



STATE OF NEVADA
COMMISSION ON ETHICS
<http://ethics.nv.gov>

NOTICE OF PUBLIC MEETING

NAME OF ORGANIZATION: NEVADA COMMISSION ON ETHICS

DATE & TIME OF MEETING: Monday, May 15, 2017 at 10:30 a.m.

PLACE OF MEETING: This meeting will be held at the following location:

**Old Assembly Chambers
Capitol Building
101 North Carson Street
Carson City, NV 89701**

AGENDA

NOTES:

- Two or more agenda items may be combined for consideration.
- At any time, an agenda item may be taken out of order, removed, or delayed.
- Public comment will be accepted at the beginning of the open session and again before the conclusion of the open session of the meeting. Comment and/or testimony by the public may be limited to three (3) minutes. No action may be taken on any matter referred to in remarks made as public comment. Members of the public may also submit written public comment to the Commission at NCOE@ethics.nv.gov.

	1. Call to Order, Roll Call, and Pledge of Allegiance to the Flag.
	2. Public Comment. Comment and/or testimony by any member of the public will be limited to three (3) minutes. No action will be taken under this agenda item.
For Possible Action	3. Approval of Minutes of the April 19, 2017 Commission Meeting.
For Possible Action	4. Consideration and determination of willfulness concerning violation of Ethics Law by Gerald Antinoro, Sheriff, Storey County pursuant to Third-Party Request for Opinion No. 16-54C , submitted pursuant to NRS 281A.440(2), including imposition of possible sanctions under NRS 281A.480.
For Possible Action	5. Discussion and approval of Commission's interest before the 79 th Legislative Session (2017), including the Commission's 2018-2019 Budget, Senate Bill 84 and Senate Concurrent Resolution 6, including providing direction thereon.

For Possible Action	<p>6. Report and recommendations by Executive Director on agency status and operations and possible direction thereon. Items to be discussed include, without limitation:</p> <ul style="list-style-type: none"> • Current FY17 Budget Status/Objectives • Education and Outreach by the Commission • Upcoming Commission meetings • Legislative Session Updated/Schedule • Commission Business Cards • Commission Technology Report
	<p>7. Commissioner Comments on matters including, without limitation, identification of future agenda items, upcoming meeting dates and meeting procedures. No action will be taken under this agenda item.</p>
	<p>8. Public Comment. Comment and/or testimony by any member of the public may be limited to three (3) minutes. No action will be taken under this agenda item.</p>
	<p>9. Adjournment.</p>

Open Meeting Law Exemption

***A meeting or hearing held by the Commission pursuant to NRS 281A.440 to receive information or evidence regarding the conduct of a public officer or employee, and deliberations of the Commission regarding such a public officer or employee, are exempt from the provisions of NRS Chapter 241, Nevada's Open Meeting Law. As a result, these agenda items, or any portion of them, may be heard in closed session.**

NOTES:

- ❖ The Commission is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada Commission on Ethics, in writing at 704 W. Nye Lane, Ste. 204, Carson City, Nevada 89703; via email at ncoe@ethics.nv.gov or call 775-687-5469 as far in advance as possible.
- ❖ To request an advance copy of the supporting materials for any open session of this meeting, contact Executive Director Yvonne M. Nevarez-Goodson, Esq. at ncoe@ethics.nv.gov or call 775-687-5469.
- ❖ This Agenda and supporting materials are posted and are available not later than the 3rd working day before the meeting at the Commission's office, 704 W. Nye Lane, Ste. 204, Carson City, Nevada, or on the Commission's website at www.ethics.nv.gov. A copy also will be available at the meeting location on the meeting day.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020 before 9:00 a.m. on the third working day before the meeting at the following locations:

- Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City
- Nevada Commission on Ethics' website: <http://ethics.nv.gov>
- Nevada Public Notice Website: <http://notice.nv.gov>
- State Library & Archives Building, 100 North Stewart Street, Carson City
- Blasdel Building, 209 E. Musser Street, Carson City
- Washoe County Administration Building, 1001 East 9th Street, Reno
- Grant Sawyer State Office Building, 555 E. Washington Ave., Las Vegas

AGENDA ITEM NO. 3

AGENDA ITEM NO. 3



**STATE OF NEVADA
COMMISSION ON ETHICS**

<http://ethics.nv.gov>

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

April 19, 2017

The Commission on Ethics held a public meeting on
Wednesday, April 19, 2017, at 8:30 a.m.
at the following location:

**Nevada Commission on Tourism
Laxalt Building - Second Floor Chambers
401 North Carson Street
Carson City, NV 89701**

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

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

Chair Cheryl A. Lau, Esq. called the meeting to order at 8:30 a.m. in Carson City, Nevada. Also present in Carson City were Vice-Chair Keith Weaver, Esq. and Commissioners Brian Duffrin, Barbara Gruenewald, Esq., Philip "P.K." O'Neill and Lynn Stewart. Present for Commission staff in Carson City were Executive Director Yvonne M. Nevarez-Goodson, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Judy A. Prutzman, Esq. and Executive Assistant Valerie M. Carter, CPM.

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Approval of Minutes of the February 15, 2017 Commission Meeting.

Commissioner Gruenewald moved to approve the February 15, 2017 Meeting Minutes. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously.

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4. Legislative update regarding the Commission's Biennial Budget (FY18-FY19), including review of Commission staff salaries.

Executive Director Yvonne Nevarez-Goodson provided an update regarding the Commission's FY18-FY19 Biennial Budget Request, which was closed before the Assembly Ways & Means and Senate Finance Committees on March 28, 2017. She explained that the Committees approved the Governor's Recommended Commission Budget, which included the change in methodology for calculating the State and local government contributions to the Commission's budget. She explained the new methodology takes into account DETR's Labor Market Statistics, which detail the number of public officers and employees who derive from the State versus the local governments and splits the share of the Commission's budget accordingly. Director Nevarez-Goodson reported that this new approved methodology will allow for more consistent fiscal planning for both the State and local governments, and the split of 28%-State and 72%-local governments should remain consistent over future biennia.

Director Nevarez-Goodson reported the Legislative Committees also considered and approved the funding for a customized Case Management System and an Opinions & Forms Database. The Committees approved \$7,200/fiscal year for the ongoing costs of the hosted systems. She stated that savings from FY17 will be used to build and customize the systems which will allow for the agency to make the transition to purely electronic recordkeeping, as well as create a searchable opinion database for use by the public, Commission staff and government and private attorneys.

Director Nevarez-Goodson reminded the Commission that the salary enhancements and title change requests did not make it into the Governor's Recommended Budget, but nevertheless, as an independent agency, the Commission saw fit to approach the Legislature with those requests. She stated that she responded to Committee questions regarding the Commission on Ethics' similarity to the Commission on Judicial Discipline, including the workload and staff responsibilities.

Commissioner O'Neill questioned what other commissions the Legislature wanted to compare to the Commission on Ethics. Director Nevarez-Goodson stated she was unaware of any specific agency or commission the legislative bodies had compared to the Commission on Ethics, but she reported that she provided the title and salary comparisons to both the Governor and the Legislature for several similar positions throughout the Unclassified Pay Bill that were equivalent to positions within the Commission.

Director Nevarez-Goodson reported there are currently two Concurrent Resolutions, both in the Assembly and Senate, which request interim studies on various salaries and positions, including within the Unclassified Pay Bill. She stated that the Commission on Ethics is specifically listed in the Senate Concurrent Resolution 6. She stated that with the Concurrent Resolutions being introduced, it signals to her that the salary enhancements will not be approved this Session. However, Director Nevarez-Goodson indicated she will still pursue changes to the Unclassified Pay Bill and hopes, at minimum, to get the requested title changes for the Commission's Executive Assistant and Associate Counsel, and salary increase for the Commission's Senior Legal Researcher in line with non-senior level "Legal Researchers" throughout the Pay Bill.

5. 79th Legislative Session (2017) update regarding proposed legislation effecting the Nevada Commission on Ethics including, without limitation SB 30, SB 36, SB 84 and ACR/SCR 6.

Executive Director Yvonne Nevarez-Goodson discussed the status of SB 30, which was a measure put forward by the Nevada Attorney General, which intended to define the types of gifts that would be appropriate for the Attorney General to accept. She reported there was an amendment to the bill on the day of the hearing which expanded that definition to all constitutional

officers; however, the bill failed to pass out of the Senate Committee by the deadline, effectively killing the measure.

Director Nevarez-Goodson reported that Senate Bill 36, which was the Governor's Bill that intended to exempt State Legislators from the jurisdiction of the Commission on Ethics and change the appointments of Commissioners, also failed to make it out of the Senate Committee by the deadline and also will not survive. Commissioner O'Neill questioned why the bill did not make it out of Committee, why Legislators were not supportive of the measure, and why, after the Nevada Supreme Court's *Hardy* decision, the Commission still has jurisdiction over Legislators. Director Nevarez-Goodson explained that the Commission does have concurrent jurisdiction regarding legislators when they are not engaging in core legislative functions or conduct that is protected by legislative privilege and immunity, and that is where the line is slightly blurred. She reported that some legislators were not comfortable with the idea of having to police themselves. Commissioner O'Neill expressed his disappointment with the failed bill.

Director Nevarez-Goodson reported that the Commission's Bill, SB 84 as amended, made it out of the Senate Committee on Legislative Operations and Elections by the deadline, and expects it to be heard on the Floor within the next couple of days. She reported that, in part, the Commission's initial request eliminated investigatory panels, but the bill was amended to address certain concerns regarding due process by revising the 2-member "Investigatory Panel" to a 3-member "Review Panel" that will have the authority to dismiss a case or move the matter forward to a full Commission Hearing as is authorized for the current investigatory panel process. However, the new Review Panels will also have the authority to approve deferral agreements which set forth terms and conditions between the Executive Director and Subject of an ethics complaint.

6. Discussion and consideration of Motion for Summary Judgment and Cross-Motion for Summary Judgment concerning Third-Party Request for Opinion No. 16-54C regarding Gerald Antinoro, Sheriff, Storey County, submitted pursuant to NRS 281A.440(2).

Commissioner Gruenewald was excused from participating in this agenda item as she served on the Panel regarding this matter.

Appearing before the Commission in this matter was Katherine F. Parks, Esq., attorney for Gerald Antinoro. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Commissioner O'Neill disclosed that he had known Sheriff Antinoro for several years, including during his time with the State Division of Investigation and the State Legislature. He stated they are also both members of the Nevada Sheriff's and Chief's Association. However, after consulting the Commission Counsel, the provisions of NRS 281A.420 and the judicial canons, Commissioner O'Neill stated he did not believe abstention was required because his professional relationship with the Sheriff and his membership with the Association do not establish personal interests or relationships that required abstention. Commissioner O'Neill further stated he could be fair and impartial in participating in the matter.

Chair Lau asked Ms. Parks if she had any objection to Commissioner O'Neill's participation in the matter. Ms. Parks stated she had no concerns.

Associate Counsel Prutzman gave an overview of the Third Party Request for Opinion (RFO) No. 16-54C, stating that the RFO alleged that Mr. Antinoro violated the Ethics Law when he prepared a letter endorsing Michelle Fiore, a candidate for United States Congress, using the official letterhead of the Storey County Sheriff's Office. The RFO alleged that Mr. Antinoro

violated NRS 281A.400(2) and (7) and NRS 281A.520; however, the two-member investigatory panel found there was only sufficient credible evidence for the Commission to consider the alleged violation of NRS 281A.400(7).

Associate Counsel Prutzman stated that material facts in this case were not disputed and the parties had submitted stipulated facts for the Commission's consideration. She then summarized the arguments set forth in the Executive Director's Motion for Summary Judgment (MSJ).

Associate Counsel Prutzman asked the Commission to carefully consider NRS 281A.020, which states that the Ethics Law promotes the separation between public and private interests, and NRS 281A.400(7) which prohibits a public officer from using governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer. She stated it was the Executive Director's position that the official letterhead of the public office or agency is, as a matter of law, governmental property. She stated the Executive Director was also concerned that this was the second ethics case involving Mr. Antinoro's use of government resources for a political purpose (RFO 14-59C).

Ms. Parks stated that she and Associate Counsel Prutzman briefed this matter in depth and acknowledged that her brief/argument was diametrically opposed to that of Associate Counsel and the Executive Director, and offered to focus on answering any questions of the Commission.

The Commission asked various questions of Ms. Parks and Associate Counsel Prutzman regarding the legal arguments presented in the Motions, and Associate Counsel Prutzman and Ms. Parks provided closing remarks regarding the Motion for Summary Judgment and Cross-Motion for Summary Judgment.

Chair Lau called for a brief recess. The meeting reconvened in closed session deliberations regarding RFO 16-54C.

Chair Lau called the meeting back into open session and tabled Agenda Item 6.

7. Report by Executive Director on agency status and operations.

Executive Director Yvonne Nevarez-Goodson acknowledged the hard work of Commission staff, stating that each member of the staff has fulfilled his/her duties with respect to processing first-party and third-party cases. She stated that staff and the Commission have been meeting the agency's performance measures for the last two years and she is very pleased to be able to report that to the Legislature.

Director Nevarez-Goodson stated the Commission will likely have an entirely new approach on education and outreach if SB 84 passes, as there will be several new procedural issues that will need to be undertaken. She reported that with some of the Commission's FY17 travel savings, she expects to reach out to the rural communities like she did two years ago, to provide ethics training to the rural communities throughout the State. She stated that Churchill County and Fallon are also scheduled for training in the next couple of months. She will be sure to invite Commissioners to trainings that are located within reasonable travel distance.

Director Nevarez-Goodson stated one Commission vacancy remains and it is a legislative appointment. She has been in touch with the Director of LCB, Rick Combs, but does not expect any appointment to be made prior to the end of the Legislative Session. Director Nevarez-

Goodson urged Commissioners to notify Rick Combs of any individuals who may be interested in the appointment.

Director Nevarez-Goodson discussed the Commission's current FY17 budget, stating there will be significant cost savings in the court reporting budget and some in the travel budget as well. She reported that these cost savings will likely not be recognized in future biennia as the Commission's Budget Request for the FY18-FY19 biennia included reduced funding in court reporting.

Director Nevarez-Goodson stated that staff remains consistently on track with the processing of all current cases. She stated it is her intention to have most matters received in FY16 completed by the end of the fiscal year.

Director Nevarez-Goodson polled the Commissioners for their availability for a May 15th or 16th Commission meeting. All members stated they were available on May 15 or would try to make themselves available. Director Nevarez-Goodson stated she will keep Commissioners informed as the agenda for that meeting takes shape.

Director Nevarez-Goodson asked Commissioners to provide her with feedback regarding legislative measures they wished to discuss or any direction they wanted to provide her going forward.

Commissioner O'Neill asked for his fellow Commissioners' opinion with regard to SB 36, the Governor's bill which would exclude Legislators from the Commission's jurisdiction and whether any Commissioners had an appetite to try to resurrect the bill. Commissioner Gruenewald stated that she respects the Senate Committee's decision not to go forward with the bill.

6. Discussion and consideration of Motion for Summary Judgment and Cross-Motion for Summary Judgment concerning Third-Party Request for Opinion No. 16-54C regarding Gerald Antinoro, Sheriff, Storey County, submitted pursuant to NRS 281A.440(2).

Chair Lau called this agenda item back to order.

Commissioner Gruenewald was excused from participating in this agenda item as she served on the Panel regarding this matter.

Appearing again before the Commission in this matter was Katherine F. Parks, Esq., attorney for Gerald Antinoro, and Associate Counsel Judy A. Prutzman, Esq., on behalf of the Executive Director.

Commissioner Duffrin commended Associate Counsel Prutzman and Ms. Parks for their excellent briefs. He then moved the Commission to grant Summary Judgment in favor of the Executive Director and deny the relief requested by Subject Antinoro, and direct Commission Counsel to prepare an Order issuing the determination of the Commission. Commissioner Duffrin further moved that the Commission direct the Commission Counsel to issue a Notice that the Commission will consider further briefs by the parties regarding whether the violation was willful under the factors set forth in NRS 281A.475, and whether any associated fines will be imposed pursuant to NRS 281A.480, at the Commission's next regular meeting - May 15, 2017. Commissioner Stewart seconded the Motion. The Motion was put to a vote and carried unanimously.

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8. Commissioner Comment on matters including, without limitation, future agenda items, upcoming meeting dates and meeting procedures.

No Commissioner comments.

9. Open Session for Public Comment.

No public comment.

10. Adjournment.

Commissioner Stewart moved to adjourn the meeting. Commissioner Duffrin seconded the Motion. The Motion was put to a vote and carried unanimously. The meeting adjourned at 11:05 a.m.

Minutes prepared by:

Valerie Carter, CPM
Executive Assistant

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Minutes approved May 15, 2017:

Cheryl A. Lau, Esq.
Chair

Keith A. Weaver, Esq.
Vice-Chair

AGENDA ITEM NO. 4

AGENDA ITEM NO. 4

RECEIVED

MAY 05 2017

COMMISSION
ON ETHICS

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STATE OF NEVADA

BEFORE THE COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct
of **Gerald Antinoro**, Sheriff, Storey
County, State of Nevada

Request for Opinion No. 16-54C

Subject. /

**EXECUTIVE DIRECTOR'S BRIEF REGARDING
DETERMINATION OF WILLFULNESS AND SANCTIONS**

Date of Hearing: May 15, 2017

Time of Hearing: 10:30 a.m.

Yvonne M. Nevarez-Goodson, Esq., Executive Director of the Nevada Commission on Ethics ("Commission"), through the Commission's Associate Counsel, Judy A. Prutzman, Esq., hereby submits this Brief Regarding Determination of Willfulness and Sanctions.

POINTS AND AUTHORITIES

I. INTRODUCTION

Third-Party Request for Opinion ("RFO") No. 16-54C alleged that Gerald Antinoro ("Antinoro"), Sheriff of Storey County, Nevada, violated various provisions of the Ethics Law when he produced a letter of endorsement for Michelle Fiore, a candidate for United States Congress, on the official letterhead of the Storey County Sheriff's Office. The Commission's Investigatory Panel found just and sufficient cause for the Commission to hold a hearing and render an opinion regarding the allegations pertaining NRS 281A.400(7). After the Commission's issuance of the Panel Determination and a Notice of Hearing and Scheduling Order to consider this matter, the Executive Director and Antinoro, through their respective attorneys, submitted

1 Stipulated Facts and filed cross-motions for summary judgment to resolve the RFO as
2 a matter of law.

3 During its April 19, 2017 Meeting, the Commission, after reviewing the entire
4 record of the RFO and considering the motions and oral arguments of counsel, the
5 Commission granted summary judgment in favor of the Executive Director, concluding
6 that Antinoro's use of the official letterhead of the Sheriff's Office for a personal
7 political endorsement violated NRS 281A.400(7) as a matter of law. However, the
8 Commission ordered further briefing by the parties for its determination of whether
9 Antinoro's violation was willful and subject to any penalties under NRS 281A.480.
10 Accordingly, the Executive Director files this brief in support of her recommendation
11 that Antinoro's violation of NRS 281A.400(7) was willful and should be subject to civil
sanctions under NRS 281A.480.

12 The Commission should take notice of a prior Stipulated Agreement involving
13 Antinoro's improper use of his public position in *In re Antinoro*, Comm'n Op. No. 14-
14 59C (2015). In that case, Antinoro used his position as Sheriff to instruct his
15 subordinate to draft a Cease and Desist Order prohibiting his political opponent from
16 attending any activities involving seniors or any other demographic group without the
17 Sheriff's permission. In that Stipulation, the Commission found that Antinoro's conduct
18 created an appearance of impropriety, resulting in a single violation of the Ethics Law,
19 implicating NRS 281A.400(2), NRS 281A.400(9) and NRS 281A.020. See Exhibit 1,
20 Stipulated Agreement for *In re Antinoro*, Comm'n Op. No. 14-59C. Less than one year
21 after the Commission's approval of the Stipulated Agreement in *In re Antinoro*, the
22 Commission received the current RFO. The Commission should also consider that
23 Antinoro has not taken any steps to correct the violation. Moreover, the nature and
24 circumstances of the conduct directly conflict with the Commission's strong public
25 policy to ensure the public's trust that government resources belonging to the public
are not utilized for private political purposes.

26 In granting the Executive Director's Motion for Summary Judgment, the
27 Commission has determined that Antinoro's conduct violated NRS 281A.400(7). For
28 the reasons set forth in this Brief, the violation should be deemed willful and the
Commission should impose a civil penalty.

II. STANDARDS OF LAW

Having already determined that Antinoro violated NRS 281A.400(7), the Commission must now determine whether his conduct in violation of the Ethics Law was willful and therefore subject to a civil (monetary) penalty. The Ethics Law specifically defines the standard for willfulness, outlines a number of factors that must be considered for a determination of willfulness and authorizes the Commission to impose a civil penalty up to \$5,000 for a first willful violation.

A. Standard for Willful Violations

NRS 281A.170 “Willful violation” defined. “Willful violation” means a violation where:

1. The public officer or employee:

(a) **Acted intentionally and knowingly**; or

(b) Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter; and

2. The Commission determines, after applying the factors set forth in NRS 281A.475, that the public officer’s or employee’s act or failure to act resulted in a sanctionable violation of this chapter.

(Emphasis added).

NRS 281A.105 “Intentionally” defined. “Intentionally” means voluntarily or deliberately, rather than accidentally or inadvertently. **The term does not require proof of bad faith, ill will, evil intent or malice.**

(Emphasis added).

NRS 281A.115 “Knowingly” defined. “Knowingly” imports a knowledge that the facts exist which constitute the act or omission, and **does not require knowledge of the prohibition against the act or omission.** Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

(Emphasis added).

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1 **NRS 281A.475 Standards for determining whether violation is**
2 **willful violation and amount of civil penalty imposed**

3 1. In determining whether a violation of this chapter is
4 a willful violation and, if so, the amount of any civil penalty to
5 be imposed on a public officer or employee or former public
6 officer or employee pursuant to NRS 281A.480, the
7 Commission shall consider, without limitation:

8 (a) The seriousness of the violation, including, without
9 limitation, the nature, circumstances, extent and gravity of the
10 violation;

11 (b) The number and history of previous warnings issued
12 to or violations of the provisions of this chapter by the public
13 officer or employee;

14 (c) The cost to the Commission to conduct the
15 investigation and any hearing relating to the violation;

16 (d) Any mitigating factors, including, without limitation,
17 any self-reporting, prompt correction of the violation, any
18 attempts to rectify the violation before any complaint is filed
19 and any cooperation by the public officer or employee in
20 resolving the complaint;

21 (e) Any restitution or reimbursement paid to parties
22 affected by the violation;

23 (f) The extent of any financial gain resulting from the
24 violation; and

25 (g) Any other matter justice may require.

26 2. The factors set forth in this section are not
27 exclusive or exhaustive, and **the Commission may consider**
28 **other factors in the disposition of the matter if they bear a**
 reasonable relationship to the Commission's
 determination of the severity of the violation.

 3. In applying the factors set forth in this section, the
 Commission shall treat comparable situations in a comparable
 manner and shall ensure that the disposition of the matter
 bears a reasonable relationship to the severity of the violation.

(Emphasis added).

B. Sanctions

NRS 281A.480 Commission authorized to impose civil penalties;
duties of Commission upon finding willful violation; circumstances
in which violation not deemed willful; effect of chapter upon
criminal law; judicial review; burden of proof.

1 1. In addition to any other penalties provided by law and in
2 accordance with the provisions of NRS 281A.475, the Commission may
3 impose on a public officer or employee or former public officer or
4 employee civil penalties:

5 (a) Not to exceed \$5,000 for a first willful violation of this chapter;

6 (b) Not to exceed \$10,000 for a separate act or event that
7 constitutes a second willful violation of this chapter; and

8 (c) Not to exceed \$25,000 for a separate act or event that
9 constitutes a third willful violation of this chapter.

10 ...

11 4. In addition to any other penalties provided by law, if a
12 proceeding results in an opinion that:

13 ...

14 (c) One or more willful violations of this chapter have been
15 committed by a public officer other than a public officer described in
16 paragraphs (a) and (b), the willful violations shall be deemed to be
17 malfeasance in office for the purposes of NRS 283.440 and the
18 Commission:

19 (1) May file a complaint in the appropriate court for removal of
20 the public officer pursuant to NRS 283.440 when the public officer is
21 found in the opinion to have committed fewer than three willful violations
22 of this chapter.

23 (2) Shall file a complaint in the appropriate court for removal of
24 the public officer pursuant to NRS 283.440 when the public officer is
25 found in the opinion to have committed three or more willful violations of
26 this chapter.

27 - This paragraph grants an exclusive right to the Commission, and no
28 other person may file a complaint against the public officer pursuant to
NRS 283.440 based on any violation found in the opinion.

 5. Notwithstanding any other provision of this chapter, any act
or failure to act by a public officer or employee or former public officer or
employee relating to this chapter is not a willful violation of this chapter if
the public officer or employee establishes by sufficient evidence that:

 (a) The public officer or employee relied in good faith upon the
advice of the legal counsel retained by his or her public body, agency or
employer; and

 (b) The advice of the legal counsel was:

 (1) Provided to the public officer or employee before the public
officer or employee acted or failed to act; and

 (2) Based on a reasonable legal determination by the legal
counsel under the circumstances when the advice was given that the
act or failure to act by the public officer or employee ~~was~~ would not
be contrary to any prior published opinion issued by the Commission
which was publicly available on the Internet website of the
Commission.

 ...

1 8. The imposition of a civil penalty pursuant to subsection 1, 2
2 or 3 is a final decision for the purposes of judicial review pursuant to
3 NRS 233B.130.

4 9. A finding by the Commission that a public officer or employee
5 has violated any provision of this chapter must be supported by a
6 preponderance of the evidence unless a greater burden is otherwise
7 prescribed by law.

8 **III. LEGAL ANALYSIS**

9 In granting the Executive Director's Motion for Summary Judgment, the
10 Commission has concluded that Antinoro's conduct violated NRS 281A.400(7). Given
11 the nature of the conduct, combined with Antinoro's history of violating the Ethics Law,
12 this violation should be declared willful and subject to a civil penalty.

13 **A. Antinoro's conduct constitutes one willful violation of NRS** 14 **281A.400(7)**

15 Under the Ethics Law, a willful violation is based upon conduct that is
16 intentional and knowing. However, to find that Antinoro's violation was willful, it is **not**
17 necessary to conclude that he intended to violate the Ethics Law or that he knew his
18 conduct was unlawful. Therefore, the necessary inquiry is whether Antinoro
19 intentionally and knowingly used the official letterhead of the Sheriff's Office for the
20 endorsement letter.

21 **1) Antinoro Acted Intentionally**

22 To find that Antinoro acted intentionally, NRS 281A.105 requires the
23 Commission to conclude only that Antinoro acted "voluntarily" or "deliberately," rather
24 than accidentally or inadvertently. The definition of "intentionally" does **not** require
25 proof that the intentional behavior was done in bad faith or with malicious motive to be
26 deemed willful.

27 The Stipulated Facts presented to the Commission in this matter indicate that
28 Antinoro deliberately and voluntarily used the official letterhead of the Sheriff's Office
when he produced the political endorsement letter for Michelle Fiore. His use of the
official letterhead was not accidental or inadvertent. In fact, because Antinoro
produced the endorsement letter on his private computer at his home, his decision to
use the official letterhead template from the Sheriff's Office required him to take

1 deliberate steps to copy or transmit the official letterhead template from his Sheriff's
2 Office computer to his personal computer at home.

3 **2) Antinoro Acted Knowingly**

4 The Ethics Law also requires that Antinoro had knowledge of his actions. NRS
5 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which
6 constitute the act or omission, and does not require knowledge of the prohibition
7 against the act or omission." Accordingly, it is not necessary that Antinoro had actual
8 knowledge that his conduct would violate NRS 281A.400(7). *See State v. Rhodig*, 101
9 Nev. 608 (1985) (" . . . the law does not require knowledge that such an act or
10 omissions unlawful."). Antinoro knew he was using the official letterhead of the
11 Sheriff's Office for a private purposed when he produced the endorsement letter for
12 Fiore.

