subsection 6 of NRS 281A.550 may seek a withdrawal of the request for the opinion at any time by submitting a motion to the Commission supported by good cause, which may include, without limitation, that the anticipated future circumstances or conduct upon which advice is sought has changed.**

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

**NAC 281A.490 Determination regarding jurisdiction: Conduct by Executive Director and Commission Counsel; notification; request for review by Commission.** (NRS 281A.290) The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a request for an opinion filed pursuant to subsection 6 of **NRS 281A.550**. ~~If the Commission Counsel determines it is determined~~ that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee **not later than 20 days after the date on which the Commission received the request for the opinion**. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be filed to the **principal** office of the Commission in writing not later than 10 days after the date on which the public officer or public employee **received was served** notification.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

**NAC 281A.495 Conduct of hearings; action by Commission; waiver of provisions; confidentiality.** (NRS 281A.290)

1. The Chair or presiding officer of a hearing concerning a request for an opinion filed pursuant to subsection 6 of **NRS 281A.550** shall:

(a) Ascertain whether the subject of the request for an opinion and all persons requested by the subject to testify are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered, in accordance with **NAC 281A.280**, to the subject of the request for an opinion and all persons whose testimony will be taken.

2. Except as otherwise provided in subsection 3 of **NAC 281A.480**, the subject of the request for an opinion must be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the request for an opinion to:

- (a) Present opening comments;
- (b) Present any evidence on his or her own behalf; and
- (c) Examine any witnesses on his or her own behalf.

4. The subject of the request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the request for an opinion

and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. ~~Upon the conclusion of the closing comments by the subject of~~ *After the conclusion of a hearing related to* the request for an opinion, the Commission will:

- (a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;
- (b) ~~Render~~ *Issue* an opinion on the matter; and
- (c) ~~Submit a copy of~~ *Provide* the opinion to the subject.

7. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

8. The request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the request for an opinion acts in a manner set forth in subsection 7 of [NRS 281A.550](#) to waive the confidentiality of such information.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011; A by R048-14, 10-24-2014)

### General Procedures for Hearings

**NAC 281A.500 Executive Director to provide information to Commission.** ([NRS 281A.290](#)) ~~At~~ *Unless directed by the Chair otherwise, at* least 1 week before the date on which the Commission is scheduled to hold a hearing ~~on a matter~~ *related to a request for an opinion pursuant to this Chapter*, the Executive Director shall provide to the Commission:

1. A statement of the matter that sets forth the issues to be determined at the hearing;
2. A list of any witnesses and their expected testimony; and
3. Any other information which the Executive Director deems necessary to assist the Commission in hearing the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.213)

**NAC 281A.505 Motion to disqualify member of Commission for good cause.** ([NRS 281A.290](#))

1. ~~A~~ *The Executive Director or his/her designee or the* subject may submit a motion to disqualify a member of the Commission from participating in a hearing for good cause.

2. Except as otherwise provided in this subsection, a motion to disqualify a member of the Commission must comply with the procedures concerning motions before the Commission which are set forth in [NAC 281A.265](#). A motion to disqualify a member of the Commission which is submitted pursuant to subsection 1 must be ruled upon by the Commission as a whole.

3. In considering a motion to disqualify a member of the Commission, the Commission will consider any grounds that would justify the disqualification of a judge pursuant to Rule 2.11 of the Nevada Code of Judicial Conduct.

4. If the Commission approves a motion to disqualify a member of the Commission, the necessary quorum to act upon and the number of votes necessary to act upon a matter before the Commission is reduced as though the member who is disqualified was not a member of the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.214)

**NAC 281A.510 Commission to determine order of proceedings.** ([NRS 281A.290](#)) Except as otherwise provided in [NRS 281A.440](#) and [NAC 281A.365](#), [281A.460](#) and [281A.495](#), the ~~Commission Chair~~ *will determine, as it deems appropriate*, the order of proceedings for a hearing and will inform the parties thereof before the hearing commences.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.215)

**NAC 281A.515 Testimony: Oath or affirmation required.** ([NRS 281A.290](#)) All testimony received at a hearing before the Commission must be given under oath or affirmation.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for

**NAC 281A.520 Participation by subject of hearing; questioning of witnesses. ([NRS 281A.290](#))**

1. Except as otherwise provided in [NRS 281A.440](#) and [NAC 281A.365](#), [281A.460](#) and [281A.495](#), the Commission will provide the subject of a hearing before the Commission with the opportunity to appear and testify before the Commission and participate in the hearing. The subject of the hearing may be represented by counsel, hear the evidence presented to the Commission, respond and present evidence and testimony on his or her own behalf, examine and cross-examine witnesses, and make arguments.