13 **3) Mitigating Factors Do Not Support a Determination That 14 Antinoro's Violation Was Not Willful**

15 Although Antinoro's conduct was intentional and knowing, the Commission
16 nevertheless considers whether the mitigating factors set forth in NRS 281A.475 and
17 NRS 281A.480(5)(a) and (b) support a determination that the violation was not willful
18 and whether a civil penalty should be imposed pursuant to NRS 281A.480. However,
19 the Commission may consider the totality of the circumstances in its determination of
20 willfulness even where certain mitigating factors may be present. In fact, the Nevada
21 Legislature acknowledged this discretion by enacting NRS 281A.475(2), which
22 expressly states that the factors outlined in NRS 281A.475(1) are not exclusive or
23 exhaustive such that the Commission may consider the severity of the violation.

24 With respect to the mitigating factors outlined in NRS 281A.475, Antinoro
25 cooperated in resolving this matter and did not receive any financial gain as a result of
26 his conduct. However, these mitigating factors are offset by several considerations.
27 First, the seriousness of the conduct is significant when measured against the public's
28 trust that government resources will not be inappropriately squandered for private
political purposes. Second Antinoro has recently committed an ethics violation for
which the Commission expressed significant concerns about the conduct of a public
officer in a political/election environment and the need for appropriate separation of

1 government property and influence in such circumstances. Finally, Antinoro has not
2 taken any steps to correct the violation after he was put on notice that his conduct
3 may have violated the Ethics Law. Antinoro emailed a digital copy of his endorsement
4 letter to Fiore, who included the letter in a video that was posted on her Twitter and
5 Facebook sites. As of May 2, 2017, even after the Commission determined that
6 Antinoro's conduct violated NRS 281A.400(7), Antinoro's endorsement letter is still
7 viewable on Fiore's Twitter site (@VoteFiore), which has over 5,000 followers. See
8 Exhibit 2, @VoteFiore Twitter page. Although Antinoro did not cause his endorsement
9 letter to be posted on Fiore's social media sites, he knew that the digital copy of his
10 letter was in fact posted and viewable by members of the public and he should have
11 requested Fiore to remove the letter.

12 The seriousness of the conduct, combined with Antinoro's recent ethics
13 violations and failure to correct the violation, provide significant support for the
14 Commission's finding of willfulness in this matter.

15 **B. A Significant Civil Penalty Should be Imposed**

16 For a first willful violation of the Ethics Law, the Commission may impose a civil
17 penalty up to but not exceeding \$5,000. The Executive Director requests that the
18 Commission impose a significant civil penalty for this violation in the amount of
19 \$1,000. The Commission has previously imposed significant monetary penalties for
20 the willful use of government property that does not include an element of bad faith or
21 reckless disregard for the Ethics Law. For example, the Commission imposed a civil
22 penalty of \$1,000 in *In re Breslow*, Comm'n Op. No. 98-21C (2000) when the
23 Commission found that Mr. Breslow violated former NRS 281.481(7) (the predecessor
24 statute to NRS 281A.400(7)) by using the cell phone issued for his use as Mayor by
25 the City of Sparks for personal business. The \$1,000 penalty was imposed even
26 though Mr. Breslow agreed to reimburse the City of Sparks for his personal calls.

27 Here, we have disregard for the Ethics Law given Antinoro's separate, recent
28 violation of the law. The proposed penalty of \$1,000 strikes an appropriate balance
between the seriousness of the conduct and the fact that Antinoro did not recognize
any financial gain as a result of this conduct.

1 **V. CONCLUSION**

2 Antinoro willfully violated NRS 281A.400(7) when he created the endorsement
3 letter on the official government letterhead of the Sheriff's Office. The Ethics Law
4 exists to confront conduct such as this that interferes with a public officer's duty to
5 protect the public trust and separate his private interests from those of the public he
6 serves. The use of a government resource not otherwise available to private citizens
7 for a political endorsement is the type of harm to the public that the Ethics Law is
8 designed to prohibit, as it creates a conflict of interest and an appearance of
impropriety.

9 Consistent with the Commission's decision that Antinoro violated NRS
10 281A.400(7) as a matter of law, the Executive Director recommends and requests that
11 the Commission conclude that Antinoro's actions constituted one willful violation of the
12 Ethics Law. As Antinoro's second Ethics violation and first willful violation, the
13 Executive Director urges the Commission to impose a civil penalty of \$1,000.
14 Consistent with past practice, the Commission may authorize the Executive Director
15 and Subject to enter into a payment schedule not to exceed one year after the
16 Commission's final decision in this matter.

17 DATED this 5th day of May, 2017.

18 NEVADA COMMISSION ON ETHICS

19
20 /s/ Judy A. Prutzman
21 Judy A. Prutzman, Esq.
22 Associate Counsel
23 Nevada Commission on Ethics
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Katherine F. Parks, Esq.
Thorndal Armstrong, et al.
6590 S. McCarran Blvd., #B
Reno, NV 8950

Email: kfp@thorndal.com
psb@thorndal.com
gantinoro@storeycounty.org

Dated: May 5, 2017 /s/ Valerie M. Carter
Employee, Nevada Commission on Ethics

EXHIBIT 1



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, Storey County,
State of Nevada,

Request for Opinion No. **14-59C**

Public Officer. /

STIPULATED AGREEMENT

1. **PURPOSE**: This Stipulated Agreement resolves Third-Party Request for Opinion ("RFO") No. 14-59C before the Nevada Commission on Ethics ("Commission") concerning Gerald Antinoro ("Antinoro"), Sheriff, Storey County, State of Nevada, and serves as the final opinion in this matter ("Sheriff's Office").

2. **JURISDICTION**: At all material times, Antinoro served as a Sheriff of Storey County. As such, Antinoro is an elected public officer, as defined in NRS 281A.160. The Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A provides the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Antinoro in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about July 30, 2014, the Commission received this RFO from Shawn Mahan, alleging that Antinoro violated the provisions of NRS 281A.020(1) and 281A.400(1), (2), (7) and (9) by: (1) using governmental time and resources in his capacity as Sheriff to further his own campaign interests; and (2) using his position as Sheriff to harass and intimidate his subordinate employees who are also running for Sheriff.¹

¹The RFO also alleged violations of NRS 281A.400(8) and 281A.500. Pursuant to NAC 281A.405, the Commission Counsel and Executive Director rejected jurisdiction regarding these allegations because NRS 281A.400(8) applies only to state legislators, and no evidence was provided to support the allegations of NRS 281A.500 as required by NAC 281A.400.

- b. As required by NAC 281A.410, the Commission gave Antinoro notice of this RFO by mail. Pursuant to NRS 281A.440(3), Antinoro was provided an opportunity to respond to the allegations.
- c. On August 18, 2014, Antinoro submitted his response to the RFO.
- d. A panel was held February 18, 2015 pursuant to NRS 281A.440, finding that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.400(2) and (9), and 281A.020(1).
- e. Antinoro challenged the findings of the panel by filing a motion to dismiss which was denied by the Commission. The Commission requested that additional facts be presented at a hearing on the allegations.
- f. In lieu of a hearing, Antinoro now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to NRS Chapter 281A.

4. **STIPULATED FACTS:** At all material times, the following Stipulated Facts are relevant to this matter:

Parties

- a. Antinoro is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
- b. Antinoro won re-election as Sheriff of Storey County in 2014.
- c. Shawn Mahan, Requester, was a Deputy Sheriff for Storey County who was also running for the office of Sheriff in 2014 and was an employee of Sheriff Antinoro.
- d. The Storey County Sheriff's Office is a local agency, as defined in NRS 281A.119, and part of a political subdivision, as defined in NRS 281A.145.
- e. John Michael Mendoza was a Deputy Sheriff in Storey County, a public employee as defined in NRS 281A.150. He was the Senior Outreach Coordinator for the Sheriff's Office, and Officer of We Care.
- f. Melanie Keener was the Acting Undersheriff in Storey County, a public employee as defined in NRS 281A.150.

- g. Jeff Bowers was a Sergeant in Storey County, a public employee as defined in NRS 281A.150.
- h. We Care, a volunteer organization for senior outreach, was an organization managed out of the Storey County Sheriff's Office and founded by the Sheriff's Office.
- i. Marilee Miller was a We Care volunteer.
- j. Infinity Hospice Care is a private organization which provided services relating to senior health issues.

Infinity Hospice Event

- k. Heather McCutcheon was a representative of Infinity Hospice Care.
- l. McCutcheon contacted Mahan and asked if he would act as a liaison for her in Storey County since she was new to Infinity Health Care and the County.
- m. Mahan accepted the invitation and flyers were produced by Infinity Hospice with Mahan's name on the flyer.
- n. The Infinity event was intended as both a campaign event for Shawn Mahan and an informational event for Infinity Hospice.
- o. The Infinity Flyers had a picture of Mahan in civilian dress with a caption stating "Commitment to Community."
- p. The Infinity Flyer stated that Infinity Hospice Care and Shawn Mahan present Senior Services in Storey County.
- q. The flyers did not reference Mahan's status as a deputy sheriff nor did the flyer clarify that Infinity was not affiliated in any way with the Storey County Sheriff's Office.
- r. The outreach event was scheduled to take place on July 22, 2014. Mahan requested time off of work as a Deputy in advance of the event, and such time off was granted.
- s. Sheriff Antinoro directed Sgt. Bowers, Mahan's immediate supervisor, to inform Mahan that his participation in the Infinity Event was in violation of Sheriff's Office policy and that he was prohibited from continuing to engage in such activities. Sgt. Bowers then issued a Cease and Desist Order forbidding Mahan to attend the event.

t. The Cease and Desist Order, dated July 15, 2014, stated:

Deputy Mahan.

Pursuant to our telephone conversation this afternoon I am providing this e-mail with serves as a direct order to cease and desist any planned event regarding Infinity Hospice Care. The reason for this action is, but is not limited to, the following reasons:

1) You are both on and off duty, a representative of the Storey County Sheriff's Office. I will refer you to existing policy if you are confused as to expected behavior. All conduct that directly or indirectly affects the Storey County Sheriff's Office falls under the purview of existing Policy & Procedure.

2) The Storey County Sheriff's Office already has in place a senior awareness program. Any and all activity which involves the seniors or any other demographic group in this county where you, as a representative of the Sheriff's office, present yourself as a member of this office, whether explicit or implied, is directly governed by the Sheriff or his designee. The Sheriff has given no authorization to present yourself in this event nor has he sanctioned this event

3) You have presented no assurance that Infinity Hospice Care is an appropriate entity to conduct business in this county. Further, you are expressly prohibited by policy to advocate for any for-profit business within this county. The fact that you announce only your name on the flyer announcing this event does not diminish the fact that you are in fact an employee of the Sheriff's office. Even were you allowed to seek such advocacy of a for-profit business from the Sheriff, you have presented no evidence that this company is competitive or offers superior service to county residents versus other, competing hospice care businesses. This is an egregious violation of your oath of office and ethical codes of conduct.

4) SCSO Policy & Procedure 340.3.4 (ab) states: "you are prohibited from ... Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Office or which is contrary to good order, efficiency or morale " Your event only serves to confuse citizens of Storey County as to which program to trust (Infinity Hospice versus the existing Senior Program). As such, this event breaks down the order you are expected to maintain.

Lastly, the Sheriff, as your employer, has a duty to present to our citizens consistent and cohesive service. Your planned event is directly contrary to his intent due, among other things, a conflict with an existing sanctioned program. As your Sheriff, he has the right, and has exercised that right, to demand you seek his approval before any such event can be planned.

Participation in this program by you will result in severe disciplinary action being taken against you. I encourage you to seek approval from the Sheriff before any such event is planned in the future.

Sergeant Jeff Bowers
Storey County Sheriff's Office
(775) 847-1146

- u. Mahan did not attend event; however, he sat in the parking lot and greeted attendees at the event, and he gave an interview to the local press.
- v. On August 19, 2014, Sheriff Antinoro placed Deputy Mahan on administrative leave for issues arising from the alleged harassment of the Infinity Hospice event and alleged abuse of sick time.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Antinoro and the Commission agree as follows:

- a. For purposes of this settlement only, each of the stipulated facts enumerated in section 4 of this Stipulated Agreement are agreed to by the parties.² For purposes of Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.
- b. Antinoro holds a public office which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Storey County). Public officers have a duty to avoid conflicts between public and private interests. NRS 281A.020(1).
- c. A public officer must not use his position as Sheriff of Storey County to secure unwarranted privileges, preferences or advantages for himself. See NRS 281A.400(2).
- d. A public officer must not attempt to influence a subordinate to benefit his personal or financial interests. NRS 281A.400(9).
- e. Whether an action is unwarranted, pursuant to NRS 281A.400(2) can turn upon whether the action was legal, or in this instance, constitutional. (See *In re Kirkland*, Comm'n Opinion 98-41 (1998)).
- f. The Cease and Desist Order was drafted to prevent Mahan from attending the Infinity Hospice event in violation of the Sheriff's Office policy; however, the language in the Order was vague and in the panel's opinion raises First Amendment concerns.
- g. Based upon the investigation, any infringement upon Mahan's First Amendment rights was inadvertent and has some support in relevant case law.

² Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17), as amended by Assembly Bill 60, 78th Session of the Nevada State Legislature, effective May 27, 2015. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- h. As the Cease and Desist Order could be interpreted to infringe upon Mahan's First Amendment rights, and impede Mahan's ability to campaign for office, Antinoro obtained an unwarranted benefit from the Order violating NRS 281A.400(2), (9) and NRS 281A.020.
- i. Antinoro agrees to clarify the Storey County Sheriff's Office policies pertaining to sheriff deputies and their associations with outside entities and is willing to provide the Commission with a courtesy copy of the new policies after completion.
- j. It is arguable that the actions of Antinoro might rise to a violation of Mahan's First Amendment rights, or at least an appearance of impropriety, implicating NRS 281A.400(2), NRS 281A.400(9) and NRS 281A.020, which is contested by the subject.
- k. However, even if the actions did rise to a violation of Mahan's First Amendment rights implicating NRS 281A.400(2), NRS 281A.400(9) and NRS 281A.020, based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that such violation in this case would not be deemed a "willful violation" pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 would not be appropriate for reasons that follow:
 - 1) Antinoro has not previously been the subject of any violation of the Ethics Law.
 - 2) Antinoro has not received any personal financial gain as the result of his conduct in this matter.
 - 3) Antinoro has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process.
- l. This Stipulated Agreement depends on and applies only to the stipulated facts, circumstances and law related to this RFO now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of this matter.

m. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding the Subject.

6. **WAIVER:**

- a. Antinoro knowingly and voluntarily waives a full hearing before the Commission on the allegations in this RFO (No. 14-59C) and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. Antinoro knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Stipulated Agreement during the regular meeting of Commission on July 15, 2015.

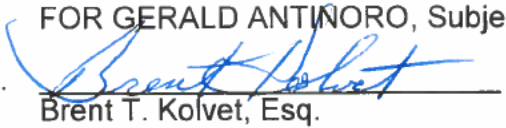
DATED this 24th day of JULY, 2015.


Gerald Antinoro

The above Stipulated Agreement is approved by:

FOR GERALD ANTINORO, Subject

DATED this 5 day of August, 2015.


Brent T. Kolvet, Esq.
Counsel for Subject

FOR YVONNE M. NEVAREZ-GOODSON
Executive Director, Commission on Ethics

DATED this 10 day of August, 2015.


Jill C. Davis, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 10th day of August, 2015. Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.³

DATED July 15 2015.

By: /s/ Paul H. Lamboley
Paul H. Lamboley
Chairman

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ John C. Carpenter
John C. Carpenter
Commissioner


By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver
Commissioner

³ Vice-Chairman Gale and Commissioner Lau served on the Investigatory Panel for this RFO and are precluded from participating in further proceedings, including consideration of the Proposed Stipulated Agreement ("proposed stipulation"), pursuant to NRS 281A.220. All other Commissioners are eligible to participate in the consideration of this matter

EXHIBIT 2



Michele Fiore
@VoteFiore


TWEETS
2,172

FOLLOWING
138


FOLLOWERS
5,133

LIKES
204


LISTS
4




6
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Michele Fiore @VoteFiore · 27 May 2016
Thank you Sheriff Gerald Antinoro for your endorsement! [youtube.com/watch?v=NR6tNo...](https://www.youtube.com/watch?v=NR6tNo...)



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Michele Fiore @VoteFiore · 25 May 2016
Early voting starts this Saturday. Click here for campaign updates & to see the latest Ads
votefiore.com/2016/05/25/wat...



Michele Fiore's Twitter Page, @VoteFiore, <https://twitter.com/VoteFiore> (last visited May 2, 2017).

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MAY 05 2017

COMMISSION
ON ETHICS

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4 Reno, Nevada 89509
5 (775) 786-2882
6 kfp@thorndal.com
7 ATTORNEYS FOR GERALD ANTINORO

8 **STATE OF NEVADA**

9 **COMMISSION ON ETHICS**

10 In the Matter of the Third-Party Request for
11 Opinion Concerning the Conduct of Gerald
12 Antinoro, Sheriff, Storey County, State of
13 Nevada,

14 Subject.

Request for Opinion No. 16-54C

15 **GERALD ANTINORO'S POST-
16 HEARING BRIEF**

17 COMES NOW, Gerald Antinoro, by and through his attorneys of record, Thorndal
18 Armstrong Delk Balkenbush & Eisinger, and hereby submits his post-hearing brief on the issue
19 of willfulness of the alleged violation by Sheriff Antinoro of NRS 281A.400(7). As shall be
20 discussed herein, the standards set forth in NRS 281A.475 do not support a finding that the
21 violation of NRS 281A.400(7) by Sheriff Antinoro was willful. As such, Sheriff Antinoro
22 submits that no civil, or other, penalty may be imposed in this matter.

23 **I**

24 **INTRODUCTION**

25 As the Commission is well aware, this matter arises out of the actions of Sheriff Gerald
26 Antinoro in preparing a three paragraph written endorsement of Michele Fiori in her
27 unsuccessful bid for Clark County's Third Congressional District seat.¹ The Executive Director
28

¹The version of the endorsement letter forwarded to Ms. Fiori was that attached to the Subject's Response to RFP 16-54C as pointed out by Commissioner O'Neill at the hearing of April 19, 2017. The undersigned apologizes to

1 and Sheriff Antinoro agreed to proceed under Stipulated Facts and to brief the legal questions at
2 issue pursuant to NAC 281A.265, rather than to proceed with an evidentiary hearing in this case.
3 A hearing was held before the Commission at which both parties presented their positions to the
4 Commission. Following the hearing, the Commission granted the Executive Director's Motion
5 for Summary Judgment upon a finding that Sheriff Antinoro's actions constituted a violation of
6 NRS 281A.400(7).
7

8 II

9 LEGAL ISSUES

10 NRS 281A.475 provides that, in determining whether a violation of Chapter 281A is
11 willful and, if so, the amount of any civil penalty which should be imposed on a public officer,
12 the Commission *shall consider*, without limitation, all of the following factors:
13

14 (a) The seriousness of the violation, including, without limitation, the nature,
15 circumstances, extent and gravity of the violation;

16 (b) The number and history of previous warnings issued to or violations of the provisions
17 of this chapter by the public officer or employee;
18

19 (c) The cost to the Commission to conduct the investigation and any hearings relating to
20 the violation;

21 (d) Any mitigating factors, including, without limitation, any self-reporting, prompt
22 correction of the violation, any attempts to rectify the violation before any complaint is filed and
23 any cooperation by the public officer or employee in resolving the complaint;
24

25 (e) Any restitution or reimbursement paid to the parties affected by the violation;

26 (f) The extent of any financial gain resulting from the violation; and

27 (g) Any other matter justice may require.
28

the Commission and the Executive Director for any confusion created by the fact that the version of the endorsement letter which became part of the Stipulated Facts was different than that originally sent to Ms. Fiori. This was an oversight by undersigned counsel and not the result of any actions on the part of Sheriff Antinoro.

1 See, NRS 281A.475.

2 NRS 281A.475(3) also cautions that, in applying the factors discussed above, the
3 Commission “shall treat comparable situations in a comparable manner and shall ensure that the
4 disposition of the matter bears a reasonable relationship to the severity of the violation.”

5 The Commission may find that a public officer’s conduct is a willful violation if he or she
6 is found to have acted voluntarily and with the specific intent and purpose either to (i) disobey or
7 disregard what Chapter 281A requires or (ii) do something which Chapter 281A forbids. *See, In*
8 *re: McDonald*, Comm’n Op. No. 00-41 (2000). The Commission may also find that a public
9 officer willfully violated a provision of Chapter 281A if it determines that he or she “knew or
10 reasonably should have known” what Chapter 281A forbids or requires and he or she is found to
11 have acted voluntarily and with “intention, knowledge, and purpose, without justifiable excuse”
12 in violation of a provision of Chapter 281A. *Id.* A violation of Chapter 281A is not “willful” if
13 it occurs as the result of carelessness, thoughtlessness, heedlessness, or inadvertence. *Id.*

14 The evidence presented to the Commission in this matter compels the conclusion that
15 Sheriff Antinoro did not willfully violate NRS 281A.400(7) by sending the endorsement letter at
16 issue to Fiori. As discussed at length in the Subject’s briefing, neither the language of Chapter
17 281A itself, nor the prior opinions of this Commission, would serve to adequately place Sheriff
18 Antinoro on notice that the conduct at issue is prohibited. It is without question that the language
19 of Chapter 281A itself does not expressly prohibit such conduct. Rather, the Commission has
20 relied upon what Sheriff Antinoro believes to be vague language in NRS 281A.400(7), including
21 the terms “significant personal interest” and “appearance of impropriety,” to find a violation in
22 this case. Such terms are no different in kind from those which were previously found to be
23 vague from a constitutional standpoint by the United States District Court in *Dehne v. Avaino*,
24 219 F. Supp.2d 1096, 1102 (D. Nev. 2001). In her Report and Recommendation which was
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1 adopted by Judge David Hagen on this issue, United States Magistrate Judge Valerie Cooke
2 pointed out that terms in NRS 281.525(1) and 281.551(2)(2) such as “false, deceptive,
3 misleading and bad faith” were constitutionally vague. In so doing, she stated as follows: “[i]f
4 the Legislature wishes to trod on First Amendment ground and regulate speech, it must do so
5 with the utmost specificity and clarity.”² See, Exhibit “D,” to Gerald Antinoro’s Reply in
6 Support of his Cross-Motion for Summary Judgment.
7

8 Here, the language of NRS 281A.400(7) as it relates to the type of conduct at issue is
9 vague and did not place Sheriff Antinoro in a position where he either knew, or should have
10 known, that his conduct was in violation of Chapter 281A.400(7). Certainly, given the
11 ambiguity of the language in Chapter 281A, Sheriff Antinoro cannot be found to have acted
12 voluntarily and with the specific intent and purpose to disobey or disregard what Chapter 281A
13 requires or forbids with respect to the single act at issue here. As such, there should be no
14 finding of willfulness under NRS 281A.475(3).
15

16 As for the prior opinions of the Commission, Sheriff Antinoro disagrees with the
17 conclusion that such opinions should have put him on notice that his endorsement of Fiori was in
18 violation of NRS 281A.400(7). The opinions cited by the Commission, including *In re*
19 *Hammargren*, Comm’n Op. No. 95-35A (1996), *In re Hettrick*, Comm’n Op. No. 01-10 (2001),
20 and *In re Tiffany*, Comm’n Op. No. 05-21C (2007) are simply not similar to the circumstances in
21 the case at bar. As has been fully briefed to the Commission, these opinions involve conduct far
22 more egregious than anything at issue here. That these prior opinions are not clear is readily
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25

26 ²The decisions of the Nevada Supreme Court and United States Supreme Court involving Sparks City Councilman
27 Michael Carrigan are not particularly instructive in this matter, as the United States Supreme Court, in addressing a
28 constitutional issue related to a different part of Chapter 281A, expressly held that a public officer’s actions of
voting *do not* constitute protected speech. Because of this fact, the section of Chapter 281A at issue in those cases
(conflict-of-interest restrictions) was analyzed under a much less stringent standard of review. See, *Carrigan v.*
Comm’n on Ethics of Nev., 129 Nev. Adv. Op. 95, 313 P.3d 880, 884 (2013). The constitutional issue is much
different under the circumstances presented to the Commission here, as there is no question that core First
Amendment political speech is at the center of this dispute.

1 apparent from a reading of the Executive Director's briefs in this matter wherein she urged the
2 Commission to "clarify" the issue of the use of letterhead under similar circumstances.

3 As such, these decisions do not, and did not, operate to put Sheriff Antinoro on notice
4 that his actions were in violation of NRS 281A.400(7) and the purported violation here should
5 not be held to have been willful.
6

7 Nor is the February 29, 2012, opinion of the Office of Special Counsel immaterial on the
8 issue of willfulness in this case. While the Commission attempts to distinguish this opinion from
9 the circumstances in the case at bar by noting that the OSC was speaking of "partisan" sheriffs,
10 this opinion is certainly relevant on the issue of whether a willful violation of NRS 281A.400(7)
11 occurred here. Irrespective of hair splitting on the issue of partisan versus non-partisan sheriffs,
12 the Office of Special Counsel, the agency responsible for interpreting the Hatch Act, concluded
13 that an elected sheriff has the right to participate in the political process not only in-person at
14 campaign events but with respect to campaign advertisements and political correspondence, as
15 well. This opinion is further evidence that Sheriff Antinoro did not know, *nor should he have*
16 *known*, that his actions in sending the endorsement to Fiori was in violation of NRS
17
18 281A.400(7).
19

20 To the extent Sheriff Antinoro's actions might be considered by the Commission to have
21 been careless, or taken without proper forethought, such conduct does not rise to the level of that
22 required to find a willful violation of Chapter 281A. *See, In re: McDonald*, Comm'n Op. No.
23 00-41.
24

25 **(a) Seriousness of the Violation at Issue**

26 Sheriff Antinoro would submit that the violation at issue in this matter is not serious and
27 that the nature, circumstances, extent and gravity of the alleged violation do not support a finding
28 of a willful violation here. While the Requestor claimed that Sheriff Antinoro committed a

1 number of violations of Chapter 281A, the Panel which reviewed this matter determined that
2 there was no credible evidence to substantiate a number of the allegations, including that Sheriff
3 Antinoro violated NRS 281A.400(2), NRS 281A.400(7) regarding an alleged improper use of his
4 badge and/or uniform, and NRS 281A.520. The Panel determined that there was no credible
5 evidence to find that Sheriff Antinoro acted in such a way as to grant an advantage to himself in
6 violation of NRS 281A.400(2) or that he otherwise acted in such a way as to have a commitment
7 in a private capacity to the interests of a candidate in violation of NRS 281A.400(2). The Panel
8 also concluded that there was no credible evidence that Sheriff Antinoro used government
9 resources or caused a governmental entity to incur any expense to support Fiori with respect to
10 the video or photograph of Sheriff Antinoro which the Panel found were used without Sheriff
11 Antinoro's permission. Thus, the majority of the allegations levied against Sheriff Antinoro by
12 the Requestor were dismissed.³

15 Given the limited scope of the violation before the Commission, Sheriff Antinoro submits
16 that this factor does not support the finding of a willful violation of NRS 281A.400(7) here.

18 **(b) Number and History of Previous Violations**

19 Sheriff Antinoro was the subject of another Third Party Request for Opinion in 2014,
20 specifically, RFO 14-59C. The Requestor in that particular RFO was Shawn Mahan, a political
21 opponent of Sheriff Antinoro during the campaign for Storey County Sheriff in 2014, and the
22 purported violation in that matter was an allegation that Sheriff Antinoro attempted to use his
23 position as Sheriff of Storey County to secure an unwanted advantage to himself in the 2014
24

25 ³The undersigned has used the term "levied" intentionally. The Requestor here, Kris Thompson, appears to be
26 attempting to use this Commission to further his own private interests. Not only did Thompson file the RFO at
27 issue, but he also filed another RFO (RFO 16-63N), the subject of which were allegations of workplace harassment
28 which had nothing whatsoever to do with Thompson. The Commission rightfully determined that it had no
jurisdiction over such allegations. Not to be deterred, Thompson filed a petition for judicial review with the First
Judicial District Court which was summarily rejected by the Court. Thompson was also the spokesperson for the
"Committee to Recall Gerald Antinoro" from office. The stated purpose of the Commission is to enhance the
people's faith in the integrity and impartiality of public officers and employees, not to be used to assist persons with
their own private agendas against a public officer.

1 election or to influence a subordinate (Mahan) to benefit his own personal or financial interest.
2 That matter revolved around events that occurred in July of 2014, when Mahan, then a deputy
3 sheriff, contacted a for-profit senior hospice care company, Infinity Hospice Care, and agreed to
4 act as a liaison for that company in Storey County. Mahan did not inform or request permission
5 of the Sheriff or any other of his superiors at the Storey County Sheriff's Office prior to taking
6 action in this regard. Infinity Hospice Care had planned an outreach event on July 22, 2014, and,
7 in advertising for the event, fliers were prepared with Mahan's picture on them. The picture of
8 Mahan on the flier was the same picture he had been using on his political signs in his campaign
9 for Sheriff. The Sheriff's Office then received a number of inquiries from senior citizens within
10 the community regarding the event. This confusion stemmed from the fact that Storey County
11 already had a relationship with "We Care," an independent organization affiliated with the
12 Sheriff's Office. In fact, the Storey County Sheriff's Office founded We Care and it was
13 managed out of the Storey County Sheriff's Office. Thus, confusion ensued as to which
14 organization, We Care or Infinity Health Care, was endorsed by the Sheriff's Office. Due to this
15 confusion, and due to the fact that Mahan did not request permission from anyone at the Sheriff's
16 Office prior to taking the actions described above, a cease and desist letter was prepared by
17 Sergeant Jeff Bowers which instructed Mahan to forego participation in the Infinity Hospice
18 Care event. Mahan did not attend the event. However, he greeted event-goers in the parking lot
19 and gave an interview while there to the local newspaper.

20
21
22
23
24 Ultimately, the parties to RFO 14-59C entered into a stipulated agreement regarding the
25 circumstances at issue there. In same, it was noted that the cease and desist order referenced
26 above could have been interpreted as infringing upon Mahan's First Amendment rights or
27 impeding his ability to campaign for office and, as such, that Sheriff Antinoro obtained an
28 unwarranted benefit from the order in violation of Chapter 281A.

1 However, any such violation was not deemed to be willful and no civil penalty was
2 deemed appropriate.

3 The circumstances at issue in RFO 14-59C are not similar in any way to those present
4 and before the Commission in this matter. RFO 14-59C had nothing whatsoever to do with the
5 alleged improper use of letterhead by a public officer and nothing associated with that RFO did
6 or should have placed Sheriff Antinoro in a position where he knew or should have known that
7 his conduct in sending the endorsement letter to Fiori was a violation of Chapter 281A. In fact,
8 the stipulated agreement in that matter recognized the *importance* of the First Amendment rights
9 of public officers and employees.
10

11 Given the very different circumstances present in the case at bar, the use RFO 14-59C to
12 assess a willful violation in this matter would be wholly inappropriate. Given that the subject
13 matter in that case was substantially different than that presented here, RFO 14-59C should be
14 given no weight with respect to the assessment of whether Sheriff Antinoro's actions constituted
15 a willful violation of NRS 281A.400(7).
16

17
18 **(c) Cost to Commission in RFO 16-54C**

19 The cost to the Commission with respect to this matter is minimal. Sheriff Antinoro at all
20 times cooperated with the Executive Director's investigation, including presenting himself for an
21 interview with Commission Counsel and its investigator on September 15, 2016, at the Executive
22 Director's offices. Sheriff Antinoro agreed to submit this matter to the Commission based on
23 Stipulated Facts, thereby avoiding the costs of an evidentiary hearing. Accordingly, this factor
24 weighs against a finding of a willful violation.
25

26 **(d) Mitigating Factors**

27 As noted above, Sheriff Antinoro cooperated at all times with the Executive Director
28 during the pendency of this matter. Sheriff Antinoro, through his legal counsel, provided the

1 Executive Director with those documents in his possession related to this matter when requested
2 to do so by Commission Counsel and agreed to be interviewed by Commission Counsel and the
3 Commission's investigator.

4 **(e) Restitution or Reimbursement Paid to the Parties Affected by the Violation**

5 With respect to this factor, there was no financial detriment to any party associated with
6 this matter nor any restitution or reimbursement to be paid. The Commission has already
7 concluded that there was no use, in a monetary sense, by Sheriff Antinoro of any resources of
8 Storey County. *See, Panel Determination.* As such, this factor also weighs against a finding of a
9 willful violation of NRS 281A.400(7).
10

11 **(f) Extent of Any Financial Gain Resulting from the Violation**

12 There was no measure of financial gain associated with Sheriff Antinoro's actions in
13 sending the endorsement letter to Ms. Fiori and, again, the analysis of this factor weighs against
14 a finding of a willful violation of NRS 281A.400(7).
15

16 **(g) Any other Factors Justice May Require**

17 Perhaps of all of the mitigating factors in this matter, the magnitude of the restriction on
18 the First Amendment rights of Sheriff Antinoro here strongly weighs *against* a finding of a
19 willful violation of NRS 281A.400(7). While the Commission dealt with the Subject's
20 constitutional arguments by stating that it must "assume" that NRS 281A.400(7) is
21 constitutional, given the significance of the First Amendment right at issue, Sheriff Antinoro
22 would submit that justice compels a finding that there was no willful violation here. NRS
23 281A.400(7) does not expressly prohibit the conduct at issue. The language of NRS
24 281A.400(7), when balanced against the First Amendment right at issue, is vague and does not,
25 and did not, put Sheriff Antinoro on notice that his conduct was in violation of same. The prior
26 opinions of the Commission are not clear in terms of providing adequate notice that conduct such
27
28

1 as that at issue is in violation of NRS 281A.400(7). In fact, the Executive Director invited the
2 Commission to "clarify" its position in this regard. Given the Executive Director's admission
3 that the issue of the use of letterhead under the circumstances at bar should be clarified by the
4 Commission, the undersigned respectfully submits that no willful violation of Chapter 281A
5 should be found. While clarification of this type of very limited use of government letterhead
6 will certainly assist public officers in the future, Sheriff Antinoro should not be subject to a
7 willful violation under NRS 281A where the legal precedent is not clear. This is especially true
8 when First Amendment core political speech is implicated.
9

10 CONCLUSION

11 Based upon all of the foregoing, Sheriff Antinoro respectfully submits that there was no
12 willful violation of NRS 281A.400(7) under the circumstances and that no civil or other penalty
13 should be imposed.
14

15 DATED this 5th day of May, 2017.
16

17 THORNDAL ARMSTRONG
18 DELK BALKENBUSH & EISINGER

19 By: 

Katherine F. Parks, Esq.

State Bar No. 6227

6590 S. McCarran Blvd., Suite B

Reno, Nevada 89509

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ATTORNEYS FOR GERALD ANTINORO
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **GERALD ANTINORO'S POST-HEARING BRIEF** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ electronic mail

_____ personal delivery


_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 ynevarez@ethics.nv.gov	Judy A. Prutzman, Esq. Associate Counsel Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 jprutzman@ethics.nv.gov
Tracy L. Chase, Esq. Commission Counsel Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City, Nevada 89703 tchase@ethics.nv.gov	

DATED this 5 day of May, 2017


An employee of THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

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STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, County of
Storey, State of Nevada,

Request for Opinion No. **16-54C**

Subject. /

**UPDATED NOTICE OF HEARING REGARDING BRIEFING
(LOCATION)**

PLEASE TAKE NOTICE, the Commission has duly scheduled a **Hearing Regarding Briefing** to consider whether the conduct found to be in violation of the Ethics Law constitutes a willful violation, including any associated mitigating factors and penalties, in the matter of Third-Party Request for Opinion No.16-54C. This notice provides updated information on the location of the hearing as follows:

THE HEARING WILL TAKE PLACE:

**Monday, May 15, 2017 at 10:30 a.m., or as soon thereafter as the
Commission is able to hear the matter, at the following a location:**

**Old Assembly Chambers
Capitol Building
101 North Carson Street
Carson City, NV 89701**

All other provisions in this matter previously noticed in the *Notice of Hearing and Scheduling Order Regarding Briefing* issued on May 3, 2017, remain in effect.

DATED: May 8, 2017

/s/ Tracy L. Chase

Tracy L. Chase, Esq.
Commission Counsel

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **UPDATED NOTICE OF HEARING REGARDING BRIEFING (LOCATION)** in Request for Opinion No. 16-54C, via email, to the Parties and the Requester, as an interested person, addressed as follows:

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Attorney for Subject
Gerald Antinoro

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Attorney for Requester
Kris Thompson

DATED: May 8, 2017



An employee, Nevada Commission on Ethics



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, County of
Storey, State of Nevada,

Request for Opinion No. **16-54C**

Subject. /

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

On June 2, 2016, the Nevada Commission on Ethics ("Commission") received Third-Party Request for Opinion No. 16-54C ("RFO") from a member of the public pursuant to NRS 281A.440(2) concerning the conduct of Storey County Sheriff Gerald Antinoro ("Subject" or "Antinoro") alleging violations of certain provisions of the Nevada Ethics in Government Law ("Ethics Law") set forth in NRS Chapter 281A.

INTRODUCTION AND PROCEDURAL HISTORY

On October 27, 2016, a *Panel Determination* was issued, finding just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding whether Antinoro's conduct in using official letterhead to endorse a political candidate violated the provisions of NRS 281A.400(7), associated with a use of governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest.

On November 3, 2016, the Commission issued a *Notice of Hearing and Scheduling Order*, setting an evidentiary hearing for February 15, 2017. On December 15, 2017, the parties filed an executed *Stipulated Facts* and requested the Commission to set aside the noticed evidentiary hearing and instead hold a hearing in April to consider Motions for Summary Judgment to be filed by the parties. A *First-Amended Notice of Hearing and Scheduling Order* was issued on January 5, 2017 to reschedule the hearing to April 19, 2017. Thereafter, each party filed a Motion for Summary Judgment (collectively the "Motions") which were fully briefed and submitted for consideration of the Commission.

HEARING ON THE MOTIONS AND STANDARD OF REVIEW

On April 19, 2017, the Commission duly called the matter to order and considered the Motions, the *Stipulated Facts*, the record of proceedings and oral arguments presented by the parties. Consistent with the definition of a "party" set forth in NAC 281A.060, Ms. Judy A. Prutzman, Esq. appeared in representation of Ms. Yvonne M. Nevarez-Goodson, Esq. and Ms. Katherine F. Parks, Esq. appeared in representation of Subject Antinoro.

The rules governing practice before the Commission are set forth in NRS Chapter 281A and NAC 281A.250 to NAC 281A.310. A Motion for Summary Judgment is a dispositive motion which is permitted to be made after the issuance of a Panel Determination. See NAC 281A.265. NRS 281A.480(9) establishes the burden of proof for finding a violation of NRS Chapter 281A as a preponderance of the evidence unless a greater burden is otherwise prescribed by law. See *also* NRS 233B.121. In prior opinions, the Commission has granted a motion for summary judgment based upon the preponderance of evidence standard. See *In re Gammick*, Comm'n Op. No. 10-71C (2010) and in *In re Matson*, Comm'n Op. No. 14-70C (2016).

The Commission is not required to follow the standards applicable to a Motion for Summary Judgment contained in the Nevada Rules of Civil Procedure ("NRCP"), but it is not prejudicial error for the Commission to do so. The Nevada Supreme Court has opined that such rules "are not binding on a state agency in an adjudicatory proceeding, unless expressly adopted by the agency." *Dutchess Bus. Servs. v. Nev. State Bd. of Pharm*, 124 Nev. 701, 710, 191 P.3d. 1159 (2008). The Commission has not expressly adopted the provisions of NRCP 56(c), which establish the standard for granting a Motion for Summary Judgment in a judicial proceeding as "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Accordingly, the Commission bases its determination on a preponderance of evidence standard and confirms that the provisions of NRCP 56 are instructive, but not mandatory.

DISCUSSION AND ORDER

The Commission has jurisdiction over this matter pursuant to NRS 281A.280. Subject Antinoro is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160. The issue presented is whether Subject violated the provisions of NRS 281A.400(7) by using public time, property, equipment or other facilities when he used the official letterhead of the Storey County Sheriff's Office to endorse a political candidate. In application of the Ethics Law, the Commission recognizes, that as a public officer, Antinoro must commit himself to avoid both actual and perceived conflicts between his private interests and those of the public he serves, including a duty to avoid using his public office or position for personal benefit. NRS 281A.020(1).

Antinoro contends he did not use government time, staff or resources as prohibited by NRS 281A.400(7) when he made a private endorsement of a political candidate since the endorsement, even though issued on official letterhead, was sent on his private computer during his lunch hour. Further, he asserts that the Executive Director has not produced evidence of a pecuniary interest or significant personal interest, a required element of NRS 281A.400(7).

1. Use of Official Government Letterhead for Private Purpose

Antinoro seeks to distinguish his circumstances from precedential opinions issued by the Commission.¹ Among other assertions, Antinoro indicates that the version of the endorsement letter published on social media by the candidate was done without his assistance or knowledge.² Also, he indicates that the image posted on social media did not contain certain attributes of an official letterhead such as address, phone and other contact information of the Storey County Sheriff's Office. The version posted on social media had the Sheriff's office logo and Antinoro's name and title of Sheriff at the top of the page.³ Antinoro asserts his circumstances are similar to and requests the Commission follow an advisory opinion dated February 29, 2012, issued by the U.S. Office of Special Counsel ("OSC") discussing the application of the Federal Hatch Act to an incumbent partisan sheriff opining that the sheriff's use of a title and uniform in political correspondence, even if the correspondence is in support of another partisan office, would not violate the Hatch Act.

¹ Without limitation, these opinions include: *In re Hammargren*, Comm'n Op. No. 95-35C (1996); *In re Kirkland*, Comm'n Op. No. 98-41A (1999); *In re Hettrick*, Comm'n Op. No. 01-10A (2001); *In re Tiffany*, Comm'n Op. No. 05-21C (2007); and *In re Kuzanek*, Comm'n Op. No. 14-61C (2015).

² The *Stipulated Facts* confirm that Antinoro did not produce or otherwise assist with the YouTube Video. Antinoro did not supply any of the other images used in the video and candidate Michelle Fiore did not contact the Sheriff to inform him about the endorsement video.

³ Although the endorsement posted on social media was not a full reproduction, Antinoro provided the Commission with an endorsement on full letterhead containing attributes of official address and contact information. See Antinoro's July 26, 2016, response to the RFO allegations, which attached the complete letter as an exhibit. Consequently, any distinctions asserted based upon a lack of address or contact information are not supported by the full record.

The Commission does not find the OSC letter or the Federal Hatch Act to be direct precedent, instructive or determinative of the matter before the Commission. The guidance issued by the U.S. Office of Special Counsel applies to an incumbent “partisan” sheriff. NRS 293.195 designates the office of sheriff in Nevada as a nonpartisan rather than a partisan office. Particularly, the OSC guidance did not relate to the use of official letterhead for a private political endorsement and did not discuss whether or not the use of an official letterhead would be restricted by the Hatch Act or established governmental policy.

The Commission has and continues to view the use of official letterhead of a government office or agency as use of governmental property. See *In re Hammargren*, Comm’n Op. No. 95-35A (1996); *In re Hettrick*, Comm’n Op. No. 01-10 (2001); and *In re Tiffany*, Comm’n Op. No. 05-21C (2007). The use of official letterhead demonstrates a wielding or exertion of the official authority of public office. It also creates the impression that the Sheriff’s Office, as a law enforcement department, endorses the contents of the letter. An endorsement on private letterhead does not carry the same weight as one issued on official letterhead. Certainly, “all individuals enjoy a constitutional right to speak out on political concerns.” *Hettrick at p. 2*. However, the Ethics Law prohibits the use of governmental property, including its official letterhead, for a significant personal interest, especially when such use creates an appearance of impropriety or the impression that the government sanctions the activity. *Id.*

The record establishes that Antinoro used the official letterhead of the Storey County Sheriff to provide a private political endorsement and such use was not permitted by established policy of the affected agencies, nor was it permitted under the limited use exception set forth in NRS 281A.400(7)(a). Furthermore, the right of a private citizen to endorse a candidate of his selection is of such significance as to be provided constitutional protection under the First Amendment. See *Buckley v. Valeo*, 424 U.S. 1, 14, 96 S.Ct. 612, 632 (1976). Consequently, the private endorsement of a candidate is a significant personal interest for purposes of application of the Ethics Law. Therefore, based upon a preponderance of evidence standard, the Commission determines that Antinoro improperly used the Storey County official letterhead to provide a private endorsement for a political candidate in violation of NRS 281A.400(7).

2. Constitutionality of NRS 281A.400(7) is Presumed

Antinoro contends that NRS 281A.400(7) is unconstitutional under the void-for-vagueness doctrine. Antinoro’s position is that the terms “appearance of impropriety,” “significant” and “personal,” all applied under the provisions of NRS 281A.400(7), are not specifically defined in NRS Chapter 281A and therefore are vague.

However, the Commission, as an administrative agency, must presume the statute to be valid, especially since there has not been a sufficient showing that the statute is unconstitutional. Although fact finding is left to the administrative agency, determination of constitutionality is for the courts. See, *Malecon Tobacco, LLC v. State ex rel. Dep’t of Taxation*, 118 Nev. 837, 59 P.3d. 474 (2002). Also, in application of statutory directives, “[a] statute should be given [its] plain meaning and must be construed as a whole and not read in any way that would render words or phrases superfluous or make a provision nugatory,” *Managarella v. State*, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001) (internal quotations omitted).

No court has determined the provisions of NRS 281A.400(7) to be unconstitutional under the void-for-vagueness doctrine or other constitutional challenge. The challenged statute is content-neutral, applies to all public officers and employees and does not preclude or chill the private support of any political candidate. There is no evidence supporting that NRS 281A.400(7) has been or is discriminatorily applied, especially given the prior opinions rendered by the Commission. Further supporting the constitutionality of NRS 281A.400(7) are two notable opinions issued by the Supreme Court of the United States and the Nevada Supreme Court holding comparable provisions of the Ethics Law to be constitutional in the context of the *First Amendment*. See *Nev. Comm’n on Ethics v. Carrigan*, 564 U.S. 117, 131 S. Ct. 2343 (2011)

("Carrigan I") and *Carrigan v. Comm'n on Ethics of Nev.*, 129 Nev. Adv. Op. 95, 313 P.3d 880 (2013) ("Carrigan II").

These opinions are direct precedent for the administrative proceedings conducted by the Commission. The U.S. Supreme Court's decision in *Carrigan I* "...rejected the notion that the First Amendment confers a right to use governmental mechanics to convey a message." *Carrigan I*, 564 U.S. 117, 127. Further, in *Carrigan II*, the Nevada Supreme Court validated the conflict of interest standards as established under civil statutes, including the Ethics Law's utilization of an "appearance of impropriety" utilized with regard to a conflict of interest, stating that such "rules have been commonplace for over 200 years." *Carrigan II*, 313 P.3d 880, 885. The Nevada Supreme Court further instructed that "...where the conduct gives an 'appearance of impropriety' it may be prohibited." *Id.*

The Court recognized the important public interest implications that the State of Nevada has in regulating governmental ethics when it determined that the restraints placed by the Ethics Law on public officials and employees relating to private conflicts of interest and recusal statutes is "scant when compared to the state's important interest in avoiding conflicts of interest and self-dealing by public officials entrusted with making decisions affecting our citizens." *Carrigan II*, 313 P.3d 880, 887, citing *Clingman v. Beaver*, 544 U.S. 581, 586-87, 125 S. Ct. 2029, 161 L.Ed 2d 920 (2005) (a reasonable, nondiscriminatory regulation that imposes an incidental burden on associational rights is acceptable when justified by a state's important regulatory concerns). Accordingly, given the precedential *Carrigan* decisions, the Commission does not perceive the term "appearance of impropriety" to be vague or its use to establish a conflict of interest to be inappropriate.

In addition, the terms "significant" and "personal" are common qualifying terms found in numerous statutes and the words have plain meanings. Both terms are defined in the latest on-line version of the *Merriam-Webster Dictionary*. "Personal" is defined to be a matter "pertaining to or relating to the person." "Significant" is defined as "having or likely to have influence or effect" such as "a significant piece of legislation" or a matter having "a noticeably or measurably large amount such as a significant number of layoffs or producing significant profits." With respect to this RFO, the private endorsement of a candidate is a significant right belonging to the person (Antinoro) and endorsements are sought because they are likely to have an influence or effect on getting the candidate elected.

Moreover, in *Carrigan II*, the Nevada Supreme Court upheld the constitutionality of the considered provisions of the Ethics Law because a public officer/employee "in doubt of the validity of a proposed conduct [under the Ethics Law] may obtain advice from the Commission and thereby remove any doubt there may be as to the meaning of the law..." *Id.*, 313 P.3d at 886. Here, Antinoro did not comply with the requirements of NRS 281A.400(7) or opinions issued by the Commission and did not utilize the Commission's advisory opinion process for guidance. If Antinoro had any doubt or question about the application of NRS 281A.400(7) to his circumstances, NRS 281A.440(1) provided him the ability to seek an advisory opinion from the Commission.

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Accordingly, based upon the entire record and the Commission's consideration of the Motions, *Stipulated Facts*, and presentations of the parties, the Commission finds good cause to enter following order:

1. The Executive Director's Motion for Summary Judgment is granted, in that, it is determined by a preponderance of evidence that Antinoro's conduct violates the provisions of NRS 281A.400(7).⁴
2. Subject Antinoro's Motion for Summary Judgment is denied.
3. In order to issue a final decision in this matter, the Commission directs Commission Counsel to issue a Notice and Scheduling Order for purposes of scheduling a hearing on May 15, 2017, for the Commission to consider briefs submitted by the parties addressing the willfulness of the violation of NRS 281A.400(7) under the requirements of NRS 281A.475 and whether any penalties or fines should be imposed by the Commission pursuant to the provisions of NRS 281A.480.

DATED: May 3, 2017

/s/ Cheryl A. Lau

Cheryl A. Lau, Esq.
Chair, Nevada Commission on Ethics

⁴ The provisions of the Ethics Law are interpreted utilizing the provisions of NRS 281A.020.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **ORDER ON MOTIONS FOR SUMMARY JUDGMENT** in Request for Opinion No. 16-54C, via email, to the Parties and the Requester, as an interested person, addressed as follows:

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Attorney for Requester
Kris Thompson

DATED: May 3, 2017



An employee, Nevada Commission on Ethics



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, County of
Storey, State of Nevada,

Request for Opinion No. **16-54C**

Subject. /

NOTICE OF HEARING AND SCHEDULING ORDER
REGARDING BRIEFING

PLEASE TAKE NOTICE, that the Commission will consider **Hearing Briefs regarding whether the conduct found to be in violation of the Ethics Law constitutes a willful violation, including any associated mitigating factors and penalties (See NRS 281A.475 and 281A.480)** and hold a hearing thereon, in the matter of Third-Party Request for Opinion No.16-54C.

The Hearing Will Take Place:

Monday, May 15, 2017 at 10:30 a.m., or as soon thereafter as the Commission is able to hear the matter, at the following a location:

**The Office of Economic Development
808 West Nye Lane
Carson City, NV 89703**

The hearing will assist the Commission to determine whether the violation of NRS Chapter 281A, the Ethics in Government Law ("Ethics Law"), set forth in the Executive Director's Motion for Summary Judgment granted by the Commission on April 19, 2017, should be deemed willful under NRS 281A.475 and whether any penalties and related fines should be imposed by the Commission pursuant to NRS 281A.480.

The parties have stipulated that the Commission may issue its determination based upon submitted Briefs and RFO record, without presentation of oral argument. Accordingly, the Commission will consider the Briefs without oral argument and hold a hearing to issue its decision on the record. NRS 281A.440(16) directs that the deliberations of the Commission are not subject to the provisions of NRS Chapter 241, Nevada's Open Meeting Law. Accordingly, the deliberations of the Commission will not be held in an open public meeting.

1. HEARING BRIEFS

On or before **Thursday, May 4, 2017**, not later than 12:00 noon,¹ the Parties shall each submit and serve on the other Party, written Briefs addressing the willfulness of the violations set forth in the Motion for Summary Judgment and associated penalty, if any, in accordance with NRS 281A.475, NRS 281A.480, relevant provisions of the Ethics Law and precedential opinions of the Commission. Briefs shall be limited to ten (10) pages in length.

¹ On April 26, 2017, the Parties mutually selected this deadline.

The Parties have agreed to electronic service in this matter and will submit any filings to Commission Counsel, Tracy L. Chase, Esq., at tchase@ethics.nv.gov, with a copy to dhayden@ethics.nv.gov, and serve the Parties as follows:

<p>Yvonne M. Nevarez-Goodson, Esq. Executive Director Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City NV 89703 ynevarez@ethics.nv.gov</p> <p>Judy A. Prutzman, Esq. Commission Counsel Nevada Commission on Ethics 704 W. Nye Lane, Suite 204 Carson City NV 89703 jprutzman@ethics.nv.gov</p>	<p>Katherine F. Parks, Esq. Thorndal Armstrong et al 6590 S. McCarran Blvd., #B Reno, NV 89509 kfp@thorndal.com</p> <p>with copy to: psb@thorndal.com gantinatoro@storeycounty.org</p>
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A certificate of service shall be included verifying service as required herein.

2. EXTENSIONS AND CONTINUANCES.

No extensions of the deadlines will be considered unless submitted in writing 5 days prior to the established deadline and provide good cause for such request. Extensions or continuances are not effective until and unless approved by the Chair of the Commission or her designee.

DATED: May 3, 2017

/s/ Tracy L. Chase

Tracy L. Chase, Esq.
Commission Counsel

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **NOTICE OF HEARING AND SCHEDULING ORDER REGARDING BRIEFING** in Request for Opinion No. 16-54C, via email, to the Parties and the Requester, as an interested person, addressed as follows:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Email: ynevarez@ethics.nv.gov

Judy A. Prutzman, Esq.
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Attorney for Subject
Gerald Antinoro

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Attorney for Requester
Kris Thompson

DATED: May 3, 2017



An employee, Nevada Commission on Ethics

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STATE OF NEVADA

BEFORE THE COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct
of **Gerald Antinoro**, Sheriff, Storey
County, State of Nevada,

Request for Opinion No. 16-54C

Subject. /

EXECUTIVE DIRECTOR'S

MOTION FOR SUMMARY JUDGMENT

Judy A. Prutzman, Esq. (#6078)
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STATE OF NEVADA

BEFORE THE COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct Request for Opinion No. 16-54C
of **Gerald Antinoro**, Sheriff, Storey
County, State of Nevada,

Subject. /

MOTION FOR SUMMARY JUDGMENT

Yvonne M. Nevarez-Goodson, Esq., Executive Director of the Nevada
Commission on Ethics ("Commission"), through the Commission's Associate Counsel,
Judy A. Prutzman, Esq., submits this Motion for Summary Judgment pursuant to NAC
281A.265.

POINTS AND AUTHORITIES

I. INTRODUCTION

This Third-Party Request for Opinion ("RFO") involves the alleged conduct of
Gerald Antinoro ("Antinoro"), Sheriff of Storey County, Nevada. The RFO alleges that
Antinoro violated the Ethics in Government Law set forth in NRS Chapter 281A
("Ethics Law") when he provided a letter to endorse former State Assemblywoman
Michelle Fiore ("Fiore") as a candidate for United States Congress. Antinoro printed
and signed the endorsement letter on the official letterhead of the Storey County
Sheriff's Office, which includes an accurate depiction of the Storey County Sheriff's
Office badge and Antinoro's official title as Sheriff. See Exhibit 6, Exhibit 1 to

1 *Stipulated Facts.* Antinoro's endorsement letter was included in a YouTube video
2 entitled "Sheriff Gerald Antinoro Endorsement" that was posted to Fiore's campaign
3 Facebook page and Twitter account (@VoteFiore) on May 27, 2016.

4 Antinoro used government resources to benefit his personal interest in
5 supporting a candidate in a political campaign. While Antinoro's conduct did not cause
6 the sheriff's office to incur any costs, his use of official government letterhead for
7 personal purposes unrelated to official business of the sheriff's office created an
8 appearance of impropriety that implicates NRS 281A.400(7). The Ethics Law exists to
9 confront circumstances such as this that interfere with Antinoro's duty to protect the
10 public trust and separate his private interests from those of the public he serves as the
11 Sheriff of Storey County. The use of a government resource not otherwise available to
12 private citizens for a political endorsement is the type of harm to the public that the
13 Ethics Law is designed to prohibit, as it creates a conflict of interest and an
14 appearance of impropriety.