2. The ~~Commission~~ **Executive Director or his/her designee** will ~~shall~~ question witnesses at the hearing **on behalf of the Commission, and any member of the Commission may question witnesses, the Executive Director, or his/her designee, and counsel for the subject at the hearing.**

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.219)

**Miscellaneous Provisions**

**NAC 281A.550 Written opinions and abstracts: Contents; dissemination. ([NRS 281A.290](#))**

1. The Commission Counsel shall, if directed by the Commission, prepare:

(a) A written opinion of the Commission regarding a first-party request for an opinion, a third-party request for an opinion or a request for an opinion submitted pursuant to subsection 6 of [NRS 281A.550](#); and

(b) An abstract of any written opinion which is confidential pursuant to subsection 7 of [NRS 281A.440](#) or subsection 7 of [NRS 281A.550](#).

2. A written opinion or abstract of the Commission must plainly state:

(a) If the opinion concerns a third-party request for an opinion, each violation alleged against the public officer or public employee who is the subject of the third-party request for an opinion;

(b) Except as otherwise provided in subsection 7 of [NRS 281A.440](#), if the opinion concerns a first-party request for an opinion, each question for which the public officer or employee seeks guidance concerning the interpretation of a statutory ethical standard;

(c) If the opinion concerns a request for an opinion filed pursuant to subsection 6 of [NRS 281A.550](#), the relevant facts in the case that do or do not justify relief from the strict application of the provisions of subsection 3 or 5 of [NRS 281A.550](#), as applicable;

(d) The determination of the Commission with regard to each allegation, question or fact, as applicable; and

(e) The applicable findings of fact and conclusions of law and any specific guidance concerning the interpretation of a statutory ethical standard provided by the Commission to a public officer or public employee who is the subject of a first-party request for an opinion.

3. Each written opinion and abstract must be numbered, dated and signed by the Chair or presiding officer.

4. The Commission will:

(a) Provide a copy of each written opinion and abstract to each person who is a party;

(b) Post a copy of each written opinion which is not confidential and each abstract on the Internet website of the Commission at <http://ethics.nv.gov>; and

(c) Deliver a copy of a written opinion which is not confidential or an abstract, as applicable, to any person who requests such a copy.

5. As used in this section, "abstract" means a version of a confidential written opinion that has been redacted or amended to keep the identity of the requester of the opinion confidential.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.223)

**NAC 281A.555 Petitions to adopt, file, amend or repeal regulations. ([NRS 233B.100](#), [281A.290](#))**

1. Any person may submit a written petition to the Commission at the **principal** office of the

Commission to adopt, file, amend or repeal any regulation of the Commission.

2. A petition submitted pursuant to subsection 1 must include, without limitation:

(a) The name and address of the petitioner;

(b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed, including, without limitation, the text of the proposed language of the regulation to be adopted, filed, amended or repealed;

(c) The reason for the adoption, filing, amendment or repeal of the regulation; and

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.

3. The Commission may decline to act upon a petition submitted pursuant to this section if the petition does not contain the information required pursuant to subsection 2.

4. The Commission will:

(a) Review and make a decision concerning the petition at the next scheduled meeting of the Commission in which consideration of the petition is feasible following the receipt of the petition; and

(b) Notify the petitioner in writing of the decision of the Commission concerning the petition within 30 days after the petition is considered by the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.236)

**NAC 281A.560 Availability of public records for inspection and copying; obtaining copies of transcripts; waiver of costs of copies of public records. ([NRS 281A.290](#))**

1. Except as otherwise provided in this section, the Commission will make public records of the Commission available for inspection and copying in accordance with the provisions of [chapter 239](#) of NRS.

2. Except as otherwise provided in this section, to obtain copies of a transcript concerning a matter that was recorded by the Commission, a person must file a written request at the **principal** office of the Commission and make arrangements directly with the court reporter.

3. The Commission will not authorize a court reporter to provide copies of a transcript concerning a matter that was recorded by the Commission to a person seeking such a transcript pursuant to subsection 2 unless the contents of the proceedings concerning that matter may be disclosed to that person pursuant to the provisions of [chapter 281A](#) of NRS and [NAC 281A.250](#) to [281A.310](#), inclusive.

4. A court reporter shall not provide to a person copies of a transcript concerning a matter that was recorded by the Commission or any other documents unless the court reporter has received written permission from the Commission.

5. The Commission may waive all or a portion of the cost of obtaining copies of public records made available pursuant to subsection 1 if the person requesting the copies files a written request for such a waiver at the **principal** office of the Commission and the Commission determines that:

(a) The copies requested are reasonable in quantity; and

(b) The person requesting the copies is a party to a matter before the Commission and does not have the financial ability to pay for all or a portion of the cost of the copies.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.242)

**NAC 281A.615 Requirements for submission of disclosure of representation and counseling and acknowledgement of statutory ethical standards. ([NRS 281A.290](#))**

1. The following documents must be on the form provided by the Commission and submitted in the manner prescribed on the form:

(a) A disclosure of representation and counseling required pursuant to [NRS 281A.410](#); and

(b) An acknowledgment of the statutory ethical standards required pursuant to [NRS 281A.500](#).

2. The form for each document specified in subsection 1 is available at the **principal** office of the Commission and on the Internet website of the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011; R048-14, 10-24-2014)—(Substituted in revision for NAC 281.227)