15 The relevant facts in this matter are not disputed and the parties have
16 submitted Stipulated Facts to the Commission. The Commission should grant
17 summary judgment in favor of the Executive Director because the undisputed facts
18 show that Antinoro's use of the Storey County Sheriff's Office letterhead violated NRS
19 281A.400(7).

20 **II. PROCEDURAL HISTORY AND STIPULATED FACTS**

21 **A. Procedural History**

22 On or about June 2, 2016, the Commission received the RFO from Requester
23 Kris Thompson ("Requester"), by and through his legal representative Rick R. Hsu,
24 Esq. with Maupin, Cox & Legoy. See Exhibit 1, RFO. The RFO alleges that Antinoro
25 violated NRS Chapter 281A by engaging in the following conduct:

26 ///

27 ///

- Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself or any person to whom he has a commitment in a private capacity to the interests of that person. (NRS 281A.400(2));
- Using governmental time, property, equipment or other facility to benefit his personal or financial interest (NRS 281A.400(7)); and
- Causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate. (NRS 281A.520)).

On or about June 17, 2016, the Commission served Antinoro via certified mail with a *Notice to Subject* advising him of the alleged violations set forth in the RFO. Antinoro was provided an opportunity to respond to the RFO and requested an extension of time to submit a response through his attorney, Katherine F. Parks, Esq. ("Parks") of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, which response was filed on or about July 26, 2016. See Exhibit 2, Response to RFO. On or about August 2, 2016, a *Notice of Additional Issues and Facts* was served on Antinoro. See Exhibit 3, *Notice of Additional Issues and Facts*. Antinoro, through Parks, filed a response to the *Notice of Additional Issues and Facts* on September 6, 2016.¹ See Exhibit 4, Response to Notice of Additional Issues/Facts.

On or about October 27, 2016, a *Panel Determination* was issued, finding just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding whether Antinoro violated NRS 281A.400(7). See Exhibit 5, *Panel Determination*.² Thereafter, the Commission issued a *Notice of Hearing and*

¹ The *Notice of Additional Facts and Issues* was issued regarding Antinoro's appearance in Fiore's YouTube endorsement video wearing his Sheriff's uniform.

² The *Panel Determination* found that credible evidence did not substantiate just and sufficient cause for the Commission to conduct a public hearing and render an opinion regarding the alleged violations of NRS 281A.400(2), NRS 281A.400(7) (regarding Antinoro's use of his badge and uniform) and NRS 281A.520. Accordingly, these allegations were dismissed.

1 *Scheduling Order*, setting this matter for a hearing on February 15, 2017. The parties
2 filed an executed *Stipulated Facts* (Exhibit 6) on December 15, 2016 and requested
3 the Commission set aside the February 15, 2017 evidentiary hearing and instead hold
4 a hearing to consider dispositive motions or stipulations. A *First-Amended Notice of*
5 *Hearing and Scheduling Order* was issued on January 5, 2017 to reschedule the
6 hearing to April 19, 2017.

7 **B. STIPULATED FACTS**

8 Pursuant to the *Stipulated Facts* submitted to the Commission, the parties have
9 agreed to submit as evidence in this matter the following facts:

- 10 1. Gerald Antinoro ("Antinoro") is the elected Sheriff of Storey County, a public
11 officer as defined in NRS 281A.160.
- 12 2. Storey County is a political subdivision as defined in NRS 281A.145.
- 13 3. The Storey County Sheriff's Office is a local agency as defined in NRS
14 281A.119.
- 15 4. During the relevant time period, Nevada State Assemblywoman Michelle Fiore
16 ("Fiore") was a United States Congressional candidate for Nevada's Third
17 Congressional District in Clark County.
- 18 5. On May 27, 2016, Fiore contacted Sheriff Antinoro by phone to request his
19 endorsement of her candidacy for U.S. Congress.
- 20 6. Sheriff Antinoro prepared a three-paragraph statement endorsing Fiore's
21 candidacy (Exhibit 1), dated May 27, 2016, on his personal computer at his
22 home during his lunch hour.
- 23 7. The statement was typed on the official Storey County Sheriff's Office
24 letterhead and emailed to Fiore from Sheriff Antinoro's personal computer and
25 email account.
- 26 8. On May 27, 2016, Sheriff Antinoro's statement appeared in a YouTube video
27 that was tweeted on Fiore's Twitter account, @VoteFiore.
- 28 9. The YouTube video containing Sheriff Antinoro's statement was also posted
on Fiore's Facebook page on May 27, 2016.

1 10. Sheriff Antinoro did not produce the YouTube video or supply any of the other
2 images used in the video. Fiore did not contact Sheriff Antinoro to inform him
3 about the endorsement video.

4 11. Fiore was defeated in her campaign for U.S. Congress in the primary election
5 held on June 15, 2016.

6 12. Policy Number 213 of the Storey County Administrative Policies and
7 Procedures ("Storey County Policies") addresses political activity by
8 employees:

9 213: Political Activity

10 Employees shall not engage in political activity of any kind during
11 working hours. This includes, but is not limited to: soliciting money,
12 influence, service, or any other valuable thing to aid, promote, or
13 defeat any political committee or the nomination or election of any
14 person to public office. Wearing or displaying of apparel, buttons,
15 insignia, or other items which advocate for or against a political
16 candidate or a political cause is also an example of prohibited
17 activity during working hours. Furthermore, no person shall attempt
18 to coerce, commence, or require a person holding or applying for
19 any position, office, or employment, including a citizen requesting
20 service supplied by employer, to influence or to give money,
21 service, or other valuable thing to aid, promote, or defeat any
22 political committee, or to aid, promote, or defeat the nomination or
23 election of any person to public office.

24

25 Employees are expressly forbidden to use any employer
26 resources, including but not limited to: interoffice mail, email,
27 telephone, fax machines, the Internet, or copy machines to engage
28 in any political activity outside the approved scope of the
employees' official duties.

....

Employees who are seeking, or who have been elected or
appointed to public office, shall not conduct any business related
to these activities while on duty. This includes all the items listed in
the previous section, (i.e., political activity).

///

///

1 13. The Storey County Policies contain the following definition of “employee:”

2 **Employee:** A person employed in a budgeted position on a full- or
3 part-time basis. For purposes of those sections of these policies
4 covering discipline, layoff, and dispute resolution, the term
5 employee excludes elected officials, department heads and casual
6 workers.

7 14. The Storey County Sheriff’s Office has a policy regarding Employee
8 Speech, Expression and Social Networking that addresses
9 endorsements:

10 1060.4.1 UNAUTHORIZED ENDORSEMENTS,
11 ADVERTISEMENTS, AND ACTIVITIES

12 While employees are not restricted from engaging in the following
13 activities as private citizens or as authorized members of a
14 recognized bargaining unit or deputy associations, employees may
15 not represent the Storey County Sheriff’s Office or identify
16 themselves in any way that could be reasonably perceived as
17 representing the Storey County Sheriff’s Office in order to do any
18 of the following, unless specifically authorized by the Sheriff:

19 (a) Endorse, support, oppose or contradict any political
20 campaign or initiative.

21 . . .

22 Additionally, when it can reasonably be construed that an
23 employee, acting in his/her individual capacity or through an
24 outside group or organization (e.g., bargaining group), is affiliated
25 with this office, the employee shall give a specific disclaiming
26 statement that any such speech or expression is not
27 representative of the Storey County Sheriff’s Office.

28 Employees retain their right to vote as they choose, to support
candidates of their choice and to express their opinions as private
citizens, including as authorized members of a recognized
bargaining unit or deputy associations, on political subjects and
candidates at all times while off-duty. Employees may not use their
official authority or influence to interfere with or affect the result of
an election or a nomination for office. Employees are also
prohibited from directly or indirectly using their official authority to
coerce, command or advise another employee to pay, lend or
contribute anything of value to a party, committee, organization,
agency or person for political purposes (5 USC § 1502).

1 **III. APPLICABLE LAW**

2 **A. Summary Judgment Standard of Review**

3 Summary judgment is appropriate when the record shows there is no genuine
4 issue of material fact remaining and the moving party is entitled to judgment as a
5 matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)
6 (citing NRCP 56(c)). Where, as in this case, a motion is submitted with stipulated
7 facts, there is no material issue of fact and the case can be determined on a question
8 of law. See *Sly v. Barnett*, 97 Nev. 587, 588, 637 P.2d 527, 527 (1981).

9 Because the parties have stipulated to the operative facts in this case, it is
10 appropriate for the Commission to rule on this motion and resolve the RFO in its
11 entirety. There are no factual disputes for the Commission to resolve. Accordingly, the
12 relevant legal inquiry for the Commission is whether the undisputed facts of this case
13 demonstrate that Antinoro violated NRS 281A.400(7). If the Commission concludes as
14 a matter of law that a violation occurred, the Executive Director's summary judgment
15 motion can be granted.

16 **B. Standard of Proof**

17 The standard of proof in an administrative proceeding before the Commission
18 is a preponderance-of-the-evidence standard. NRS 281A.480(9). A preponderance of
19 the evidence refers to "the greater weight of the evidence." *McClanahan v. Raley's,*
20 *Inc.*, 117 Nev. 921, 925-26, 34 P.3d 573, 576 (2001) (quoting Black's Law Dictionary
21 1201 (7th ed. 1999)). Thus, the factual findings of an administrative decision will only
22 be overturned if they are not supported by substantial evidence, which is evidence
23 that a reasonable mind could accept as adequate to support a conclusion. *Nassiri v.*
24 *Chiropractic Physicians' Bd.*, 130 Nev., Adv. Op. 27, 327 P.3d 487, 489 (2014); NRS
25 233B.135(4).

26 ///

27 ///

1 The Executive Director respectfully submits that she is entitled to summary
2 judgment because the relevant facts of this case are not disputed and the
3 preponderance of evidence shows that Antinoro violated NRS 281A.400(7) because
4 his use of public property, the Storey County Sheriff's Office letterhead, for personal
5 purposes created the appearance of impropriety.

6 **C. Nevada's Ethics in Government Law**

7 **NRS 281A.400(7): Use of Government Resources for Private Benefit**

8
9 7. Except for State Legislators who are subject to the restrictions set
10 forth in subsection 8, a public officer or employee shall not use
11 governmental time, property, equipment or other facility to benefit a
12 significant personal or pecuniary interest of the public officer or employee.
13 This subsection does not prohibit:

14 (a) A limited use of governmental property, equipment or other facility
15 for personal purposes if:

16 (1) The public officer or employee who is responsible for and has
17 authority to authorize the use of such property, equipment or other facility
18 has established a policy allowing the use or the use is necessary as a
19 result of emergency circumstances;

20 (2) The use does not interfere with the performance of the public
21 officer's or employee's public duties;

22 (3) The cost or value related to the use is nominal; and

23 (4) The use does not create the appearance of impropriety;

24 (b) The use of mailing lists, computer data or other information lawfully
25 obtained from a governmental agency which is available to members of
26 the general public for nongovernmental purposes; or

27 (c) The use of telephones or other means of communication if there is
28 not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is
authorized pursuant to this subsection or would ordinarily charge a
member of the general public for the use, the public officer or employee
shall promptly reimburse the cost or pay the charge to the governmental
agency.

24 **IV. LEGAL ANALYSIS**

25 The Ethics Law seeks to secure the public trust by promoting the appropriate
26 separation between private interests and a public officer's public duties. To promote
27 integrity in public service, the Ethics Law is concerned with situations involving public
28

1 officers that create the appearance of impropriety as well as actual impropriety and
2 conflicts of interests. See *In re Wilson*, Comm'n Op. No. 13-81C (2014). As a public
3 officer, Antinoro must commit himself to avoid both actual and perceived conflicts
4 between his private interests and those of the public he serves, including a duty to
5 avoid using his public office or position for personal benefit. NRS 281A.020(1).

6 Generally, NRS 281A.400(7) creates a strict prohibition against the use by a
7 public officer of "governmental time, property, equipment or other facility to benefit a
8 significant personal or financial interest." Accordingly, the Commission must first
9 determine if Antinoro used governmental time, property, equipment or other facility to
10 benefit his personal or pecuniary interest. If this question is answered in the
11 affirmative, the Commission must next consider whether the "limited use" exception
12 contained in NRS 281A.400(7)(a) applies to Antinoro's use of government property.
13 Antinoro's conduct is not permissible under the "limited use" exception unless each of
14 the following factors is satisfied:

- 15 (1) There is a policy authorizing Antinoro's use of the Storey
16 County Sheriff's Office letterhead for a letter of endorsement for
17 a political candidate;
- 18 (2) Use of the letterhead did not interfere in any way with the
19 performance of Antinoro's public duties;
- 20 (3) The cost or value related to the use was nominal; and
- 21 (4) The use did not create the appearance of impropriety.

22 **A. Antinoro Used Governmental Property**

23 The first question for the Commission to consider is whether Antinoro used any
24 governmental resources when he produced the endorsement letter for Fiore. When
25 the letter of endorsement was produced, Antinoro avoided using governmental time or
26 equipment to work on his private endeavor. He typed the letter during his lunch hour
27 at his home on his personal computer, then used his private email address to transmit
28 an electronic copy of the letter to Fiore. Under these circumstances, had Antinoro

1 typed the letter on a blank piece of paper or on his personal letterhead or stationary,
2 his conduct would not conflict with the requirements of NRS 281A.400(7) because
3 there would be no use of governmental property. However, it is undisputed that
4 Antinoro's letter of endorsement was typed on the Storey County Sheriff's Office
5 letterhead. Thus, the governmental property at issue here is the official letterhead of
6 the Storey County Sheriff's Office.

7 In prior Commission cases involving the use of official letterhead by public
8 officials, the Commission has viewed the letterhead and stationary of public offices as
9 governmental property. Thus, in *In re Hammargren*, Comm'n Op. No. 95-35A (1996),
10 the Commission held that Lieutenant Governor Hammargren violated NRS 281.481(7)
11 (the predecessor statute to NRS 281A.400(7)) when he prepared a letter to Nevada
12 physicians on the official state letterhead of the Lieutenant Governor's Office,
13 requesting support of a bill that would benefit Hammargren's private medical practice.
14 See also *In re Tiffany*, Comm'n Op. No. 15-21C (2007) (concluding that Senator
15 Tiffany's use of her Nevada State Senate letterhead stationary to promote her private
16 business was improper use of government property and violated NRS 281.481(8)³; *In*
17 *re Hettrick*, Comm'n Op. No. 01-10A (2001) (concluding that Assemblyman Hettrick's
18 Nevada State Assembly letterhead was government property that could not be used
19 for a political fundraising letter).

20 The public officers in *Hammargren*, *Tiffany* and *Hettrick* were entitled to use the
21 official letterhead of their public office only for official business. Therefore, it logically
22 follows that the official letterhead of the Storey County Sheriff's Office is also a
23 government resource subject to the restrictions set forth in NRS 281A.400(7).
24 Furthermore, the only reason Antinoro is entitled to use the letterhead is because of
25

26
27 ³ NRS 281.481(8), the predecessor statute to NRS 281A.400(8), prohibited members of the State
28 Legislature from using "governmental time, property, equipment or other facility for a non-governmental
purpose or for the private benefit of himself or any other person."

1 his public office. This is a privilege unavailable to individuals who are not the sheriff of
2 Storey County.

3 **B. Antinoro's Use of Governmental Property Benefited His Personal Interest**
4 **in Supporting a Political Candidate**

5 It is not necessary to show that Antinoro realized any *pecuniary* benefit by
6 using the Storey County Sheriff's Office letterhead for the letter of endorsement. The
7 legislature intended NRS 281A.400(7) to reach beyond financial interests by referring
8 also to "personal" interests. See *In re Bowles*, Comm'n Op. No. 96-49 (1996)
9 (discussing application of former NRS 281.481(7) to a public officer's personal use of
10 public money when he "borrowed" \$100 from a DMV cash drawer to pay for food at a
11 Democratic Party picnic). The Commission has therefore acknowledged that the
12 appropriate inquiry is "whether the public officer used the public's resources to benefit
13 himself *in any way*." *Id.* (emphasis in original).

14 Quite simply, NRS 281A.400(7) draws a "clear and bright line": public property
15 belongs to the public and cannot be used for personal benefit or gain. See *id.* Thus,
16 under the previous version of NRS 281A.400(7), the Commission has declared that
17 the prohibition in NRS 281A.400(7) prohibits the use of governmental property for
18 personal political or campaign purposes. See *In re Kirkland*, Comm'n Op. No. 98-41
19 (1999) (citing *In re Bob Nolen*, Comm'n Op. No. 96-39 (1996) and *In re Lonnie*
20 *Hammargren*, Comm'n Op. No. 95-35 (1995)). Accordingly, the Commission should
21 find that Antinoro's use of the letterhead for a political endorsement letter benefited his
22 private interest in supporting Fiore in her Congressional campaign.

23 **C. Sheriff Antinoro's Use of Official Government Letterhead Does Not**
24 **Satisfy All Elements of the Limited Use Exception in NRS 281A.400(7)(a)**

25 In 1997, the Nevada Legislature passed Senate Bill 214 to add a limited use
26 exception to the general prohibition contained in NRS 281A.400(7). The legislative
27 history of SB 214 indicates that the exception was added in recognition that there are
28 situations in which the "necessary use" of government property would be justified. See

1 Hearing on S.B. 214 Before Senate Comm. on Gov't Affairs, 69th Leg. (Nev., May 7,
2 1997).

3 Antinoro's use of the Storey County Sheriff's Office letterhead for a letter of
4 endorsement of a political candidate violated NRS 281A.400(7) unless all four of the
5 factors enumerated in NRS 281A.400(7)(a)(1) through (4) apply:

6 (1) The public officer or employee who is responsible for and
7 has authority to authorize the use of such property, equipment
8 or other facility has established a policy allowing the use or the
9 use is necessary as a result of emergency circumstances;

10 (2) The use does not interfere with the performance of the
11 public officer's or employee's public duties;

12 (3) The cost or value related to the use is nominal; and

13 (4) The use does not create the appearance of impropriety.

14 The Executive Director concedes that the factors set forth in NRS
15 281A.400(7)(a)(2) and (3) have been met. First, Antinoro's use of the letterhead to
16 produce the endorsement letter on May 27, 2016 did not "interfere with the
17 performance of [his] public duties." Antinoro typed the letter on his personal computer
18 at his home during his lunch hour. He subsequently emailed the letter to Fiore from his
19 personal computer and email account. Second, the "cost or value related to the use
20 was nominal." Antinoro prepared an electronic copy of the letter on the official
21 letterhead on his personal computer. The letter was not printed or reproduced in hard
22 copy, but was transmitted electronically to Fiore then embedded by Fiore in her
23 YouTube video and posted to her Twitter account and Facebook page.

24 The decisive inquiry therefore focuses on whether the person who has authority
25 to authorize use of the letterhead "has established a policy allowing the use" and
26 whether Antinoro's use created "the appearance of impropriety." NRS
27 281A.400(7)(a)(1) and (4).

28 ///

///

1. Use of the Letterhead Was *Prohibited* by the Storey County Policies

The Commission must determine whether Antinoro's use of the Storey County Sheriff's Office letterhead for the endorsement letter was allowed pursuant to a policy established by the appropriate "authority to authorize the use of such property." Storey County Policy Number 213 ("Policy 213") relates to political activity by County employees and states that "[e]mployees⁴ are expressly forbidden to use any employer resources . . . to engage in any political activity outside the approved scope of the employees' official duties." See Exhibit 6, *Stipulated Facts* ¶12 (emphasis added). Policy 213 applies to Antinoro and expressly prohibits the use of any County resources for political purposes. Thus, Antinoro's use of the Storey County Sheriff's Office letterhead for the endorsement letter constituted an unauthorized use of government resources pursuant to County policy.

As the Storey County Sheriff, it could be argued that Antinoro is the public officer who "is responsible for and has authority to authorize the use of" the letterhead of the sheriff's office. Accordingly, Antinoro had the ability to and presumably did authorize his own use of the official letterhead for his private political interests. However, the Executive Director notes the inherent potential for abuse when the public officer is himself responsible for or has authority to approve his own use of government property. In any event, Antinoro did not actually establish any formal policy allowing the use of the sheriff's office letterhead for personal purposes unrelated to official business of the sheriff's office.

In the absence of any established policy that authorizes the use of official letterhead of the Storey County Sheriff's Office for a letter of endorsement for a political candidate, the requirements of the limited use exception cannot be met and the Commission must find that Antinoro violated NRS 281A.400(7).

⁴ Antinoro is an "employee," as that term is defined by the Storey County Policies, for purposes of the Storey County Policy regarding political activity by county employees. The term employee excludes elected officials only for sections of the Storey County Policies that are related to discipline, layoff and dispute resolution. See Exhibit 6, *Stipulated Facts* ¶13.

2. Antinoro's Use of the Letterhead Created the Appearance of Impropriety

Antinoro's use of an official letterhead for political purposes also creates the appearance of impropriety under NRS 281A.400(7)(a)(4). In an advisory opinion involving a state legislator's proposed use of his Nevada Assembly letterhead for a political fundraising letter, the Commission opined that such use would create an appearance of impropriety under NRS 281.481(8) (statute prohibiting use of government property by State Legislators) because there is a risk of creating the impression that the State Assembly and/or State Legislature endorses the content of the letter. *Hettrick*, Comm'n Op. No. 01-10 (2001). In reaching its decision in *Hettrick*, the Commission relied upon its "appearance of impropriety" analysis in *In re Kirkland*, Comm'n Op. No. 98-41 (1999) ("*Kirkland*").

In *Kirkland*, which involved the endorsement of a district judge by the Washoe County Sheriff, the Commission found that the sheriff's use of his uniform and badge created an improper appearance that his endorsement was an official endorsement by Washoe County or the Washoe County Sheriff's Office. *Id.* Accordingly, Sheriff Kirkland was advised that use of his uniform, badge, employees or other "physical accouterments" of his office to endorse a person's candidacy would create an appearance of impropriety under NRS 281.481(7)(a)(4) (the predecessor statute of NRS 281A.400(7)(a)(4)). *Id.* Likewise, in *In re Kuzanek*, Comm'n Op. No. 14-61A (2015), the Commission held:

The use of the Washoe County Sheriff Deputy uniform and undersheriff badge act as a visual endorsement, affirmation, and sanction of Kuzanek's campaign for sheriff, and provide an unfair advantage to Kuzanek at government cost. This is the type of harm to the public that the Ethics Law is designed to prohibit. A public officer and/or employee cannot engage in any activity that involves the use of the public agency's time, facilities, equipment and supplies or the use of state or political subdivision badge or uniform to give that person an advantage, and it creates the appearance of impropriety.

1 The Commission should find that the Storey County Sherriff's Office letterhead
2 is similar to the physical accouterments of office discussed in *Kirkland* that should not
3 be used for the personal purposes of endorsing a political candidate. The Commission
4 cautioned in *Kirkland* that "it would never be proper for a governmental agency to
5 endorse a political candidate." *Kirkland*, Comm'n Op. No. 98-41 (1999). Then, in
6 *Hettrick*, the Commission acknowledged that use of an official letterhead for political
7 purposes creates an appearance of impropriety and the impression of government
8 approval of the contents of letter. See *Hettrick*, Comm'n Op. No. 01-10 (2001).
9 Antinoro's endorsement letter printed on the official letterhead of the Storey County
10 Sheriff's Office created the improper appearance that the sheriff's office or Storey
11 County also endorses Fiore. This is precisely the type of impropriety the Ethics Law
seeks to avoid through NRS 281A.400(7).⁵

12 Using the Storey County Sheriff's Office letterhead for a letter of endorsement
13 creates the appearance of impropriety as it is tied to the authority of the sheriff's office.
14 The letterhead, like any government letterhead, indicates that the person signing the
15 letter is exercising authority that is not granted to private citizens. The letterhead
16 represents the Storey County Sheriff's Office, not Antinoro as a private citizen. While
17 Antinoro has earned the right to be sheriff through a vote of the citizens of Storey
18 County, that right does not allow him to use the prestige or influence of his public
19 office for his private or political interests. The letterhead belongs to the Storey County
20 Sheriff's Office and should be used only for official business of the office.

21 **D. The Constitutional Protection of Political Speech Does Not Excuse Sheriff**
22 **Antinoro's Conduct**

23 The Commission recognizes that individuals enjoy a constitutional right to
24 speak out on political concerns. See *In re Hettrick*, Comm'n Op. No. 01-10 (2001).

25
26 ⁵ Similarly, NRS 281A.520 attempts to ensure public independence from government interference or
27 influence during an election. The Commission has decided that public officers have an obligation to
28 ensure that public resources remain neutral during the course of an election so that any question
placed upon the ballot would not be supported at public expense. See, e.g., *In re Edwards*, Comm'n
Op. No. 13-24C (2013).

1 However, a public officer's or public employee's right to participate in political activities
2 is not absolute. See *U.S. Civ. Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S.
3 548, 567 (1973) (citations omitted). Because the free speech of public officers and
4 employees is not absolute, states may enact reasonable regulations limiting the
5 political activities of public officers and employees without violating the First
6 Amendment. *Clements v. Fashing*, 457 U.S. 957, 971-73 (1982). Accordingly,
7 Nevada's Ethics Law appropriately prohibits an elected public officer from speaking
8 out on political concerns in a way that establishes a conflict and/or creates the
9 appearance of impropriety or the impression that the government sanctions the
10 activity. See *Hettrick*, Comm'n Op. No. 01-10 (2001) (citing *In re Kirkland*, Comm'n
11 Op. No. 98-41 (1998)).

12 In any event, resolution of this RFO does not require the Commission to
13 determine whether Antinoro's decision to endorse a political candidate, in and of itself,
14 was prohibited by the Ethics Law. The Commission need only address the *manner* in
15 which Sheriff Antinoro engaged in his political activity through the use of government
16 property. Specifically, this RFO focuses on whether Antinoro's use of government
17 property for his political activity violated NRS 281A.400(7). Similarly, in *Kirkland*, the
18 Commission appropriately examined the *manner* in which a political endorsement is
19 provided by a public officer.

20 **E. Antinoro's Conduct Constitutes One Willful Violation of the Ethics Law**

21 Even if Antinoro did not actually intend to violate the Ethics Law, his use of the
22 Storey County Sheriff's Office letterhead was willful, as defined in NRS 281A.170,
23 because he acted intentionally and knowingly. For an act to be intentional, NRS
24 281A.105 requires that Antinoro acted voluntarily or deliberately. The definition further
25 states that proof of bad faith, ill will, evil or malice is not required. It is enough that
26 Antinoro did not accidentally or inadvertently use the letterhead for personal purposes.

27 ///

28 ///

1 NRS 281A.115 defines “knowingly” as “import[ing] a knowledge that the facts exist
2 which constitute the act or omission.” NRS 281A does not require that Antinoro had
3 actual knowledge that his conduct violated NRS 281A, but it does impose constructive
4 knowledge when other facts are present that should put an ordinarily prudent person
5 upon inquiry. See *In re Stark*, Comm’n Op. No. 10-48C (2010). In light of the Storey
6 County Policy regarding political activity by County employees, Antinoro should have
7 known that it was not appropriate for him to place Fiore’s letter of endorsement on the
8 Storey County Sheriff’s Office letterhead.

9 Antinoro’s actions in this matter were willful pursuant to NRS 281A.170 and
10 there are no mitigating factors to justify a non-willful violation. In fact, this is Antinoro’s
11 second Ethics violation. A prior RFO alleging that Antinoro used governmental time
12 and resources to further his own campaign interests was resolved by stipulation,
13 resulting in one non-willful violation implicating NRS 281A.020 and NRS 281A.400(2)
14 and (9). *In re Antinoro*, Comm’n Op. No. 14-59C (2015).

15 Based on the undisputed facts and preponderance of evidence establishing
16 Antinoro’s use of government property to benefit his personal interest as a matter of
17 law, the Executive Director respectfully requests summary judgment for one willful
18 violation of the Ethics in Government Law. For Antinoro’s first willful violation, the
19 Commission may impose a civil penalty not to exceed \$5,000 pursuant to NRS
20 281A.480(1)(a).

21 ///

22 ///

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1 **V. CONCLUSION**

2 Summary judgment should be granted and the Commission should find that
3 Antinoro willfully violated NRS 281A.400(7). The Commission should also impose a
4 civil penalty against Antinoro in an amount not to exceed \$5,000.

5 DATED this 1st day of March, 2017.

6 NEVADA COMMISSION ON ETHICS

7
8 /s/ Judy A. Prutzman
9 Judy A. Prutzman, Esq.
10 Associate Counsel
11 Nevada Commission on Ethics
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Katherine F. Parks, Esq.
Thorndal Armstrong, et al.
6590 S. McCarran Blvd., #B
Reno, NV 8950

Email: kfp@thorndal.com
psb@thorndal.com
gantinoro@storeycounty.org

Attorney for Subject

/s/ Valerie M. Carter
Employee, Nevada Commission on Ethics

Exhibit #1



4785 Caughlin Parkway
Reno, Nevada 89519

P.O. Box 30000
Reno, Nevada 89520
www.mcllawfirm.com

Rick R. Hsu, Esq.

RECEIVED

JUN 02 2016

COMMISSION
ON ETHICS

Telephone
(775) 827-2000

Facsimile
(775) 827-2185

E-Mail:
rhsu@mcllawfirm.com

June 2, 2016

Via Hand Delivery

Yvonne M. Nevarez-Goodson
Executive Director
Nevada Commission on Ethics
704 West Nye Lane, Suite 204
Carson City, NV. 89703

Re: Additional Third Party Request for Opinion
Subject: Gerald Antinoro

Dear Yvonne:

I hereby enclose a second Third Party Request for Opinion against Gerald Antinoro, which has been signed by Kris Thompson, the project manager for my client. An additional copy of the RFO is enclosed for your staff to stamp "received."

Although I did not prepare this RFO, I have been requested that you direct any communications to the requester through me at this point in time. Kindest regards,

Sincerely,

Rick R. Hsu

RRH

Enclosure

c: client (w/enclosure via email)

NRS 281A.440(2)

RECEIVED
JUN 02 2016
The Nevada Ethics
Commission
OFFICE OF ETHICS

1. Provide the following information for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS Chapter 281A. (If you allege that more than one public officer or employee has violated the law, use a separate form for each individual.)

NAME: (Last, First)		Antinoro Gerald		TITLE OF PUBLIC OFFICE: (Position: e.g. city manager)		Sheriff	
PUBLIC ENTITY: (Name of the entity employing this position: e.g. the City of XYZ)		Storey County					
ADDRESS: (Street number and name)		206 C. Street		CITY, STATE, ZIP CODE		Virginia City 89440	
TELEPHONE:		Work: 775-881-8196		Other: (Home, cell)		E-MAIL: gantinatora@storeycounty.nv	

2. Describe in specific detail the public officer's or employee's conduct that you allege violated NRS Chapter 281A. ***(You must include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)***

Check here ☒ if additional pages are attached.

See attached

3. Is the alleged conduct the subject of any action currently pending before another administrative or judicial body?
If yes, describe:

4. What provisions of NRS Chapter 281A are relevant to the conduct alleged? Please check all that apply.

	Statute	Essence of Statute:
<input type="checkbox"/>	NRS 281A.020(1)	Failing to hold public office as a public trust; failing to avoid conflicts between public and private interests.
<input type="checkbox"/>	NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
<input checked="" type="checkbox"/>	NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person.
<input type="checkbox"/>	NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and any business entity in which he has a significant pecuniary interest.

<input type="checkbox"/>	NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of his duties as a public officer or employee.
<input type="checkbox"/>	NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
<input type="checkbox"/>	NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests.
<input checked="" type="checkbox"/>	NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his personal or financial interest. (Some exceptions apply).
<input type="checkbox"/>	NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
<input type="checkbox"/>	NRS 281A.400(9)	Attempting to benefit his personal or financial interest through the influence of a subordinate.
<input type="checkbox"/>	NRS 281A.400(10)	Seeking other employment or contracts through the use of his official position.
<input type="checkbox"/>	NRS 281A.410	Failing to file a disclosure of representation and counseling of a private person before public agency.
<input type="checkbox"/>	NRS 281A.420(1)	Failing to sufficiently disclose a conflict of interest.
<input type="checkbox"/>	NRS 281A.420(3)	Failing to abstain from acting on a matter in which abstention is required.
<input type="checkbox"/>	NRS 281A.430/530	Engaging in government contracts in which public officer or employee has a significant pecuniary interest.
<input type="checkbox"/>	NRS 281A.500	Failing to timely file an ethical acknowledgment.
<input type="checkbox"/>	NRS 281A.510	Accepting or receiving an improper honorarium.
<input checked="" type="checkbox"/>	NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.
<input type="checkbox"/>	NRS 281A.550	Failing to honor the applicable "cooling off" period after leaving public service.

5. Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Check here ☐ if additional pages are attached.

NAME and TITLE: (Person #1)	KRIS Thompson		
ADDRESS:	505 USA Parkway	CITY, STATE, ZIP	Sparks NV 89434
TELEPHONE:	Work: 775-342-3856	Other: (Home, cell)	E-MAIL: kthompson2011@yahoo.com
NATURE OF TESTIMONY:	Witnessed the twitter page with the endorsement by Antonino on official letterhead and w/ a logo of his badge.		
NAME and TITLE: (Person #2)			
ADDRESS:		CITY, STATE, ZIP	
TELEPHONE:	Work:	Other: (Home, cell)	E-MAIL:
NATURE OF TESTIMONY:			

6. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS PURSUANT TO NRS 281A.440(2)(b)(2).

Attach all documents or items you believe provide credible evidence to support your allegations. NAC 281A.435(3) defines credible evidence as any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made. A newspaper article or other media report will not support your allegations if it is offered by itself.

State the total number of additional pages attached (including evidence) 3.

7. REQUESTER'S INFORMATION:

YOUR NAME:	KRIS Thompson		
YOUR ADDRESS:	505 USA Parkway	CITY, STATE, ZIP:	Sparks NV 89434
YOUR TELEPHONE:	Day: 775-342-3856	Evening:	E-MAIL:

By my signature below, I affirm that the facts set forth in this document and all of its attachments are true and correct to the best of my knowledge and belief. I am willing to provide sworn testimony if necessary regarding these allegations.

I acknowledge that, pursuant to NRS 281A.440(8) and NAC 281A.255(3), this Request for Opinion, the materials submitted in support of the allegations, and the Commission's investigation are confidential until the Commission's Investigatory Panel renders its determination, unless the Subject of the allegations authorizes their release.

Signature: 

Date: 6/1/18

Print Name: KRIS Thompson

You must submit an original and two copies of this form bearing your signature, and three copies of the attachments to:

Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703



Forms submitted by facsimile will not be considered as properly filed with the Commission.
NAC 281A.255(3)

TELEPHONE REQUESTS FOR OPINION ARE NOT ACCEPTED.

Charge #1 – Using Physical Accoutrements of his position to benefit or secure an advantage for a third party.

The attached letter from Storey County Sheriff Gerald Antinoro endorsed a candidate for U.S. Congress. He prepared this letter endorsing the candidate on his official Sheriff's letterhead which includes a logo of his badge and a letterhead stating "STOREY COUNTY SHERIFF'S OFFICE.....Gerald Antinoro Sheriff."

This letter was transmitted to the endorsed candidate and published on her campaign twitter webpage.

https://twitter.com/VoteFiore?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauth
or

Pursuant to the Opinion by the Ethics Commission in 1999 re Richard Kirkland, government officials cannot "create the impression of government sanction." By issuing this endorsement on Sheriff's Office letterhead he communicates government sanction.

The Kirkland opinion creates a strict rule that an "appearance of impropriety" is created if in the course of endorsing a person's candidacy, a law enforcement official used the physical accoutrements of his office or position to bolster the endorsement. The physical accoutrements of office include uniforms and badges. The badge is prominent on the letterhead and in the endorsement.

**STOREY COUNTY SHERIFF'S OFFICE**

Gerald Antinoro
Sheriff

May 27, 2016

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPSO, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro".

Gerald Antinoro

Exhibit #2

JOHN L. THORNDAL
JAMES G. ARMSTRONG
CRAIG R. DELK
STEPHEN C. BALKENBUSH
PAUL F. EISINGER
CHARLES L. BURCHAM
BRIAN K. TERRY
ROBERT F. BALKENBUSH
PHILIP GOODHART
CHRISTOPHER J. CURTIS
KATHERINE F. PARKS
KEVIN R. DIAMOND
BRIAN M. BROWN

BRENT T. KOLVET**
THERRY V. BARKLEY*
JOHN D. HOOKS
KEVIN A. PICK
MEGHAN M. GOODWIN
GREGORY M. SCHULMAN*
ALEXANDRA B. McLEOD
JOSEPH E. BALKENBUSH
DOUGLAS J. DUESMAN
CURTIS R. RAWLINGS*
KIRBY R. WELLS*
HEATHER L. TRUJILLO
SEAN D. COONEY
MADISON N. GREGOR
DANIEL J. MCCAIN

Of Counsel*
Special Counsel**



LAW OFFICES
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DELK BALKENBUSH & EISINGER**
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KATHERINE F. PARKS, ESQ.
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July 26, 2016

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FAX: (775) 786-8804

ELKO
919 IDAHO STREET
ELKO, NV 89801
(775) 777-3011
FAX: (775) 786-8001

JAMES J. JACKSON
(1958-2014)

Via Electronic Mail

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Re: Request for Opinion No. 16-54C

Dear Ms. Nevarez-Goodson:

As you are aware, this office was retained to represent the interests of Storey County Sheriff Gerald Antinoro in connection with the above-entitled matter. Please allow the following to constitute our client's response to the Third Party Request for Opinion submitted by Kris Thompson.

Mr. Thompson contends that Sheriff Antinoro has violated several provisions of NRS 281A.400 by virtue of his actions in endorsing Assemblywoman Michele Fiori in her campaign for Congress. Specifically, Mr. Thompson asserts that Sheriff Antinoro's actions are in violation of NRS 281A.400(2) and NRS 281A.400(7). My client and I respectfully disagree.

As for the facts underlying this matter, on May 27, 2016, Michele Fiori, an Assemblywoman from District 4 in Clark County, asked Sheriff Antinoro to endorse her for Congress. In response, Sheriff Antinoro drafted the three paragraph statement attached hereto as Exhibit 1 and sent it to Ms. Fiori by email from his private email account. The statement was drafted by Sheriff Antinoro from his home and during his lunch hour.

Storey County has not formally adopted a “little Hatch Act.” However, Storey County Administrative Policies and Procedures §213 addresses employee’ political activity.¹ *See*, Exhibit 2.2 Policy and Procedure §213 prohibits employees from engaging in political activity during working hours and prohibits an employee from attempting to coerce, command or require a person holding or applying for any position, to aid, promote or defeat any political committee or candidate. The policy further regulates certain off duty conduct, including participation in political activity while in uniform and forbids the use of employer resources to engage in any political activity.

NRS 281A.400(2) provides as follows:

“A public officer or employee shall not use the public officer’s or employee’s position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person.”

NRS 281A.400(7) provides that, “a public officer or employee shall not use governmental time, property, equipment or other facility to benefit the public officer’s or employee’s personal or financial interests.” However, the statute does not prohibit a limited use of government property, equipment or other facility for personal purposes if: (1) the public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency services; (2) the use does not interfere with the performance of the public officer’s or employee’s public duties; (3) the cost or value related to the use is nominal; and (4) the use does not create the appearance of impropriety. *Id.*

The First Amendment of the United States Constitution protects political speech. The Hatch Act (5 U.S.C. §1501-1508 and §7324 et seq.) prohibits all federal employees and some state and municipal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. *See*, 5 U.S.C. §1502(a)(1) and 5 U.S.C. §7324(a)(1).

Many states, counties and municipalities have adopted what are often described as “little Hatch Acts.” As noted above, Storey County has not adopted a version of the Hatch Act. However, the subject is addressed in Storey County Policy and Procedure §213. The question under consideration in this matter is whether Sheriff Antinoro’s actions in sending the endorsement at issue to Ms. Fiori on Storey County Sheriff’s Office letterhead and bearing a logo in the shape of a badge is in violation of NRS 281A.400.

¹ The position of Sheriff, as an elected position, falls outside of the definition of “employee” set forth in Storey County’s Administrative Policies and Procedures. *See*, Exhibit 3. However, §213 provides a good back drop for the analysis of Mr. Thompson’s complaint.

² The Storey County Sheriff’s Office also has a policy governing employee speech, expression and social networking. *See*, Exhibit 5, Policy 1060.

In February of 2012, the U.S. Office of Special Counsel reevaluated its position on whether the use by an elected official of his or her official title while participating in political activity violates the Hatch Act. *See*, Exhibit 4, February 29, 2012, advisory opinion from U.S. Office of Special Counsel. In its advisory opinion, the OSC specifically addressed whether a sheriff may use his title in political correspondence and whether a sheriff may wear his uniform to political events such as rallies and fundraising activities. *Id.* In addition, the OSC was asked for its opinion as to whether it makes a difference whether the sheriff engaged in such activities while running for reelection or while campaigning for another candidate altogether. *Id.*

The OSC concluded that an incumbent sheriff would not violate the Hatch Act by wearing their uniforms or using their titles while campaigning for reelection. *Id.* The OSC further concluded that its reasoning should properly be extended to an elected official's other political activities; i.e. those not in furtherance of their own reelection. In so concluding, the OSC stated as follows:

“If these elected officials are permitted to use their official titles in their own partisan campaigns, OSC can identify no unique harm that would result if they do the same when endorsing other partisan candidates. Arguably, an elected official's use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident of the elected official being permitted to run for partisan office. Therefore, it does not appear that an elected official's use of his title when endorsing a partisan candidate would violate the Hatch Act. In the case of a sheriff, wearing his uniform while campaigning for another candidate would also be permissible. *Id.*”

This Commission addressed similar issues in *In Re: Kirkland*, Opinion No. 98-41. In that case, the Commission addressed questions regarding the involvement of then Washoe County Sheriff Richard Kirkland in his political endorsement of Judge James Hardesty, including his appearance in a televised political advertisement in uniform. In analyzing the issue of whether such conduct violated NRS 281.481(2), the Commission determined that Mr. Kirkland's endorsement of Judge Hardesty while in uniform resulted in an “advantage” to another person. However, the Commission further determined that Mr. Kirkland's actions were not “unwarranted” within the meaning of NRS 281A.400(2). While noting that the term “unwarranted” is not defined in the Ethics in Government Law, the Commission concluded that, if Mr. Kirkland's actions were in violation of the Hatch Act (or the Washoe County Code provision also at issue), his conduct would be tantamount to the conferral of an unwarranted advantage.

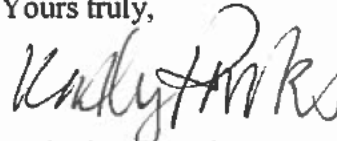
Clearly, the actions of Sheriff Antinoro in sending the three paragraph communication at issue, which he prepared at home over the lunch hour, on his own computer and which he transmitted to Ms. Fiori via his private email, fall far short of the type of conduct at issue in *In re: Kirkland* which was found *not* to have violated NRS 281A.400(2). Further, based upon the February, 2012 advisory opinion of the OSC, Sheriff Antinoro's conduct was not at all in violation of the Hatch Act.

With respect to the suggestion that Sheriff Antinoro's conduct constituted a violation of NRS 281A.481(7), such is simply not the case. Sheriff Antinoro drafted the communication at issue at his home, over the lunch hour, on his own computer. He then sent the communication to

Ms. Fiori using his private email. Thus, there was *no* use of governmental time, property, equipment or other facility by Sheriff Antinoro. Even if there were such a use, the exceptions set forth at NRS 281A.481(7)(a)(1)-(4) would apply. Nothing about the communication at issue can be interpreted as having created the appearance of impropriety and Sheriff Antinoro is permitted to use his name and official title in a political advertisement. While public officials must temper their constitutional right to speak out on matters of political concern, Sheriff Antinoro's actions did not constitute a violation of NRS 281A.400(2) or NRS 281A.400(7).

My client and I thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "Kathy Parks", written over a horizontal line.

Katherine F. Parks

KFP/psb

enclosures

cc: (Sheriff Gerald Antinoro via electronic mail)

Exhibit 1



STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro
Sheriff

May 27, 2016

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPSO, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro".

Gerald Antinoro

Exhibit 2

**STOREY COUNTY ADMINISTRATIVE
POLICIES AND PROCEDURES**

NUMBER 213
EFFECTIVE DATE: 06/17/08
REVISED:
AUTHORITY: BOC
COUNTY MANAGER: PAW

SUBJECT: Political Activity

I POLICY:

Employees shall not engage in political activity of any kind during working hours. This includes, but is not limited to: soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office. Wearing or displaying of apparel, buttons, insignia, or other items which advocate for or against a political candidate or a political cause is also an example of prohibited political activity during work hours. Furthermore, no person shall attempt to coerce, command, or require a person holding or applying for any position, office, or employment, including a citizen requesting service supplied by employer, to influence or to give money, service, or other valuable thing to aid, promote, or defeat any political committee, or to aid, promote, or defeat the nomination or election of any person to public office.

Employees may not participate in any of the above-mentioned activities off duty while wearing a uniform, name tag, or any other item identifying them as a representative of the employer.

Employees are expressly forbidden to use any employer resources, including but not limited to: interoffice mail, email, telephone, fax machines, the Internet, or copy machines to engage in any political activity outside the approved scope of the employees' official duties.

II Running for, or Holding, Political Office

While employees are encouraged to participate in the political process, they must understand the employer also has an obligation to provide service to the public.

Employees who are seeking, or who have been elected or appointed to public office, shall not conduct any business related to these activities while on duty. This includes all the items listed in the previous section, (i.e., political activity.)

If there is a conflict with, or the activities hinder the performance of the duties with employer, the employee will comply with one of the following: (final approval is at the employer's sole discretion)

- The employee will be expected to resign their position;
- The employee may apply and seek approval for use of accrued annual leave time,
or;
- The employee may request unpaid leave.

The maximum duration of paid or unpaid leave time approved will be 30 days. Employers' leave policies addressing continuation of health insurance, retirement benefits, accrual of additional leave time, and job and seniority status will be applied in this situation.

If there is any question regarding this policy, employees should contact their supervisor for clarification.

RESPONSIBILITY FOR REVIEW: The County Personnel Director and/or Administrative Officer will review this policy every 5 years or sooner as necessary.

Exhibit 3

Date of Hire/Hire Date: The actual date an employee first renders paid service in a regular position.

Day: Calendar days unless work days are specified.

Demotion: Involuntary movement of an employee from one job class to another job class having a lower maximum base rate of pay, as a result of disciplinary action.

Department Head/Department Manager: An elected official or appointed official who is directly responsible to the County Manager or to the Board or to a board established by the Board, for overall administration of an office or department of the employer.

Disability-Related Inquiry: A question (or series of questions) that is likely to elicit information about a disability. (See *Section 2.6.8.* of these policies for a more complete description.)

Discharge: Termination, separation, dismissal, or removal from employment for cause.

Discipline: A suspension (generally without pay), involuntary demotion, reduction in pay, discharge, or written reprimand or verbal warning.

Discrimination: Employment decisions or actions which are inappropriately taken because of the applicant's or employee's race, color, religion, age, gender, sexual orientation, national origin, ancestry, veteran status, disability, or union activity.

Dispute: Unresolved work-related problems identified by an employee or group of employees pertaining to work-related issues. Disputes may not be related to disciplinary action.

Domestic Partner: Persons who are registered as domestic partners with the state of Nevada per Senate Bill 283 of the 2009 Nevada Legislation.

Drug Test: A urinalysis (urine) test that includes specimen collection and testing by a Department of Health and Human Services (DHHS)-certified laboratory. Both a screening test and a confirmation test must be used to establish a positive test result.

Eligible List: A list of names of persons who have satisfactorily completed an examination for a position and have qualified; also includes **Reinstatement List** (see below). A list of names of persons who have been laid off and are available for reinstatement.

Employee: A person employed in a budgeted position on a full- or part-time basis. For purposes of those sections of these policies covering discipline, layoff, and dispute resolution, the term employee excludes elected officials, department heads and casual workers.

Regular Full-time Employee: A person who has successfully completed an initial introductory period in a regular budgeted position with a normally scheduled work week of at least forty (40) hours.

Regular Part-Time Employee: A person who has successfully completed an initial introductory period in a regular budgeted position which requires at least twenty (20) hours per week, but less than full-time employment.

Introductory Employee: A person who serves in an at-will status for a specified period of time during which s/he is evaluated by the employer to ensure that s/he has demonstrated fitness for a position by actually performing the duties of the position.

Exempt Employee: An employee who is exempt from the overtime provisions of the Fair Labor Standards Act. (Such determination is made on the basis of duties and responsibilities performed and the method of pay computation.)

Non-Exempt Employee: An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

Employer Premises: All employer property and facilities, the surrounding grounds and parking lots, leased space, employer motor-driven equipment/vehicles, offices, desks, cabinets, closets, etc.

Exhibit 4



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 29, 2012

XXXXXX XXXXXXXX
Assistant XXXXXXXXX County Attorney
XXXX XXXXXXXX XXXX
XXXXXXXX, XX XXXXXX

Re: OSC File No. AD-12-XXXX

Dear Xx. XXXXXXX:

This letter responds to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Act. Specifically, you ask whether an incumbent sheriff may wear his uniform to political events such as rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials. You also ask whether a sheriff may use his title in political correspondence or in connection with fundraising activities. Finally, you ask if it makes a difference whether the sheriff engages in these activities while running for reelection, running for another elected office, or while campaigning for another candidate altogether. For purposes of this opinion, you ask OSC to assume that the sheriff is subject to the Hatch Act's restrictions. As explained in more detail below, the Act generally would not prohibit any of the activities you enumerate in your request.

State and local employees who are covered by the Hatch Act are prohibited from using their official authority or influence to interfere with or affect the result of an election or a nomination for office.¹ 5 U.S.C. § 1502(a)(1). Federal employees are subject to the same restriction. See 5 U.S.C. § 7323(a)(1). The Hatch Act regulation that applies to federal employees states that an improper use of official authority or influence occurs when employees use their official titles while participating in political activity. 5 C.F.R. § 734.302(b)(1). In determining whether the use of official title by state and local employees violate the Hatch Act, OSC uses the aforementioned regulation for federal employees as guidance. Thus, OSC generally concludes that state and local employees violate the Hatch Act when they use their official titles, or otherwise trade on the influence of their positions by, for example, wearing their official uniforms, while engaged in political activity.

As you know, OSC recently reevaluated this conclusion as it applies to elected officials who are covered by the Hatch Act. Specifically, in recognition of the fact that they hold partisan political office, OSC reasoned that they would not violate the Hatch Act by wearing their uniforms or using their titles while campaigning for reelection. OSC took into account the fact that Congress gave greater latitude to individuals who are covered by the Hatch Act due to their

¹ In addition, state and local employees are prohibited from coercing other employees into making political contributions and from being candidates in partisan elections. 5 U.S.C. § 1502(a)(2)-(3).

elected positions when it exempted them from the candidacy prohibition to which other state and local employees are subject. See 5 U.S.C. § 1502(c). Moreover, the Hatch Act regulations that apply to federal employees do not contemplate a scenario where an employee would be covered by virtue of his elective office. Cf. 5 U.S.C. § 7322(1) (expressly excluding the President and Vice President from Hatch Act coverage). Thus, those regulations do not translate smoothly to the state and local arena, where many elected officials are covered by the Hatch Act.

We also note that the provision exempting individuals holding elected office from the candidacy prohibition is not limited to reelection bids. Thus, a sheriff who is covered by the Hatch Act would not be prohibited from running for another elected office. Accordingly, the rationale OSC has articulated with respect use of one's official title and uniform during a reelection campaign also applies when the official runs for some other partisan political office.

OSC's reasoning also extends to an elected official's other political activities, i.e., activities not in furtherance of his own reelection. Indeed, in allowing these elected officials to run as representatives of political parties, Congress presumably anticipated that they would endorse other candidates running under their political party's banner. If these elected officials are permitted to use their official titles in their own partisan campaigns, OSC can identify no unique harm that would result if they do the same when endorsing other partisan candidates. Arguably, an elected official's use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident of the elected official being permitted to run for partisan office. Therefore, it does not appear that an elected official's use of his title when endorsing a partisan candidate would violate the Hatch Act. In the case of a sheriff, wearing his uniform while campaigning for another candidate also would be permissible.

These principles apply to in-person campaign events, campaign advertisements, and political correspondence. Likewise, a sheriff could attend fundraisers and solicit contributions while wearing his uniform and identifying himself as the sheriff. We note, however, that a sheriff covered by the Hatch Act still is prohibited from coercing or attempting to coerce other employees into making political contributions. See 5 U.S.C. § 1502(a)(2). Asking a subordinate to make a political contribution or volunteer for a political campaign is considered inherently coercive. Special Counsel v. Acconcia, (CB-1216-06-0007-T-1, February 26, 2007 (Initial Decision at 9), rev'd on other grounds, 107 M.S.P.R. 60 (2007), citing Special Counsel v. Purnell, 37 M.S.P.R. 184, 195 (1988), aff'd sub nom. Fela v. Merit Sys. Prot. Bd., 730 F. Supp. 779 (N.D. Ohio 1989). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. Special Counsel v. Gallagher, 44 M.S.P.R. 57, 76 (1990). Thus, sheriffs should not ask their employees to contribute to political campaigns.

Similarly, while OSC concludes that the use of official authority prohibition would not preclude a sheriff from wearing his uniform and using his official title while campaigning, this provision of the Hatch Act would prohibit him from soliciting the uncompensated volunteer services of a subordinate employee. See 5 C.F.R. § 734.302. Therefore, he must not ask his employees to support his campaign or the campaign of another candidate.

U.S. Office of Special Counsel
Page 3

We hope this opinion adequately addresses your questions. Please contact me at (202) 254-3642 if we can be of further assistance.

Sincerely,

/s/

Carolyn S. Martorana
Attorney, Hatch Act Unit

Exhibit 5

Employee Speech, Expression and Social Networking

1060.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Office.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or deputy associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1060.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

1060.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this office. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this office be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Storey County Sheriff's Office will carefully balance the individual employee's rights against the Office's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

1060.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Storey County Sheriff's Office employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

Storey County Sheriff's Office

Policy Manual

Employee Speech, Expression and Social Networking

- Disclosing a photograph and name or address of a deputy who is working undercover.
- Disclosing the address of a fellow deputy.
- Otherwise disclosing where another deputy can be located off-duty.

1060.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the office's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or deputy associations, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Storey County Sheriff's Office or its employees.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Storey County Sheriff's Office and tends to compromise or damage the mission, function, reputation or professionalism of the Storey County Sheriff's Office or its employees. Examples may include:
 - 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
 - 2. Expression that demonstrates support for criminal activity.
 - 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Office. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- (e) Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Storey County Sheriff's Office.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Office for financial or personal gain, or any disclosure of such materials without the express authorization of the Sheriff or the authorized designee (NRS 281A.400(5)).
- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of office logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Storey County Sheriff's Office

Storey County Sheriff's Office

Policy Manual

Employee Speech, Expression and Social Networking

on any personal or social networking or other website or web page, without the express authorization of the Sheriff.

- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or office-owned, for personal purposes while on-duty, except in the following circumstances:
 - 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
 - 2. During authorized breaks; such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1060.4.1 UNAUTHORIZED ENDORSEMENTS, ADVERTISEMENTS, AND ACTIVITIES

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or deputy associations, employees may not represent the Storey County Sheriff's Office or identify themselves in any way that could be reasonably perceived as representing the Storey County Sheriff's Office in order to do any of the following, unless specifically authorized by the Sheriff:

- (a) Endorse, support, oppose or contradict any political campaign or initiative.
- (b) Endorse, support, oppose or contradict any social issue, cause or religion.
- (c) Endorse, support or oppose any product, service, company or other commercial entity.
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group), is affiliated with this office, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Storey County Sheriff's Office.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or deputy associations, on political subjects and candidates at all times while off-duty. Employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

Storey County Sheriff's Office

Policy Manual

Employee Speech, Expression and Social Networking

Due to the need to secure discipline, mutual respect, trust, and efficiency among the ranks in the pursuit of the stated mission, any employee filing for candidacy of any local Storey County political office will be immediately placed on an unpaid leave of absence until the election.

If service by a member in any political office is or appears clearly inconsistent, incompatible, or in conflict with that person's duties as a member of the Sheriff's Office, as judged by the Sheriff, that employment must be terminated before the person assumes political office.

1060.5 PRIVACY EXPECTATION

Employees forfeit any expectation of privacy with regard to e-mails, texts or anything published or maintained through file-sharing software or any Internet site (e.g., Facebook, MySpace) that is accessed, transmitted, received or reviewed on any office technology system.

The Office reserves the right to access, audit and disclose for whatever reason any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Office, including the office e-mail system, computer network or any information placed into storage on any office system or device.

This includes records of all key strokes or web-browsing history made at any office computer or over any office network. The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if it is accessed through office computers or networks.

1060.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Sheriff or authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Office or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Office.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Office.

1060.7 TRAINING

Subject to available resources, the Office should provide training regarding employee speech and the use of social networking to all members of the Office.

Exhibit #3



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, Storey
County, State of Nevada,

Request for Opinion No. **16-54C**

CONFIDENTIAL
Pursuant to NRS 281A.440(8)

Subject. /

NOTICE OF ADDITIONAL ISSUES AND FACTS

Pursuant to NRS 281A.440(2), NAC 281A.410 and NAC 281A.415

In addition to the *Notice to Subject* provided to Subject Gerald Antinoro on June 17, 2016, NOTICE IS HEREBY GIVEN that the Nevada Commission on Ethics ("Commission") has identified relevant issues and facts beyond those presented in the original Third-Party Request for Opinion ("RFO"). Accordingly, Subject is hereby notified that the Commission's investigation has identified evidence that Subject appeared in a video endorsement for Michele Fiore wearing his Sheriff's uniform, which may implicate conduct contrary to NRS 281A.400(2) and (7) and NRS 281A.520.

Pursuant to NAC 281A.415 and NRS 281A.440(3), Subject may respond to these additional issues and facts in writing to the Commission addressed to 704 W. Nye Lane, Suite 204, Carson City, NV 89704, or via Email to my attention at ynevarez@ethics.nv.gov, not later than 30 days after receipt of this notice. Accordingly, the deadline to submit a written response to the additional allegations is September 7, 2016. A lack of response is not deemed an admission that the allegations are true.

Except as otherwise provided in NRS 281A.440, the Commission will hold its activities in response to this RFO confidential until its investigatory panel determines whether just and sufficient cause exists to hold a hearing and render an opinion. However, the Commission has no authority to require the requester to do so. As a result, information may appear in the media. The Commission will not be the source of any public information until the investigatory panel has completed its review and has rendered its determination. Subject will be provided notice of the Panel Determination.

Please contact me at (775) 687-5469 with any questions.

Dated this 2nd day of August, 2016.

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

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted, via Email, a true and correct copy of the **Notice of Additional Issues and Facts** regarding **RFO No. 16-54C** addressed as follows:

Katherine F. Parks, Esq.
Thorndal Armstrong et al
6590 S. McCarran Blvd., #B
Reno, Nevada 89509

Email: kfp@thorndal.com

Dated: August 2, 2016.



Employee, Nevada Commission on Ethics

Exhibit #4

JOHN L. THORNDAL
JAMES G. ARMSTRONG
CRAIG R. DELK
STEPHEN C. BALKENBUSH
PAUL F. EISINGER
CHARLES L. BURCHAM
BRIAN K. TERRY
ROBERT F. BALKENBUSH
PHILIP GOODHART
CHRISTOPHER J. CURTIS
KATHERINE F. PARKS
KEVIN R. DIAMOND
BRIAN M. BROWN

BRENT T. KOLVET**
THIERRY V. BARKLEY*
JOHN D. HOOKS
KEVIN A. PICK
MEGHAN M. GOODWIN
GREGORY M. SCHULMAN*
ALEXANDRA B. McLEOD
JOSEPH E. BALKENBUSH
DOUGLAS J. DUESMAN
CURTIS R. RAWLINGS*
KIRBY R. WELLS*
HEATHER L. TRUJILLO
SEAN D. COONEY
MADISON N. GREGOR
DANIEL J. MCCAIN

Of Counsel*
Special Counsel**



LAW OFFICES
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KATHERINE F. PARKS, ESQ.
RENO OFFICE
kfp@thorndal.com

September 6, 2016

RECEIVED

SEP 06 2016

COMMISSION
ON ETHICS

LAS VEGAS

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ELKO

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(775) 777-3011
FAX (775) 786-8004

JAMES J. JACKSON
(1958-2014)

Via Electronic Mail

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703

Re: Request for Opinion No. 16-54C

Dear Ms. Nevarez-Goodson:

Please allow this letter to serve as my client's response to your request for additional information in this matter.

At no time did my client participate in any videotaped endorsement of Michele Fiori. In the event Ms. Fiori used the likeness of Sheriff Antinoro in uniform in some form of video endorsement, it was done without the prior knowledge of my client. As such, there are no additional facts which implicate conduct prohibited by NRS 281A.400(2) and NRS 281A.520.

If you need any additional information, please do not hesitate to contact me.

Yours truly,

Katherine F. Parks

KFP/psb

cc: (Sheriff Gerald Antinoro via electronic mail)

Exhibit #5



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, Storey
County, State of Nevada,

Request for Opinion No. **16-54C**

Subject. /

PANEL DETERMINATION

NRS 281A.440(5); NAC 281A.440

The Nevada Commission on Ethics ("Commission") received Third-Party Request for Opinion ("RFO") No. 16-54C regarding the alleged conduct of Storey County Sheriff Gerald Antinoro ("Subject") in violation of the Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"), specifically, alleged violations implicate NRS 281A.400(2) and (7) and NRS 281A.520(1) and (3).¹ The RFO alleges that Subject used his official position and government time and resources to secure unwarranted advantages or preferences when he provided a letter using official letterhead to endorse a political candidate. The endorsement and a related video also appeared on the candidate's Facebook page with a photo of the Subject in his Sheriff's uniform.

As the elected Sheriff of Storey County, Subject serves as a public officer as defined in NRS 281A.160. The Commission has jurisdiction over the conduct of public officers and public employees pursuant to NRS 281A.280.

On October 19, 2016, pursuant to NRS 281A.440(5), an Investigatory Panel consisting of Commissioners Magdalena Groover and Barbara Gruenewald, Esq., reviewed the following: 1) RFO; 2) Subject's Response to the RFO; 3) Notice of Additional Issues and Facts; 4) Subject's Response to the Additional Issues and Facts; 5) Investigator's Report to Associate Counsel; and 6) Executive Director's Recommendation to the Investigatory Panel.

Under NAC 281A.435, the Panel unanimously finds and concludes that the facts establish credible evidence to substantiate just and sufficient cause for the Commission to render an opinion in the matter regarding the allegations pertaining to NRS 281A.400(7) with regard to Subject's use of official letterhead to make a political endorsement. Therefore, the Investigatory Panel refers the alleged violation of NRS 281A.400(7) to the Commission to hold a hearing and render an opinion. Under NRS 281A.440, a notice of hearing and a procedural order will follow.

///

///

¹ Pursuant to NRS 281A.440(2), NAC 281A.410 and NAC 281A.415, the Commission identified relevant issues and facts supporting the allegations beyond those presented in the original RFO and notified Subject accordingly.

However, under NAC 281A.435, the Panel unanimously finds and concludes that the facts do not establish credible evidence to substantiate just and sufficient cause for the Commission to consider the alleged violations pertaining to NRS 281A.400(2), NRS 281A.400(7) (regarding use of badge and uniform) and NRS 281A.520. The Commission's investigation revealed that Subject did not grant an advantage to himself or have a commitment in a private capacity to the interests of the candidate (NRS 281A.400(2)), or use government resources or cause a governmental entity to incur any expense to support the candidate with respect to the video and the photo of the Subject in uniform, which photo was used without Subject's permission (NRS 281A.400(7) and NRS 281A.520)). Therefore, these allegations are dismissed.

Dated: October 27, 2016

By: /s/ Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing via U.S. Postal Service Certified Mail through the State of Nevada mailroom, and via Email, a true and correct copy of the **PANEL DETERMINATION** regarding **RFO No. 16-54C** addressed as follows:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Judy A. Prutzman, Esq.
Associate Counsel
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703

Email: ynevarez@ethics.nv.gov

Email: jprutzman@ethics.nv.gov

Katherine F. Parks, Esq.
Thorndal Armstrong et al
6590 S. McCarran Blvd., #B
Reno, NV 89509
Attorney for Subject

Email: kfp@thorndal.com

Gerald Antinoro
Sheriff
Storey County
205 S. C. Street
P.O. Box 498
Virginia City, NV 89440

Certified Mail: 9171 9690 0935 0037 6423 55

Email: [gantinatoro@storeycounty.org](mailto:gantinoro@storeycounty.org)

Rick R. Hsu, Esq.
Maupin Cox Legoy,
Attorneys at Law
P.O. Box 30000
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Dated: October 27, 2016.



Employee, Nevada Commission on Ethics

Exhibit #6

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STATE OF NEVADA
COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct
of **Gerald Antinoro**, Sheriff of Storey
County, Nevada,

Request for Opinion No. 16-54C

Subject. /

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STIPULATED FACTS

The Executive Director, through Associate Counsel Judy A. Prutzman, Esq., and the Subject, through his counsel, Katherine F. Parks, Esq., have stipulated to the following facts in Third-Party Request for Opinion ("RFO") No. 16-54C before the Nevada Commission on Ethics ("Commission") concerning Gerald Antinoro ("Antinoro"), Sheriff of Storey County.

The parties agree to submit as evidence in this matter the following stipulated facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

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STIPULATED FACTS

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1. Gerald Antinoro ("Antinoro") is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
 2. Storey County is a political subdivision as defined in NRS 281A.145.
 3. The Storey County Sheriff's Office is a local agency as defined in NRS 281A.119.
 4. During the relevant time period, Nevada State Assemblywoman Michelle Fiore ("Fiore") was a United States Congressional candidate for Nevada's Third Congressional District in Clark County.
 5. On May 27, 2016, Fiore contacted Sheriff Antinoro by phone to request his endorsement of her candidacy for U.S. Congress.

- 1 6. Sheriff Antinoro prepared a three-paragraph statement endorsing Fiore's
- 2 candidacy (Exhibit 1), dated May 27, 2016, on his personal computer at his
- 3 home during his lunch hour.
- 4 7. The statement was typed on the official Storey County Sheriff's Office
- 5 letterhead and emailed to Fiore from Sheriff Antinoro's personal computer and
- 6 email account.
- 7 8. On May 27, 2016, Sheriff Antinoro's statement appeared in a YouTube video
- 8 that was tweeted on Fiore's Twitter account, @VoteFiore.
- 9 9. The YouTube video containing Sheriff Antinoro's statement was also posted
- 10 on Fiore's Facebook page on May 27, 2016.
- 11 10. Sheriff Antinoro did not produce the YouTube video or supply any of the other
- 12 images used in the video. Fiore did not contact Sheriff Antinoro to inform him
- 13 about the endorsement video.
- 14 11. Fiore was defeated in her campaign for U.S. Congress in the primary election
- 15 held on June 15, 2016.
- 16 12. Policy Number 213 of the Storey County Administrative Policies and
- 17 Procedures ("Storey County Policies") addresses political activity by
- 18 employees:

213: Political Activity

Employees shall not engage in political activity of any kind during working hours. This includes, but is not limited to: soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office. Wearing or displaying of apparel, buttons, insignia, or other items which advocate for or against a political candidate or a political cause is also an example of prohibited activity during working hours. Furthermore, no person shall attempt to coerce, commence, or require a person holding or applying for any position, office, or employment, including a citizen requesting service supplied by employer, to influence or to give money, service, or other valuable thing to aid, promote, or defeat any political committee, or to aid, promote, or defeat the nomination or election of any person to public office.

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1 Employees are expressly forbidden to use any employer
2 resources, including but not limited to: Interoffice mail, email,
3 telephone, fax machines, the Internet, or copy machines to engage
4 in any political activity outside the approved scope of the
5 employees' official duties.

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7 Employees who are seeking, or who have been elected or
8 appointed to public office, shall not conduct any business related
9 to these activities while on duty. This includes all the items listed in
10 the previous section, (i.e., political activity).

11 13. The Storey County Policies contain the following definition of "employee:"

12 **Employee:** A person employed in a budgeted position on a full- or
13 part-time basis. For purposes of those section of these policies
14 covering discipline, layoff, and dispute resolution, the term
15 employee excludes elected officials, department heads and casual
16 workers.

17 14. The Storey County Sheriff's Office has a policy regarding Employee Speech,
18 Expression and Social Networking that addresses endorsements:

19 1060.4.1 UNAUTHORIZED ENDORSEMENTS,
20 ADVERTISEMENTS, AND ACTIVITIES

21 While employees are not restricted from engaging in the following
22 activities as private citizens or as authorized members of a
23 recognized bargaining unit or deputy associations, employees may
24 not represent the Storey County Sheriff's Office or identify
25 themselves in any way that could be reasonably perceived as
26 representing the Storey County Sheriff's Office in order to do any
27 of the following, unless specifically authorized by the Sheriff:

- 28 (a) Endorse, support, oppose or contradict any political
campaign or initiative.

...

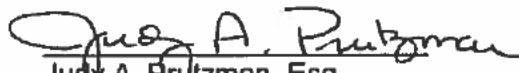
Additionally, when it can reasonably be construed that an
employee, acting in his/her individual capacity or through an
outside group or organization (e.g., bargaining group), is affiliated
with this office, the employee shall give a specific disclaiming
statement that any such speech or expression is not
representative of the Storey County Sheriff's Office.

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1 Employees retain their right to vote as they choose, to support
2 candidates of their choice and to express their opinions as private
3 citizens, including as authorized members of a recognized
4 bargaining unit or deputy associations, on political subjects and
5 candidates at all times while off-duty. Employees may not use their
6 official authority or influence to interfere with or affect the result of
7 an election or a nomination for office. Employees are also
8 prohibited from directly or indirectly using their official authority to
9 coerce, command or advise another employee to pay, lend or
10 contribute anything of value to a party, committee, organization,
11 agency or person for political purposes (5 USC § 1502).

12 DATED this 15th day of December, 2016.

13 FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
14 Executive Director, Commission on Ethics

15 
16 Judy A. Prutzman, Esq.
17 Associate Counsel

18 FOR GERALD ANTINORO
19 Subject

20 
21 Katherine F. Parks, Esq.

EXHIBIT 1



STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro
Sheriff

May 27, 2016

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPS, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro".

Gerald Antinoro

STATE OF NEVADA
BEFORE THE COMMISSION ON ETHICS

In the Matter of the Third-Party Request
For Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, Storey County,
State of Nevada,

Request for Opinion No. 16-54C

Subject.

GERALD ANTINORO'S OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT AND
CROSS-MOTION FOR SUMMARY JUDGMENT

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8 **STATE OF NEVADA**
9 **COMMISSION ON ETHICS**

10 In the Matter of the Third-Party Request for
11 Opinion Concerning the Conduct of **Gerald**
12 **Antinoro**, Sheriff, Storey County, State of
13 Nevada,

14 Subject.

Request for Opinion No. 16-54C

15 **GERALD ANTINORO'S OPPOSITION**
16 **TO MOTION FOR SUMMARY**
17 **JUDGMENT AND CROSS-MOTION**
18 **FOR SUMMARY JUDGMENT**

19 COMES NOW Subject, Gerald Antinoro, by and through his attorneys of record,
20 Thorndal Armstrong Delk Balkenbush & Eisinger, and pursuant to NAC 281A.265, hereby
21 submits his opposition to the Executive Director's Motion for Summary Judgment and Cross-
22 Motion for Summary Judgment.

23 **I**

24 **INTRODUCTION**

25 As noted by the Executive Director in her Motion for Summary Judgment, this matter
26 comes before the Commission on stipulated facts entered into between the parties on December
27 15, 2016. *See*, Exhibit "A," stipulated facts. The only issue to be decided by the Commission is
28 whether Sheriff Gerald Antinoro committed a violation of NRS 281A.400(7) when he endorsed
Michele Fiore in her candidacy for U.S. Congress on May 27, 2016. Ms. Fiore was, at that time,
a candidate for Nevada's Third Congressional District in Clark County, Nevada. Sheriff
Antinoro prepared a three paragraph statement in support of Ms. Fiore on his personal computer,

1 during his lunch hour. *See*, Exhibit "B," written statement. The statement was typed on
2 letterhead bearing a logo of the Storey County Sheriff's Office and identifies the Subject by his
3 title. *Id.* Sheriff Antinoro did not print out the statement but, rather, emailed the statement to
4 Ms. Fiore from his personal computer and email account. *See*, Exhibit "A," stipulated facts.
5 This conduct is the only basis for the claim that Sheriff Antinoro violated NRS 281A.400(7).
6

7 The Executive Director filed her Motion for Summary Judgment on March 1, 2017. As
8 the facts in this case are undisputed, the issues which remain for decision by the Commission are
9 questions of law and Sheriff Antinoro submits that the Executive Director's motion should be
10 denied and that judgment should be entered in his favor pursuant to NAC 281A.265.
11

12 II

13 PROCEDURAL FACTS

14 This case arises out of a third party Request for Opinion filed by Kris Thompson through
15 his attorney on June 2, 2016. *See*, Executive Director's Motion for Summary Judgment, Exhibit
16 "1." In same, the Requestor alleged that Sheriff Antinoro had engaged in conduct which violated
17 several provisions of Chapter 281A, including NRS 281A.400(2), NRS 281A.400(7), and NRS
18 281A.520 in endorsing Michele Fiore for U.S. Congress. *Id.* Sheriff Antinoro was notified of
19 the alleged violations and the undersigned responded to the RFO on behalf of Sheriff Antinoro
20 on July 26, 2016. *See*, Executive Director's Motion for Summary Judgment, Exhibit "2."
21

22 Thereafter, on August 2, 2016, Sheriff Antinoro was served with a Notice of Additional
23 Issues and Facts. *See*, Executive Director's Motion for Summary Judgment, Exhibit "3." This
24 notice related to the issue of Ms. Fiore's use of the above-described statement on YouTube and
25 Twitter and on Ms. Fiore's use of a YouTube video depicting the Sheriff wearing his uniform.
26 Sheriff Antinoro did not produce the YouTube video or supply any of the other images used in
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1 the video nor did Ms. Fiore contact Sheriff Antinoro to inform him about the endorsement video.
2 *See*, Exhibit "A," stipulated facts.

3 On October 27, 2016, a Panel Determination was issued on the grounds that just and
4 sufficient cause allegedly exists for the Commission to conduct a public hearing and render an
5 opinion on one claim only; that being whether Sheriff Antinoro violated NRS 281A.400(7) when
6 he authored and emailed the endorsement letter described above to Fiore. The Panel
7 Determination did not find credible evidence to substantiate just and sufficient cause to find, or
8 conduct a hearing on, the alleged violations of NRS 281A.400(2), NRS 281A.400(7)(regarding
9 use of a badge and uniform) and NRSA.520. These allegations were dismissed and one single
10 charge remains for the Commission's consideration.
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13 III

14 LEGAL ANALYSIS

15 I. Standard of Review

16 Summary judgment is proper under NRCP 56 when, based upon the pleadings,
17 depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly
18 before the court, no genuine issue of material fact exists, and the moving party is entitled to
19 judgment as a matter of law. *See, Wood v. Safeway, Inc.*, 121 Nev. 724,731, 121 P.3d 1026,
20 1031 (2005). Here, the parties have stipulated to the operative facts in this case and no genuine
21 issues exist as to same.
22

23 Further, in accordance with NRS 281A.480(9), the standard of proof to be applied to this
24 administrative proceeding is that of a preponderance of the evidence. A preponderance of the
25 evidence means such evidence as, when considered and compared with that opposed to it, has
26 more convincing force and the greater probability of truth. *See, Corbin v. State*, 111 Nev. 378,
27 380, 892 P.2d 580 (1995).
28

1 As shall be discussed in detail herein, the preponderance of the evidence in this matter,
2 which is undisputed, compels the denial of the Executive Director's Motion for Summary
3 Judgment and an order of the Commission granting judgment in favor of Gerald Antinoro as a
4 matter of law.

5 **II. Sheriff Antinoro's Actions did not Violate NRS 281A.400(7)**

6
7 The only issue which requires the attention of the Commission is whether Sheriff
8 Antinoro violated NRS 281A.400(7) in preparing the three paragraph endorsement statement and
9 emailing the same to Ms. Fiore. The statute at issue provides, in pertinent part, as follows:

10 7. Except for State Legislators who are subject to the restrictions set forth in subsection
11 8, a public officer or employee shall not use governmental time, property, equipment or
12 other facility to benefit a significant personal or pecuniary interest of the public officer or
employee. This section does not prohibit:

13 (a) A limited use of governmental property, equipment or other facility for
14 personal purposes if:

- 15 (1) The public officer or employee who is responsible for and has
16 authority to authorize the use of such property, equipment or other facility
17 has established a policy allowing the use or the use is necessary as a result
18 of emergency circumstances;
19 (2) The use does not interfere with the performance of the public officer's
or employee's public duties;
20 (3) The cost or value related to the use is nominal; and
21 (4) The use does not create the appearance of impropriety.

22 Nowhere in NRS 281A.400(7), nor anywhere else in Chapter 281A, does the Legislature
23 state that conduct of the type at issue in this case constitutes a violation of any ethical rules.
24 More specifically, nothing in Chapter 281A states that an elected official such as Sheriff
25 Antinoro may not engage in political speech of the type at issue here. The constitutional
26 ramifications of the Commission's decision to read such a prohibition into Chapter 281A will be
27 discussed in greater detail below. Irrespective of First Amendment considerations, Sheriff
28 Antinoro is entitled to judgment in his favor as a matter of law, as the stipulated facts and
evidence in this matter does not support a violation of NRS 281A.400.

1 A. *Sheriff Antinoro did not use "governmental time, property, equipment or other*
2 *facility" so as to implicate NRS 281A.400.*

3 First, there is no evidence here, let alone a preponderance of the evidence, which supports
4 the conclusion that Sheriff Antinoro used "governmental time, property, equipment or other
5 facility" when he prepared the statement at issue and emailed the same to Fiore.¹ It is undisputed
6 that Sheriff Antinoro prepared the statement over his lunch hour and on his personal computer.
7 *See, Exhibit "A."* The statement was not printed onto a single piece of paper but was emailed to
8 Fiore using Sheriff Antinoro's private email account. *Id.* The contention that the Sheriff's use of
9 letterhead bearing the name of the Storey County Sheriff's Office with a likeness of a badge
10 constituted use of "government property" is not supported by the prior decisions of the
11 Commission on which the Executive Director relies.

12 The Commission's decision in the *Matter of the Request for Opinion concerning the*
13 *conduct of Lonnie Hammargren* is illustrative on this point. *See, Comm'n Op. No. 95-35 (1995).*
14 In that case, prior to his election as the Lieutenant Governor of the State of Nevada in 1994,
15 Lonnie Hammargren was a licensed neurosurgeon. He was sued for medical malpractice in
16 1986. While the district court initially granted summary judgment in his favor in that
17 malpractice action, the Nevada Supreme Court reversed in *Hoopes v. Hammargren*, 102 Nev.
18 425, 725 P.2d 238 (1986). Hammargren continued to conduct his private medical practice even
19 after he took office.
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23 On April 25, 1995, Assembly Bill 520 was referred to the Assembly Committee on
24 Judiciary. As introduced, the bill advocated for sweeping changes to Nevada's medical
25 malpractice statutes. Among other things, the bill provided for attorney disclosures regarding
26 fees and caps on attorney's fees, revised the immunity from liability for civil damages for
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¹The term "facility, as is true with a number of critical terms set forth in Chapter 281A, is nowhere defined in Chapter 281A and appears to be so vague as to render this section constitutionally deficient.

1 persons who provide emergency obstetrical care and care to indigent persons, provided that any
2 punitive damages awarded to a plaintiff in a medical malpractice case would be paid to the State
3 for the benefit of the medically indigent, and capped the amount of damages recoverable for non-
4 economic losses. Advocates of the bill argued that its passage would have benefit to medical
5 malpractice insurance carriers by setting limits on their liability, thereby providing for decreased
6 malpractice insurance premiums.
7

8 On May 11th, 1995, Hammargren wrote and mailed a letter *to all Nevada licensed*
9 *physicians* on the official state letterhead of the Lieutenant Governor's office with
10 Hammargren's public offices as the lieutenant governor of the state and president of the senate.
11 The letter included his address at both the Capitol Building in Carson City and the Grant Sawyer
12 Building in Las Vegas. The letter was produced by Hammargren's state-employed staff and he
13 signed the letter using his official title as Lieutenant Governor. The letter advocated to its
14 recipients that they "ACT NOW," and urged them to "phone, write and FAX your Assemblyman
15 and your Senator, asking them to vote "yes" on AB 520. *Hammargren, supra.* at p. 2/5.
16 Hammargren went on to provide additional instructions as to where these particular constituents
17 should send their correspondence in support of the bill and commented that "we" have a good
18 chance to enact tort reform only if Nevada doctors were to "act now." *Id.* He also asked those in
19 receipt of his letter to copy him on their correspondence on the bill. As noted above, the letter
20 was signed by "LT GOVERNOR LONNIE HAMMARGREN." *Id.*
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23 Hammargren went on to testify before the Assembly Judiciary Committee on the subject
24 of AB 520. During his testimony, Hammargren declared that he was "emotionally involved"
25 with the issues addressed in AB 520 and commented that he was, "mad as Hell and was not
26 going to take it anymore." He also gave testimony about his own medical insurance premiums.
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1 At the time of his testimony before the Judiciary Committee, Hammargren was a defendant in a
2 pending medical malpractice lawsuit.

3 The issue presented to the Commission in *Hammargren* was whether Hammargren
4 violated the Nevada Ethics in Government Law by using state resources, including state
5 stationary, state-paid employees, and the title of Lieutenant Governor, in preparing and sending
6 the May 11th, 1995, letter to all physicians in Nevada. The Commission decided in the
7 affirmative. The Commission made note of the fact that Hammargren wrote the letter on state
8 letterhead and that his title was plainly displayed "and over which he signed his name." The
9 Commission further found that Hammargren had both a pecuniary and personal interest in the
10 passage of AB 520.
11

12 The digitally produced statement prepared by Sheriff Antinoro in this matter is in no way
13 comparable to the actions of Hammargren as described above.
14

15 The statement in question, while bearing the Sheriff's title and depicting a logo of the
16 Storey County Sheriff's Office, does not include the address of the Storey County Sheriff's
17 Office, in contrast to the letter sent to all physicians in Nevada by Hammargren. The statement
18 in question in this case was signed by "Gerald Antinoro," not by Gerald Antinoro, "Storey
19 County Sheriff." The statement in this case was digitally produced and emailed using Sheriff
20 Antinoro's private email address. It was not even reproduced on a piece of paper. The statement
21 in question is simply not akin to that at issue in Opinion No. 95-35 in which Hammargren's title
22 of Lieutenant Governor was "plainly displayed" and over which he signed his name. Under such
23 circumstances, it cannot be found that Sheriff Antinoro used government property in violation of
24 NRS 281A.400(7).
25

26 Nor is the matter of *In re: Kuzanek*, RFO 14-61C supportive of the finding of a willful
27 violation in this case. In that matter, Tim Kuzanek, Undersheriff of Washoe County and a
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1 candidate for Sheriff, had an official campaign website and a Facebook page which displayed a
2 picture of him in full sheriff's office dress uniform, along with a picture of his badge.² The
3 Commission made note of the fact that the Washoe County Sheriff's Office had a policy
4 prohibiting members of the Sheriff's Office from using County property as an endorsement for
5 political activity and County property as defined as including uniforms furnished by the Sheriff's
6 Office. Ultimately, it was determined (in a stipulated agreement), that Kuzanek had used the
7 physical accouterments of his office to bolster his own political campaign by displaying himself
8 in full dress uniform, along with his Undersheriff's badge.

10 As is true with respect to the facts presented by *Kirkland*, the facts before the
11 Commission in *Kuzanek* are simply not similar to those at issue in this matter and these decisions
12 demonstrate that Sheriff Antinoro did not violate NRS 281A.400(7) with respect to the
13 endorsement statement at issue.

15 ***B. Sheriff Antinoro's actions were not undertaken to benefit a "significant***
16 ***personal or pecuniary interest" within the meaning of NRS 281A.400(7).***

17 In her motion for summary judgment, the Executive Director argues that Sheriff
18 Antinoro's use of a digital image of the Storey County Sheriff's Office's letterhead compels a
19 finding that the Sheriff used governmental property in violation of NRS 281A.400(7). She then
20 turns to the limited exceptions set forth at NRS 281A.400(7)(a)(1)-(4). She does not address,
21 however, another condition precedent to finding a violation of the statute at issue; namely, that
22 the public officer or employee in question used such government property "to benefit a
23 significant personal or pecuniary interest." The Executive Director concedes that Sheriff
24 Antinoro's actions do not involve any pecuniary interest whatsoever. She does not address the
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²As is discussed herein, based upon recent advisory opinion from the U.S. Office of Special Counsel, Kuzanek's conduct was not in violation of the Hatch Act and was fully permissible under federal law.

1 fact that there is no evidence that the actions at issue were done to further a *significant personal*
2 *interest* of Sheriff Antinoro.

3 As with numerous other terms within Chapter 281A, the terms “significant” and
4 “personal” are not defined in the statute rendering them constitutionally deficient as vague. *See,*
5 *Dehne v. Avaino*, 219 F. Supp.2d 1096 (D. Nev. 2001). Notwithstanding, there is simply no
6 evidence, let alone a preponderance of the evidence, to suggest that Sheriff Antinoro’s single act
7 of emailing a three paragraph statement to Ms. Fiore, a candidate for Nevada’s Third
8 Congressional District in Clark County (at the other end of the state from Storey County) was
9 done to further a “significant personal interest.” The comparison between the actions of Dr.
10 Hammagren, who used his title and official stationery to advocate for a bill in which he had a
11 stated personal (and pecuniary) interest, is stark. NRS 281A.400(7) requires that the actions of
12 the public officer or employee be done in furtherance of a *significant personal interest*. The
13 Executive Director provides no evidence on this required element, nor is there any such
14 evidence, so as to support a violation of NRS 281A.400(7). Given that the Legislature saw fit to
15 qualify the terms “personal” and “pecuniary” with the term “significant,” one cannot simply
16 presume the existence of such an interest without evidence. Accordingly, summary judgment
17 must be entered in favor of Sheriff Antinoro.

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21 **C. *Sheriff Antinoro’s actions do not create the appearance of impropriety and are***
22 ***not in violation of NRS 281A.400(7) under legal precedent established by the***
23 ***Commission.***

24 Rather than support the Executive Director’s position, the Commission’s decision in the
25 *Matter of the Request for Opinion Concerning Richard Kirkland*, Comm’n Op. No. 95-41, cited
26 by the Executive Director in her motion, actually compels entry of summary judgment in favor
27 of Sheriff Antinoro. *Kirkland* involved the issue of then-Washoe County Sheriff Richard
28 Kirkland’s endorsement of Justice James Hardesty for district court judge. Sheriff Kirkland’s

1 endorsement included participation in an advertisement which showed him in uniform with his
2 name and title mentioned, as well as other sheriffs' employees working with county jail inmates
3 in their black and white striped jail uniforms while Sheriff Kirkland described programs he and
4 his department had instituted with a brief endorsement of Justice Hardesty at the end of the
5 advertisement. Sheriff Kirkland made two commercials on behalf of Justice Hardesty, one
6 during his lunch hour and one prior to the time Sheriff Kirkland began his shift. The
7 Commission found that Sheriff Kirkland had been very careful in how and when he filmed his
8 portion of the advertisements at issue and that there was no cost to the public for either his
9 participation or the filming of his deputies.

11
12 The Commission then turned to an analysis of whether the facts supported a violation of
13 NRS 281.481(7), the predecessor of the statute at issue in this case, and whether Sheriff Kirkland
14 used governmental time, property, equipment or other facility to benefit his personal or financial
15 interests. In so doing, and as is the case here, the Commission focused on whether the sheriff's
16 actions created the appearance of impropriety.

17
18 In addressing this question, the Commission recognized the fundamental principle that
19 the First Amendment of the United States Constitution protects political speech but noted that
20 such First Amendment rights are not absolute when it comes to federal, and some state and
21 municipal employees. In that regard, the Commission cited to the Hatch Act and its prohibition
22 against federal, and some state and municipal, employees from using their official authority or
23 influence for the purpose of interfering with or affecting the result of an election. *See*, 5 U.S.C.
24 §1502(a)(1); *see also*, 5 U.S.C. §7324(a)(1). The Hatch Act commonly refers to two laws passed
25 in 1939 and 1940 which restrict the political activities of public employees.³ *See, Bauers v.*
26 *Cornett*, 865 F.2d 1517, 1521 (8th Cir. 1989). "The Hatch Act was passed by Congress to
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³Subsequent statutory changes have narrowed the reach of the Hatch Act as it applies to state and local employees and 1974 amendments to the Act removed the prohibition against allowing state and local employees to take an active part in a campaign. *Broderick, supra*. at 1523.

1 address particular forms of political party corruption and coercion perpetrated by, and
2 victimizing federal, state and local employees.” *Id.* at 1520-21.

3 The Commission further noted that Washoe County had adopted its own version of the
4 Hatch Act, as have many states, counties and municipalities. These regulations, often called
5 “little Hatch Acts,” also seek to prohibit or limit the political activities of its employees.
6 Although Storey County has not adopted such a prohibition in the form of an ordinance, the
7 personnel policies of Storey County and the Storey County Sheriff’s Office do address political
8 speech of its covered employees.⁴

10 In Kirkland, the Commission determined that its analysis turned on whether Sheriff
11 Kirkland’s “use of his title, position, uniform, badge, or employees in his endorsement
12 advertisements created the ‘appearance of impropriety.’” *Kirkland, supra.* at p. 4. The
13 Commission concluded that it was incontrovertible that it would never be proper for a
14 government agency to endorse a candidate and, as such, it followed that its elected officials
15 could not create the impression of government sanction. “It is for this reason that the Hatch Act
16 and the little Hatch Acts . . . prohibit or limit certain political activities for government actors.”
17
18 *Id.* The Commission then found as follow:

20 “We find that some aspects of Mr. Kirkland’s endorsement advertisements could create
21 such an appearance of impropriety. In particular, we find that the use of his uniform,
22 badge, and his uniformed deputies creates an improper appearance that his endorsement
23 was an official endorsement by Washoe County or the Washoe County Sheriff’s Office.
24 This is especially problematic where the office for which Mr. Kirkland’s endorsement
25 was district judge.”

26 *Id.*

27 The Commission went on to state that the use by Sheriff Kirkland of his “uniform and
28 badge” were the “critical difference.” Had Sheriff Kirkland used only his name and official title

⁴Storey County’s definition of “employee” excludes elected officials, department heads and causal workers from its definition for purposes of certain sections. Sheriff Antinoro, as an elected official, is responsible for enacting policy at the Sheriff’s Office.

1 in the advertisement he would not, in the opinion of the Commission, have run afoul of NRS
2 281A.400(7) and would not have created the appearance of impropriety. Thus, the Commission
3 cautioned that a public officer should not use "his uniform, badge, employees, private office, or
4 other non-public facilities for the purposes of making an endorsement advertisement." *Id.*

5 The actions of Sheriff Antinoro in sending the statement in question do not, under the
6 Commission's own precedent, constitute actions which create the appearance of impropriety in
7 violation of NRS 281A400(7)(a)(4). To the contrary, Sheriff Antinoro's conduct falls within that
8 which was held to be permissible by this Commission in that he used his name and official title
9 in his endorsement of Ms. Fiore.
10

11 Further, while certainly thorough, the Commission's decision in *Kirkland* was rendered
12 in 1998. More recent guidance from the U.S. Office of Special Counsel (OSC), the agency
13 charged with interpreting the Hatch Act, suggests that Sheriff Antinoro acted well within his
14 First Amendment rights in engaging in the conduct at issue and in accordance with the
15 requirements of the Hatch Act. The OSC was formed in 1979 as the investigative and
16 prosecutorial arm of the Merit Systems Protection Board (MSPB). The OSC, now an
17 independent agency, is the entity authorized to issue advisory opinions and investigate violations
18 of the Hatch Act pursuant to 5 U.S.C. §1216(a)(2).
19

20 On February 29, 2012, the OSC issued a response to a request for an advisory opinion on
21 the issue of whether an incumbent sheriff may wear his uniform to political events such as
22 rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials.
23 *See*, Exhibit "C," February 29, 2012, advisory opinion. In its opinion, the OSC began by noting
24 that it had recently reevaluated issues associated with participation by elected officials in such
25 conduct as it relates to the Hatch Act. *Id.* at p. 1. Specifically, the OSC stated that elected
26 officials such as a sitting sheriff would not violate the Hatch Act by wearing their uniforms or
27
28

1 using their titles while campaigning for reelection. *Id.* The OSC extended this reasoning to the
2 actions of an elected sheriff while participating in campaign activities on behalf of other
3 candidates running for office. Specifically, the OCS stated that an elected official who used his
4 title when endorsing a partisan candidate and/or wore his or her uniform while campaigning for
5 another candidate would not be in violation of the Hatch Act. *Id.* at p. 2. The OSC further
6 extended this reasoning to apply to in-person campaign events, campaign advertisements, and
7 political correspondence and concluded that a sheriff could attend fundraisers and solicit
8 contributions while wearing his or her uniform and identifying himself or herself as the sheriff.
9 *Id.* While noting that a sheriff covered by the Hatch Act is still prohibited from “coercing or
10 attempting to coerce other employees into making political contributions,” the OSC concluded
11 that an elected sheriff could participate in campaign activities of others without running afoul of
12 federal law.
13
14

15 As noted above, Storey County has not enacted a “little Hatch Act.” However, to the
16 extent the personnel policies of the County and the Sheriff’s Office resemble little Hatch Acts, as
17 they restrict political activity of County employees, the conduct at issue in this case would not
18 violate them. Given the OSC’s reevaluation of this issue, and its conclusion that a sitting sheriff
19 may actually campaign, in uniform and using his official title, both at in-person campaign events
20 and in campaign advertisements and political correspondence, it simply cannot be found that
21 Sheriff Antinoro acted improperly under the circumstances or in such a manner as would create
22 the appearance of impropriety. As such, Sheriff Antinoro, and not the Executive Director, is
23 entitled to summary judgment in this matter.
24
25

26 **III. Any Determination that the Conduct at Issue was in Violation of NRS 281A.400(7)**
27 **would be in Violation of the First Amendment of the United States Constitution.**

28 The First Amendment of the United States Constitution provides that Congress “shall
make no law . . . abridging the freedom of speech” and this prohibition is applicable to the states

1 by virtue of the Fourteenth Amendment.⁵ See, *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1658
2 (2015). The United States Supreme Court has repeatedly held that, “[t]he First Amendment has
3 its fullest and most urgent application to speech uttered during a campaign for political office.”
4 *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2009). “As we have long recognized, speech
5 about public issues and the qualifications of candidates for elected office commands the highest
6 level of First Amendment protection.” See, *Eu v. San Francisco County Democratic Cent.*
7 *Comm.*, 489 U.S. 214, 282 (1989). The Courts have cautioned that this principle requires them
8 to “err on the side of protecting political speech rather than suppressing it.” *FEC v. Wis. Right to*
9 *Life, Inc.*, 551 U.S. 449, 457 (2007). The United States Supreme Court has further held that an
10 “exacting scrutiny” must be applied to laws restricting such speech. *Williams-Yulee, supra.* at
11 1664. As such, in order for NRS 281A.400(7) to be used in such a way as to prohibit the
12 political speech at issue, it must be shown that the statute is narrowly tailored to serve a
13 compelling government interest. *Id.* at 1665. While the United States Supreme Court has held
14 that the government has an interest in regulating the conduct and speech of its employees, in this
15 case, that interest is not outweighed by the wholesale infringement on the First Amendment
16 rights of the Subject.

17
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19
20 ***A. NRS 281A.400(7) is unconstitutionally vague.***

21 First, to the extent the Commission decides to impose such an enormous restriction on
22 core First Amendment rights by application of NRS 281A.400(7), that statute is
23 unconstitutionally vague. NRS 281A.480 permits the Commission to assess civil penalties
24 against a subject of up to \$5,000.00 for a single willful violation of Chapter 281A. See, NRS
25 281A.480(1)(a). That statute provides further punitive powers to the Commission, including the
26 power to file a complaint in court for the removal of a public officer if he or she is found to have
27
28

⁵See also, Article 1, Section 9 of the Nevada Constitution.

1 committed "fewer than three willful violations" of Chapter 281A. *See*, NRS 281A.480(4)(c)(1).
2 These punitive powers of the Commission are significant yet NRS 281A.400(7) gives no
3 guidance to public officials as to *what conduct* is prohibited under the statute. While the term
4 "pecuniary interest" is defined in Chapter 281A, the terms "significant" and "personal" are not.
5 *See*, NRS 281A.139 and Chapter 281A generally. Nor is there guidance in the statute in terms of
6 a definition for "appearance of impropriety." *See*, NRS 281A.400(7) and Chapter 281A
7 generally.

8
9 Nowhere in Chapter 281A did the Legislature see fit to include a prohibition against
10 political speech by public officials. Further, the terms set forth in NRS 281A.400(7) discussed
11 above are not defined and are vague as a matter of law. The vagueness doctrine requires
12 legislatures to set reasonably clear guidelines for enforcement officials in order to prevent
13 arbitrary and discriminatory enforcement of the law. *See, Smith v. Goguen*, 415 U.S. 566, 572-
14 73 (1974). A vague statute is one which operates to hinder free speech through the use of
15 language so vague as to allow the inclusion of protected speech in its prohibition or to leave the
16 individual with no clear guidance as to the nature of the acts which are subject to punishment.
17 "Where First Amendment rights are involved, an even greater degree of specificity is required."
18 *Id.* at 573.

19
20
21 In this case, the Commission seeks to impose a tremendous burden on the Subject's First
22 Amendment rights using statutory language which falls well short of providing fair notice as to
23 the conduct it punishes. As such, NRS 281A.400(7) is unconstitutionally vague.

24
25 ***B. NRS 281A.400(7) is unconstitutional as applied to Sheriff Antinoro under the***
26 ***circumstances of this case.***

27 Further, the use of NRS 281A.400(7) to punish the conduct at issue in this case is
28 unconstitutional and in violation of the First Amendment of the United States Constitution as
applied to Sheriff Antinoro. While the government may regulate speech of public employees to

1 a greater extent than that of citizens at large, in this case, punishment of the core political speech
2 of the subject under the circumstances goes much too far. Sheriff Antinoro's three paragraph
3 endorsement of Michele Fiore is unquestionably core political speech entitled to the highest level
4 of First Amendment protection. *See, Eu, supra.* at 282. The endorsement goes no further than to
5 identify the Subject as the Sheriff of Storey County, an action which is permissible even under
6 the prior decisions of this Commission. The fact that the endorsement was typed on letterhead
7 bearing the logo of the Storey County Sheriff's Office cannot be used by the Commission as a
8 means of punishing Sheriff Antinoro's core First Amendment right to engage in speech on
9 political issues and matters of public concern. To punish the conduct at issue here would be in
10 gross violation of the First Amendment.
11

12
13 ***C. NRS 481A.400(7) is unconstitutionally overbroad.***

14 NRS 281A.400(7) also fails from a constitutional standpoint because it is
15 unconstitutionally overbroad. A statute is overbroad when its language, given its normal
16 meaning, is so sweeping that its sanctions may be applied to constitutionally protected conduct
17 which the state is not permitted to regulate. *See, Dehne, supra.* at 1102. The danger inherent in
18 overbroad statutes is that such statutes provide the government with practically unbridled
19 administrative and prosecutorial discretion that may result in selective prosecution. Thus,
20 overbroad statutes may undesirably dissuade persons from exercising their rights by chilling
21 protected speech or expression. *See, Bates v. State Bar of Arizona*, 433 U.S. 350, 380 (1977).
22 As the courts have recognized, the threat to free expression created by overbroad statutes is that,
23 by potentially sweeping in constitutionally protected activity, individuals and groups may self-
24 censor out of fear of vindictive or selective prosecution. *Id.*

25 Use of NRS 281A.400(7)(a)(4)'s prohibition against a public employee engaging in
26 conduct which might "create an appearance of impropriety" simply cannot be used in such a
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28

1 sweeping fashion so as to foreclose Sheriff Antinoro's core political speech. Such a result
2 compels the conclusion that NRS 281A.400(7) is unconstitutionally overbroad. Certainly,
3 application of NRS 281A.400(7) to Sheriff Antinoro under the circumstances at bar acts in such
4 a manner as to dissuade those subject to the Act, including Sheriff Antinoro, from exercising
5 their core First Amendment rights. Such an application is not constitutionally permitted and
6 NRS 281A.400(7) fails under the overbreadth doctrine.
7

8 IV

9 CONCLUSION

10 Based on all of the following, Sheriff Antinoro respectfully requests that the Executive
11 Director's motion for summary judgment be denied. Further, Sheriff Antinoro submits that the
12 undisputed facts in this matter, when weighed under the preponderance of the evidence standard,
13 compel the issuance of an order granting judgment in his favor as a matter of law.
14

15
16 DATED this 13th day of March, 2017.

17 THORNDAL ARMSTRONG
18 DELK BALKENBUSH & EISINGER

19 By: 

Katherine F. Parks, Esq.

State Bar No. 6227

6590 S. McCarran Blvd., Suite B

Reno, Nevada 89509

(775) 786-2882

kfp@thorndal.com

20 ATTORNEYS FOR GERALD ANTINORO
21
22
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CERTIFICATE OF SERVICE

I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **GERALD ANTINORO'S OPPOSITION AND CROSS-MOTION FOR SUMMARY JUDGMENT** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ electronic mail

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
ynevarez@ethics.nv.gov

Judy A. Prutzman, Esq.
Associate Counsel
Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
jprutzman@ethics.nv.gov

DATED this 13 day of March, 2017.



An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

EXHIBIT “A”

EXHIBIT “A”

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STATE OF NEVADA
COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct Request for Opinion No. 16-54C
of Gerald Antinoro, Sheriff of Storey
County, Nevada,

Subject. /

STIPULATED FACTS

The Executive Director, through Associate Counsel Judy A. Prutzman, Esq., and the Subject, through his counsel, Katherine F. Parks, Esq., have stipulated to the following facts in Third-Party Request for Opinion ("RFO") No. 16-54C before the Nevada Commission on Ethics ("Commission") concerning Gerald Antinoro ("Antinoro"), Sheriff of Storey County.

The parties agree to submit as evidence in this matter the following stipulated facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

STIPULATED FACTS

1. Gerald Antinoro ("Antinoro") is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
2. Storey County is a political subdivision as defined in NRS 281A.145.
3. The Storey County Sheriff's Office is a local agency as defined in NRS 281A.119.
4. During the relevant time period, Nevada State Assemblywoman Michelle Fiore ("Fiore") was a United States Congressional candidate for Nevada's Third Congressional District in Clark County.
5. On May 27, 2016, Fiore contacted Sheriff Antinoro by phone to request his endorsement of her candidacy for U.S. Congress.

- 1 6. Sheriff Antinoro prepared a three-paragraph statement endorsing Fiore's
2 candidacy (Exhibit 1), dated May 27, 2016, on his personal computer at his
3 home during his lunch hour.
- 4 7. The statement was typed on the official Storey County Sheriff's Office
5 letterhead and emailed to Fiore from Sheriff Antinoro's personal computer and
6 email account.
- 7 8. On May 27, 2016, Sheriff Antinoro's statement appeared in a YouTube video
8 that was tweeted on Fiore's Twitter account, @VoteFiore.
- 9 9. The YouTube video containing Sheriff Antinoro's statement was also posted
10 on Fiore's Facebook page on May 27, 2016.
- 11 10. Sheriff Antinoro did not produce the YouTube video or supply any of the other
12 images used in the video. Fiore did not contact Sheriff Antinoro to inform him
13 about the endorsement video.
- 14 11. Fiore was defeated in her campaign for U.S. Congress in the primary election
15 held on June 15, 2016.
- 16 12. Policy Number 213 of the Storey County Administrative Policies and
17 Procedures ("Storey County Policies") addresses political activity by
18 employees:

19 213: Political Activity

20 Employees shall not engage in political activity of any kind during
21 working hours. This includes, but is not limited to: soliciting money,
22 influence, service, or any other valuable thing to aid, promote, or
23 defeat any political committee or the nomination or election of any
24 person to public office. Wearing or displaying of apparel, buttons,
25 insignia, or other items which advocate for or against a political
26 candidate or a political cause is also an example of prohibited
27 activity during working hours. Furthermore, no person shall attempt
28 to coerce, commence, or require a person holding or applying for
any position, office, or employment, including a citizen requesting
service supplied by employer, to influence or to give money,
service, or other valuable thing to aid, promote, or defeat any
political committee, or to aid, promote, or defeat the nomination or
election of any person to public office.

.....

///

1 Employees are expressly forbidden to use any employer
2 resources, including but not limited to: interoffice mail, email,
3 telephone, fax machines, the Internet, or copy machines to engage
4 in any political activity outside the approved scope of the
5 employees' official duties.

6

7 Employees who are seeking, or who have been elected or
8 appointed to public office, shall not conduct any business related
9 to these activities while on duty. This includes all the items listed in
10 the previous section, (i.e., political activity).

11 13. The Storey County Policies contain the following definition of "employee:"

12 **Employee:** A person employed in a budgeted position on a full- or
13 part-time basis. For purposes of those section of these policies
14 covering discipline, layoff, and dispute resolution, the term
15 employee excludes elected officials, department heads and casual
16 workers.

17 14. The Storey County Sheriff's Office has a policy regarding Employee Speech,
18 Expression and Social Networking that addresses endorsements:

19 **1060.4.1 UNAUTHORIZED ENDORSEMENTS,**
20 **ADVERTISEMENTS, AND ACTIVITIES**

21 While employees are not restricted from engaging in the following
22 activities as private citizens or as authorized members of a
23 recognized bargaining unit or deputy associations, employees may
24 not represent the Storey County Sheriff's Office or identify
25 themselves in any way that could be reasonably perceived as
26 representing the Storey County Sheriff's Office in order to do any
27 of the following, unless specifically authorized by the Sheriff:

- 28 (a) Endorse, support, oppose or contradict any political
campaign or initiative.

...


Additionally, when it can reasonably be construed that an
employee, acting in his/her individual capacity or through an
outside group or organization (e.g., bargaining group), is affiliated
with this office, the employee shall give a specific disclaiming
statement that any such speech or expression is not
representative of the Storey County Sheriff's Office.

///

1 Employees retain their right to vote as they choose, to support
2 candidates of their choice and to express their opinions as private
3 citizens, including as authorized members of a recognized
4 bargaining unit or deputy associations, on political subjects and
5 candidates at all times while off-duty. Employees may not use their
6 official authority or influence to interfere with or affect the result of
7 an election or a nomination for office. Employees are also
8 prohibited from directly or indirectly using their official authority to
9 coerce, command or advise another employee to pay, lend or
10 contribute anything of value to a party, committee, organization,
11 agency or person for political purposes (5 USC § 1502).

12 DATED this 15th day of December, 2016.

13 FOR YVONNE M. NEVAREZ-GOODSON, ESQ.
14 Executive Director, Commission on Ethics

15 
16 Judy A. Pritzman, Esq.
17 Associate Counsel

18 FOR GERALD ANTINORO
19 Subject

20 
21 Katherine F. Parks, Esq.

EXHIBIT “B”

EXHIBIT “B”



STOREY COUNTY SHERIFF'S OFFICE

Gerald Antinoro
Sheriff

May 27, 2016

I am proud to endorse Michele Fiore for Congress. Michele Fiore sponsored and supported any legislation our law enforcement community needed in both of her terms in Carson City. Michele Fiore supports law enforcement, and peace officers across the state support and endorse her.

I have gotten to know Assemblywoman Fiore through her work in Carson City and I have nothing but respect for her. I know she does not advocate armed conflict with peace officers and that she has always been very supportive of law enforcement in our state. I also know from personal experience that NAPSU, who recently came out against Michele Fiore, do not always present factual information and do not speak for their entire membership, but in the interest of their leaders.

Nevada needs Michele Fiore in Congress. I know she is not afraid to take the fight to Washington D.C. I have watched her ask the tough questions in Carson City and fight for what is right for the people of Nevada. I have no doubt that she will continue to do so in Congress. I know she will continue to support all our first responders in Washington D.C. Michele's record of fighting for our second amendment rights and our law enforcement speaks for itself. I encourage everyone in Congress District 3 to vote for Michele Fiore!

A handwritten signature in black ink, appearing to read "Gerald Antinoro".

Gerald Antinoro

EXHIBIT “C”

EXHIBIT “C”



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 29, 2012

XXXXXX XXXXXXXX
Assistant XXXXXXXXXX County Attorney
XXXXX XXXXXXXX XXXX
XXXXXXXX, XX XXXXXX

Re: OSC File No. AD-12-XXXX

Dear Xx. XXXXXXXX:

This letter responds to your request for an advisory opinion concerning the Hatch Act. The Office of Special Counsel (OSC) is authorized pursuant to 5 U.S.C. § 1212(f) to issue opinions interpreting the Act. Specifically, you ask whether an incumbent sheriff may wear his uniform to political events such as rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials. You also ask whether a sheriff may use his title in political correspondence or in connection with fundraising activities. Finally, you ask if it makes a difference whether the sheriff engages in these activities while running for reelection, running for another elected office, or while campaigning for another candidate altogether. For purposes of this opinion, you ask OSC to assume that the sheriff is subject to the Hatch Act's restrictions. As explained in more detail below, the Act generally would not prohibit any of the activities you enumerate in your request.

State and local employees who are covered by the Hatch Act are prohibited from using their official authority or influence to interfere with or affect the result of an election or a nomination for office.¹ 5 U.S.C. § 1502(a)(1). Federal employees are subject to the same restriction. See 5 U.S.C. § 7323(a)(1). The Hatch Act regulation that applies to federal employees states that an improper use of official authority or influence occurs when employees use their official titles while participating in political activity. 5 C.F.R. § 734.302(b)(1). In determining whether the use of official title by state and local employees violate the Hatch Act, OSC uses the aforementioned regulation for federal employees as guidance. Thus, OSC generally concludes that state and local employees violate the Hatch Act when they use their official titles, or otherwise trade on the influence of their positions by, for example, wearing their official uniforms, while engaged in political activity.

As you know, OSC recently reevaluated this conclusion as it applies to elected officials who are covered by the Hatch Act. Specifically, in recognition of the fact that they hold partisan political office, OSC reasoned that they would not violate the Hatch Act by wearing their uniforms or using their titles while campaigning for reelection. OSC took into account the fact that Congress gave greater latitude to individuals who are covered by the Hatch Act due to their

¹ In addition, state and local employees are prohibited from coercing other employees into making political contributions and from being candidates in partisan elections. 5 U.S.C. § 1502(a)(2)-(3).

elected positions when it exempted them from the candidacy prohibition to which other state and local employees are subject. See 5 U.S.C. § 1502(c). Moreover, the Hatch Act regulations that apply to federal employees do not contemplate a scenario where an employee would be covered by virtue of his elective office. Cf. 5 U.S.C. § 7322(1) (expressly excluding the President and Vice President from Hatch Act coverage). Thus, those regulations do not translate smoothly to the state and local arena, where many elected officials are covered by the Hatch Act.

We also note that the provision exempting individuals holding elected office from the candidacy prohibition is not limited to reelection bids. Thus, a sheriff who is covered by the Hatch Act would not be prohibited from running for another elected office. Accordingly, the rationale OSC has articulated with respect use of one's official title and uniform during a reelection campaign also applies when the official runs for some other partisan political office.

OSC's reasoning also extends to an elected official's other political activities, i.e., activities not in furtherance of his own reelection. Indeed, in allowing these elected officials to run as representatives of political parties, Congress presumably anticipated that they would endorse other candidates running under their political party's banner. If these elected officials are permitted to use their official titles in their own partisan campaigns, OSC can identify no unique harm that would result if they do the same when endorsing other partisan candidates. Arguably, an elected official's use of his title when campaigning for himself and other partisan candidates is a natural and foreseeable incident of the elected official being permitted to run for partisan office. Therefore, it does not appear that an elected official's use of his title when endorsing a partisan candidate would violate the Hatch Act. In the case of a sheriff, wearing his uniform while campaigning for another candidate also would be permissible.

These principles apply to in-person campaign events, campaign advertisements, and political correspondence. Likewise, a sheriff could attend fundraisers and solicit contributions while wearing his uniform and identifying himself as the sheriff. We note, however, that a sheriff covered by the Hatch Act still is prohibited from coercing or attempting to coerce other employees into making political contributions. See 5 U.S.C. § 1502(a)(2). Asking a subordinate to make a political contribution or volunteer for a political campaign is considered inherently coercive. Special Counsel v. Acconcia, (CB-1216-06-0007-T-1, February 26, 2007 (Initial Decision at 9), rev'd on other grounds, 107 M.S.P.R. 60 (2007), citing Special Counsel v. Purnell, 37 M.S.P.R. 184, 195 (1988), aff'd sub nom. Fela v. Merit Sys. Prot. Bd., 730 F. Supp. 779 (N.D. Ohio 1989). Where the supervisor-subordinate relationship exists, no particular words are required to establish coercion because virtually any language can be threatening. Special Counsel v. Gallagher, 44 M.S.P.R. 57, 76 (1990). Thus, sheriffs should not ask their employees to contribute to political campaigns.

Similarly, while OSC concludes that the use of official authority prohibition would not preclude a sheriff from wearing his uniform and using his official title while campaigning, this provision of the Hatch Act would prohibit him from soliciting the uncompensated volunteer services of a subordinate employee. See 5 C.F.R. § 734.302. Therefore, he must not ask his employees to support his campaign or the campaign of another candidate.

U.S. Office of Special Counsel
Page 3

We hope this opinion adequately addresses your questions. Please contact me at (202) 254-3642 if we can be of further assistance.

Sincerely,

/s/

Carolyn S. Martorana
Attorney, Hatch Act Unit

STATE OF NEVADA

BEFORE THE COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct
of **Gerald Antinoro**, Sheriff, Storey
County, State of Nevada,

Request for Opinion No. 16-54C

Subject. /

EXECUTIVE DIRECTOR'S

OPPOSITION TO ANTINORO'S CROSS-MOTION FOR SUMMARY JUDGMENT

AND

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

1 Judy A. Prutzman, Esq. (#6078)
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3 Nevada Commission on Ethics
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9 **STATE OF NEVADA**

10 **BEFORE THE COMMISSION ON ETHICS**

11 In the Matter of the Third-Party Request
12 for Opinion Concerning the Conduct
13 of **Gerald Antinoro**, Sheriff, Storey
14 County, State of Nevada,

Request for Opinion No. 16-54C

15 Subject. /

16 **OPPOSITION TO ANTINORO'S CROSS-MOTION FOR SUMMARY JUDGMENT**
17 **AND**
18 **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

19 Yvonne M. Nevarez-Goodson, Esq., Executive Director of the Nevada
20 Commission on Ethics ("Commission"), by and through the Commission's Associate
21 Counsel, Judy A. Prutzman, Esq., hereby submits her Opposition to Antinoro's Cross-
22 Motion for Summary Judgment and a Reply in Support of the Motion for Summary
23 Judgment submitted on March 9, 2017.

24 **INTRODUCTION**

25 Sheriff Antinoro violated the Ethics in Government Law when he produced a
26 letter of endorsement for Michelle Fiore, a candidate for U.S. Congress, on the official
27 letterhead of the Storey County Sheriff's Office. The letter was electronically
28 transmitted to Fiore, who included the letter in a video that was posted on her social
media sites and viewable by more than 7,000 individuals. If the Commission does not
conclude that Antinoro's conduct violated Ethics Law, it will erode the Legislature's

1 directive for an appropriate separation between the roles of persons who are both
2 public servants and private citizens.

3 This is not a complicated case. This RFO presents clear, undisputed facts and
4 requires the Commission to examine one simple question: “Does a public officer
5 violate NRS 281A.400(7) when he digitally produces a letter of endorsement for a
6 political candidate on the official letterhead of his public office?” In opposing the
7 Executive Director’s Motion for Summary Judgment, Antinoro asks the Commission to
8 determine that he did not use government property because his endorsement letter
9 was digitally produced and not printed on a single piece of paper. Antinoro also asks
10 the Commission to find that his endorsement of Fiore cannot be considered a
11 “significant personal interest” within the meaning of NRS 281A.400(7). Remarkably,
12 Antinoro characterizes his political interests as insignificant, despite his position that
13 his endorsement letter amounts to political speech entitled to the highest level of
14 constitutional protection.

15 If the Commission accepts Antinoro’s position, the official letterheads of all
16 public agencies could be digitally reproduced and widely distributed electronically by
17 any public officer or employee who wishes to use the letterhead for political purposes.
18 This is an absurd result that the Commission should avoid. *See City Plan Dev. v.*
19 *State, Labor Comm’r*, 121 Nev. 419, 435, 117 P.3d 182, 192 (2005) (When
20 interpreting a statute, a court should look to the policy and spirit of the law and will
21 seek to avoid an interpretation that leads to an absurd result).

22 Finally, Antinoro asks the Commission to apply non-binding federal law and
23 guidance to Nevada’s Ethics Law to conclude that Nevada’s elected sheriffs may use
24 the official letterhead of their agencies for political endorsements without creating an
25 appearance of impropriety. This result is also absurd and effectively establishes a “law
26 enforcement exception” to NRS 281A.400(7) that does not exist. The Commission
27 should not interpret the Ethics Law in a way that creates a narrow exception for only
28 one class of public officers.

1 The preponderance of evidence, supported by undisputed facts, indicates that
2 Antinoro used government property to benefit his significant personal interest in
3 supporting a candidate in a political campaign. Antinoro's use of a government
4 resource for a political endorsement created an appearance of impropriety because it
5 may indicate to the public that Fiore is endorsed by the entire Storey County Sheriff's
6 Office, not just Antinoro. This is the type of harm to the public that the Ethics Law is
7 designed to prohibit, as it creates confusion about the nature of the political
8 endorsement and blurs the line between Antinoro's personal interests and his public
9 duties. Accordingly, the Commission should grant the Executive Director's Motion for
10 Summary Judgment and deny Antinoro's Cross-Motion to find that Antinoro violated
11 NRS 281A.400(7).

12 **LEGAL ANALYSIS**

13 **I. Antinoro's Use of the Storey County Letterhead for a Political** 14 **Endorsement Letter Violated NRS 281A.400(7)**

15 It is undisputed that Antinoro used the Storey County Sheriff's Office letterhead
16 to produce a letter of endorsement for Fiore. NRS 281A.400(7) creates a strict
17 prohibition against the use by a public officer of "governmental time, property,
18 equipment or other facility to benefit a significant personal or financial interest."
19 Antinoro's limited use of government property for an endorsement of a political
20 candidate violated NRS 281A.400(7) because there was no policy authorizing such
21 use of the letterhead and the use created the appearance of impropriety.

22 In an attempt to avoid the clear application of the Ethics Law to the facts of this
23 case, Antinoro raises inapplicable constitutional challenges and relies upon irrelevant
24 federal guidance related to an elected sheriff's ability to wear the sheriff's uniform and
25 use the sheriff's title while participating in campaign activities. However, these
26 arguments do not avoid the conclusion that Antinoro's conduct violated the Ethics
27 Law. The Commission has acknowledged that the political process and an individual's
28 right to freely participate in political activity are of extreme importance. *See In re*

1 *Barrett*, Comm’n Op. No. 01-08A (2002). Nevertheless, public officers are required to
2 appropriately separate their private political interests and activities from their public
3 duties. *Id.*

4 A. The Letterhead of the Storey County Sheriff’s Office is Governmental
5 Property Subject to the Prohibitions of NRS 281A.400(7)

6 In his Cross-Motion, Antinoro maintains that summary judgment must be
7 entered in his favor because the Executive Director did not demonstrate, by a
8 preponderance of evidence, that he used “governmental time, property, equipment or
9 other facility” when he produced a letter of endorsement for Fiore utilizing the official
10 letterhead of the Storey County Sheriff’s Office. He attempts to characterize the
11 letterhead of the Storey County Sheriff’s Office as non-governmental property
12 because it was reproduced only in electronic form, did not include the address of the
13 Storey County Sheriff’s Office and was not signed by Antinoro in his official capacity,
14 using his Sheriff’s title. Yet, it remains undisputed that the letterhead utilized by
15 Antinoro was the official letterhead of the Storey County Sheriff’s Office.

16 Antinoro asks the Commission to conclude that a digital reproduction of an
17 official letterhead is not the type of governmental property contemplated by NRS
18 281A.400(7). However, this conclusion contradicts the Commission’s prior decisions
19 and would lead to absurd results. The Commission has consistently viewed the official
20 letterhead of a government office or agency as governmental property. See *In re*
21 *Hammargren*, Comm’n Op. No. 95-35A (1996); *In re Tiffany*, Comm’n Op. No. 15-21C
22 (2007); *In re Hettrick*, Comm’n Op. No. 01-10A (2001). The format of Antinoro’s
23 endorsement letter (digital versus hard copy) does not diminish or eliminate the
24 governmental character of the property – the letterhead of the Storey County Sheriff’s
25 Office. Indeed, Antinoro has not and cannot claim that the endorsement letter for Fiore
26 was produced under his personal letterhead, or some other letterhead that is not
27 utilized for official business of the Storey County Sheriff’s Office.
28

1 The fact that Antinoro's letter of endorsement was transmitted electronically
2 and was not produced utilizing any other government resources (paper, time,
3 computer or personnel) does not change the character of the letterhead from
4 government to non-government. These facts merely allow the Commission to review
5 Antinoro's conduct under the limited use exception of NRS 281A.400(7)(a). Antinoro's
6 view of what constitutes "governmental property" would lead to absurd results. If the
7 Commission decides that a digital letterhead utilized to produce an electronic copy of
8 a letter is not "governmental property" within the meaning of NRS 281A.400(7), then a
9 public officer or employee could use a government letterhead for personal purposes
10 without violating the Ethics Law, so long as the letter was only emailed and no other
11 government resources (paper, time or computers) were used to produce the letter.
12 This is not a logical result that supports the clear intent of the Ethics Law.

13 B. Antinoro's Interest in Endorsing a Political Candidate is a Significant
14 Personal Interest Within the Meaning of NRS 281A.400(7)

15 Antinoro accuses the Executive Director of failing to address the "personal
16 interest" requirement of NRS 281A.400(7) because she did not specify how Antinoro's
17 conduct furthered a *significant* personal interest. In so doing, Antinoro asserts that his
18 interest in endorsing a political candidate cannot be considered a significant personal
19 interest within the meaning of NRS 281A.400(7). However, this view contradicts
20 Antinoro's own position that his endorsement of a political candidate constitutes core
21 political speech that is entitled to constitutional protection. Indeed, as argued by
22 Antinoro in his Opposition and Cross-Motion, the constitution affords the broadest
23 protection to political expression, including speech about candidates for elected office.
24 *See Buckley v. Valeo*, 424 U.S. 1, 14, 96 S. Ct. 612, 632 (1976) (per curiam).¹

27 ¹ Despite Antinoro's arguments of constitutionally protected speech and association, the Executive
28 Director maintains that these arguments lack merit, as described in this Opposition.

1 NRS 281A.400(7) states, in relevant part, that “a public officer or employee
2 shall not use governmental time, property, equipment or other facility to benefit a
3 significant personal or pecuniary interest of the public officer or employee.” The
4 Commission recently examined NRS 281A.400(7) in *In re Matson*, Comm’n Op. No.
5 14-70C (2016), which involved Shirley Matson, the elected Nye County Assessor. In
6 granting a Motion for Summary Judgment submitted by the Executive Director, the
7 Commission determined that Matson violated NRS 281A.020 and 281A.400(7) and (9)
8 when she ordered a subordinate to reappraise property owned by two Nye County
9 employees under circumstances demonstrating that the reappraisals were not
10 properly conducted in accordance with applicable law. Matson ordered the
11 reappraisals as revenge or retaliation against the two employees. Accordingly, the
12 significant personal interest at issue was Matson’s personal animus against the
13 employees and the Commission found that Matson misused government resources in
14 violation of the Ethics Law.²

15 If the Commission found that a public officer’s personal animus towards co-
16 workers is the type of “significant personal interest” contemplated by NRS
17 281A.400(7), the Commission logically must conclude that Antinoro’s endorsement of
18 a political candidate is also a significant personal interest within the meaning of NRS
19 281A.400(7). This conclusion would fit squarely with the Commission’s decisions that
20 an earlier version of NRS 281A.400(7) prohibits the use of governmental property for
21 personal political or campaign purposes. See *In re Kirkland*, Comm’n Op. No. 98-41
22 (1999) (citing *In re Bob Nolen*, Comm’n Op. No. 96-39 (1996) and *In re Lonnie*
23 *Hammargren*, Comm’n Op. No. 95-35 (1995)).

24
25 ² One of the employees had drafted a Nye County Resolution condemning Matson’s racist remarks and
26 signed a petition to recall Matson. The other employee had also signed the recall petition. The
27 Commission concluded that actions of these employees against Matson created the personal animus
28 which constitutes a personal interest implicating NRS 281A.400(7).

1 C. Sheriff Antinoro's Use of Official Government Letterhead Does Not Satisfy
2 All Elements of the Limited Use Exception in NRS 281A.400(7)(a)

3 Antinoro's use of the Storey County Sheriff's Office letterhead for a letter of
4 endorsement of a political candidate violated NRS 281A.400(7), unless all four of the
5 following factors apply:

6 (1) The public officer or employee who is responsible for and
7 has authority to authorize the use of such property, equipment
8 or other facility has established a policy allowing the use or the
9 use is necessary as a result of emergency circumstances;

10 (2) The use does not interfere with the performance of the
11 public officer's or employee's public duties;

12 (3) The cost or value related to the use is nominal; and

13 (4) The use does not create the appearance of impropriety.

14 The Executive Director demonstrated in her motion that no established policy
15 allowed Antinoro to use the Storey County Sheriff's Office letterhead for a political
16 endorsement letter. The Executive Director also established that such use creates the
17 appearance of impropriety. In response, Antinoro presents a confusing and irrelevant
18 argument regarding the Commission's application of the Hatch Act in *In re Kirkland*,
19 Comm'n Op. No. 98-41C (1999). Antinoro also relies upon a recent opinion issued by
20 the U.S. Office of Special Counsel ("OSC") regarding certain campaign activities of an
21 elected sheriff.

22 Antinoro's reliance on the OSC opinion is misplaced. The OSC opinion is not
23 binding upon Nevada or the Commission. Even if the OSC opinion was controlling, it
24 does not address the conduct at issue in this RFO – use of government letterhead for
25 a political endorsement. The OSC opinion specifically addresses whether an
26 incumbent sheriff violates the federal Hatch Act by wearing his uniform to political
27 events or using his title in political correspondence. However, Antinoro's use of his title
28

1 in the endorsement letter is not at issue in this RFO.³ Antinoro's use of his sheriff's
2 uniform is also not before the Commission.

3 Antinoro's reliance on the Hatch Act and the OSC opinion does not overcome
4 the fact that Antinoro's use of the letterhead for a political endorsement was not
5 authorized by any policy established by Storey County or Antinoro himself. The clear
6 language of the limited use exception requires that such a policy exist. See NRS
7 281A.400(7)(a)(1).⁴ Without such a policy, the requirements of the limited use
8 exception cannot be met and the Commission can conclude that Antinoro's use of the
9 letterhead violated NRS 281A.400(7).

10 Antinoro also cannot rely upon the Hatch Act and the OSC opinion to avoid a
11 finding that his use of an official letterhead for political purposes created the
12 appearance of impropriety under NRS 281A.400(7)(a)(4). The Commission's clear
13 precedent, set forth in *In re Hettrick*, Comm'n Op. No. 01-10 (2001), demonstrates that
14 the use of an official letterhead for political purposes creates an appearance of
15 impropriety and the impression of government approval of the contents of letter.
16 Likewise, Antinoro's endorsement letter printed on the official letterhead of the Storey
17 County Sheriff's Office created the improper appearance that the sheriff's office or
18 Storey County also endorses Fiore.

19 Antinoro's use of government letterhead for a political endorsement is precisely
20 the type of impropriety the Ethics Law seeks to avoid through NRS 281A.400(7).
21 Without a clear line drawn with respect to this conduct, the Commission opens the
22 door to a multitude of other limited uses of government resources for political
23

24
25 ³ Indeed, the Commission decided in *Kirkland* that a public officer will **not** create an appearance of
26 impropriety under former NRS 281A.400(7)(a)(4) by endorsing a political candidate if he or she uses his
or her official title.

27 ⁴ Even if such a policy did exist, the Executive Director maintains that a policy which would have
28 singled out Antinoro's conduct separate and distinct from that of other employees may have triggered
other concerns under NRS 281A.400, as described in the Executive Director's Motion for Summary
Judgment.

1 purposes, particularly uses that involve government email and other electronic
2 medium.

3 **II. NRS 281A.400(7) is Neither Unconstitutionally Vague Nor Overboard**

4 Antinoro challenges the constitutionality of NRS 281A.400(7), arguing that the
5 statute is both vague and overbroad. The determination of constitutionality is generally
6 an issue for the courts. *See Malecon Tobacco, LLC v. State ex rel. Dep't of Taxation*,
7 118 Nev. 837, 59 P.3d 474 (2002). Nevertheless, the Executive Director addresses
8 Antinoro's constitutional challenges for the Commission's consideration.

9 Antinoro focuses on the words "significant" and "personal" contained in NRS
10 281A.400(7), complaining that these terms are vague because they are not defined in
11 NRS Chapter 281A and therefore provide no guidance to public officers as to what
12 conduct is prohibited. He also asserts that NRS 281A.400(7) is overbroad because its
13 prohibition of conduct that creates an "appearance of impropriety" deters him and
14 other public officers from engaging in constitutionally protected political speech.

15 When reviewing the constitutionality of a statute, the statute is presumed to be
16 valid and the burden falls on the challenger to demonstrate that a statute is
17 unconstitutional. *State v. Eighth Judicial Dist. Court*, 129 Nev., Adv. Op. 52, 306 P.3d
18 369, 375 (2013). The burden therefore falls on Antinoro to make a "clear showing of
19 invalidity." *Pitmon v. State*, 131 Nev., Adv. Op. 16, ___ P.3d ___ (2015) (citing *Silvar*
20 *v. Eighth Judicial Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

21 The first step in both a vagueness and overbreadth analysis is to construe the
22 challenged statute. *See United States v. Williams*, 553 U.S. 285, 304 (2008) ("it is
23 impossible to determine whether a statute reaches too far without first knowing what
24 the statute covers"); *State v. Castaneda*, 126 Nev. 478, 483, 245 P.3d 550, 553-54
25 (2010) ("Enough clarity to defeat a vagueness challenge may be supplied by judicial
26 gloss on an otherwise uncertain statute, by giving a statute's words their well-settled
27 and ordinarily understood meaning, and by looking to the common law definitions of
28 the related term or offense." (citations and quotations omitted)).

1 NRS 281A.400(7) states that a public officer or employee shall not use
2 governmental property to benefit a “significant personal or pecuniary interest” of the
3 public officer or employee. The plain meaning of “significant” is “meaningful” or
4 “important.” *The American Heritage College Dictionary* 1268 (3rd ed. 1997). The
5 statute, as originally enacted, did not contain the word “significant.” The term was
6 added by the Nevada Legislature in 2013 with the enactment of Senate Bill (“SB”)
7 228. The Commission’s Executive Director at the time testified that “significant” was
8 being added to several subsections of the Ethics Law, including NRS 281A.400(7), to
9 eliminate a *de minimis* interest from being seen as a true conflict. See Exhibit C
10 submitted at Hearing on SB 228 Before the Assembly Legislative Operations &
11 Elections Comm., 77th Leg. (Nev. May 14, 2013). Thus, NRS 281A.400(7) does not
12 contemplate the use of governmental property that benefits an unimportant, incidental
13 or trivial personal interest.

14 The plain meaning of “personal” is “relating to a particular person” or “private.”
15 *The American Heritage College Dictionary* 1019 (3rd ed. 1997). In the context of the
16 Ethics Law, the term clearly intends to distinguish personal interests as those related
17 to one’s private life and not related to one’s public life as a public officer or employee.

18 A. NRS 281A.400(7) is Not Unconstitutionally Vague

19 A statute may be challenged as unconstitutional either because it is vague on
20 its face, or because it is vague as applied only to the particular challenger. *Pitmon*,
21 131 Nev., Adv. Op. 16 at 4 (citation omitted). Antinoro appears to argue both. A
22 statute is unconstitutionally vague if it (1) “fails to provide a person of ordinary
23 intelligence fair notice of what is prohibited” or (2) “is so standardless that it authorizes
24 or encourages seriously discriminatory enforcement.” *Carrigan v. Nev. Comm’n on*
25 *Ethics*, 129 Nev., Adv. Op. 95, 5, 313 P.3d 880 (2013) (citation omitted). Civil laws,
26 such as the Ethics Law, are held to a less strict vagueness standard than criminal
27 laws because the consequences are less severe. *Id.*

1 Considering the plain meanings of terms like “significant” and “personal
2 contained in NRS 281A.400(7), there is nothing vague about the statute. Furthermore,
3 Antinoro’s claim that he did not have fair notice that he might violate NRS 281A.400(7)
4 if he used government letterhead for personal purposes ignores the Ethics Law’s
5 advisory opinion option.⁵ See *Carrigan*, 129 Nev., Adv. Op. 95 at 8 (citation omitted)
6 (“When a statute is accompanied by an administrative system that can flesh out
7 details, the due process clause permits those details to be left to that system”). In fact,
8 the Commission has previously issued an advisory opinion to a public officer seeking
9 advice on whether his use of government letterhead would violate the Ethics Law. See
10 *In re Hettrick*, Comm’n Op. No. 01-10A (2001). Additionally, the Commission’s
11 advisory opinion in *In re Kirkland*, Comm’n Op. No. 98-41 (1999) provided guidance
12 on the type of conduct that creates an “appearance of impropriety” under NRS
13 281A.400(7). There are no facts in this matter to indicate that Antinoro did not have
14 any time or opportunity to request an opinion from the Commission before he provided
15 his endorsement letter to Fiore.

16 Analyzed on an as-applied basis, Antinoro’s claim that NRS 281A.400(7) is
17 unconstitutional because it punishes his core political speech also fails. The statute
18 Antinoro challenges does not prohibit public officers from endorsing political
19 candidates; rather, it prohibits public officers and employees from using government
20 resources to do so. Moreover, Antinoro’s use of government letterhead signifies that
21 his political endorsement was offered in his official, representative capacity, and the
22 United States Supreme Court “has rejected the notion that the First Amendment
23 confers a right to use governmental mechanics to convey a message.” *Nevada*
24 *Comm’n on Ethics. v. Carrigan*, 131 S.Ct. 2343, 2346 (2011).

25 ///

26
27 ⁵ NRS 281A.440(1) allows the Commission to issue an advisory opinion within 45 days after receiving
28 a request.

1 B. NRS 281A.400(7) is Not Unconstitutionally Overbroad

2 Antinoro asserts that NRS 281A.400(7) is unconstitutionally overbroad.
3 Specifically, Antinoro claims that “appearance of impropriety” contained in the limited
4 use exception of NRS 281A.400(7)(a) impermissibly reaches constitutionally protected
5 core political speech and therefore deters him and other public officers from exercising
6 their First Amendment rights by chilling political speech. Once again, it is the use of
7 government letterhead that indicates Antinoro engaged in conduct in his
8 representative capacity, to which no First Amendment rights attach. Antinoro’s political
9 endorsement performed in his private capacity may enjoy constitutional protection as
10 protected speech, but his use of official government letterhead divests Antinoro of his
11 constitutional claims.

12 Even accepting, arguendo, that Antinoro’s conduct constituted protected
13 speech or that NRS 281A.400(7) somehow burdens or chills Antinoro’s core political
14 speech, the burden is minimal when compared to Nevada’s compelling state interest
15 in promoting ethical government and ensuring that public officers avoid conflicts of
16 interest. See *Carrigan*, 129 Nev. Adv. Op. 95 at 10 (citing *Clingman v. Beaver*, 544
17 U.S. 581, 586-87 (2005) (a reasonable, nondiscriminatory regulation that imposes an
18 incidental burden on First Amendment rights is acceptable when justified by a state’s
19 important regulatory concerns). Additionally, the statute is narrowly tailored to further
20 the state’s compelling interest. NRS 281A.400(7) is content-neutral and restricts the
21 use of government property to benefit any significant personal interest, regardless of
22 the nature or character of the interest or content of the message.

23 **III. Conclusion**

24 This case provides the Commission with an opportunity to restate and clarify
25 the ethical boundaries applicable to the use of a government letterhead for personal
26 purposes.

27 ///

28 ///

The undisputed facts in this matter support a finding that Antinoro willfully violated NRS 281A.400(7) and the Executive Director's Motion for Summary Judgment must therefore be granted. Accordingly, the Executive Director requests the imposition of a civil penalty not to exceed \$5,000 pursuant to NRS 281A.480(1)(a).

DATED this 21st day of March, 2017.

NEVADA COMMISSION ON ETHICS

/s/ Judy A. Prutzman
Judy A. Prutzman, Esq.
Associate Counsel
Nevada Commission on Ethics

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STATE OF NEVADA
BEFORE THE COMMISSION ON ETHICS

In the Matter of the Third-Party Request
For Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, Storey County,
State of Nevada,

Request for Opinion No. 16-54C

Subject.

GERALD ANTINORO'S REPLY IN SUPPORT OF HIS
CROSS-MOTION FOR SUMMARY JUDGMENT

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8 **STATE OF NEVADA**
9 **COMMISSION ON ETHICS**

10 In the Matter of the Third-Party Request for
11 Opinion Concerning the Conduct of **Gerald**
12 **Antinoro**, Sheriff, Storey County, State of
13 Nevada,

14 Subject.

Request for Opinion No. 16-54C

GERALD ANTINORO'S REPLY IN
SUPPORT OF CROSS-MOTION FOR
SUMMARY JUDGMENT

15 COMES NOW Subject, Gerald Antinoro, by and through his attorneys of record,
16 Thorndal Armstrong Delk Balkenbush & Eisinger, and pursuant to NAC 281A.265, hereby
17 submits his reply in support of his Cross-Motion for Summary Judgment.

18 **I**

19 **INTRODUCTION**

20 As the Commission is well aware, this matter arises out of one discreet action of Storey
21 County Sheriff Gerald Antinoro that occurred on May 27, 2016. On that date, and in response to
22 her request, Sheriff Antinoro prepared a three paragraph statement in support of Michele Fiori's
23 unsuccessful bid for Clark County's Third Congressional District seat. Under the stipulated facts
24 which govern this case, Ms. Fiori contacted Sheriff Antinoro by phone and requested his
25 endorsement. *See*, Exhibit "A," to Antinoro's Opposition to Motion for Summary Judgment and
26 Cross-Motion for Summary Judgment. Sheriff Antinoro prepared the three-paragraph statement
27 attached as Exhibit 1 to the Executive Director's Motion for Summary Judgment. *Id.* The
28

1 statement was typed on a template of the Storey County Sheriff's Office. *Id.* Sheriff Antinoro
2 prepared the statement of his personal computer, over the lunch hour, while he was at home, and
3 it was emailed to Ms. Fiori from Sheriff Antinoro's private email account. *Id.*

4 It is uncontroverted, under the stipulated facts agreed to by the Commission, that Ms.
5 Fiori used Sheriff Antinoro's statement in a YouTube video that was tweeted on Fiori's Twitter
6 account, and that the statement was posted on Fiori's Facebook page on May 27, 2016, *without*
7 *Sheriff Antinoro's knowledge.* *Id.* In fact, issues associated with the use of Sheriff Antinoro's
8 statement by Ms. Fiori on social media were brought to the Executive Director's attention and a
9 Notice of Additional Facts and Issues was prepared and summarily rejected in a Panel Decision
10 dated October 27, 2016. The Panel's decision was unanimous and the Panel specifically held as
11 follows:
12
13

14 "The Commission's investigation revealed that the Subject did not grant an advantage to
15 himself or have a commitment in a private capacity to the interests of the candidate (NRS
16 281A.400(2)), or use government resources or cause a governmental entity to incur any
17 expense to support the candidate with respect to the video and the photo of the Subject, in
uniform, which photo was used without the Subject's permission (NRS 281A.400(&) and
NRS 281A.520)). Therefore, these allegations are dismissed."

18 Despite the unanimity of the Panel's decision in that regard, the Executive Director, in her
19 opposition/reply, makes the following unfounded and gratuitous statement in the very
20 introductory portion of her brief:
21

22 "Sheriff Antinoro violated the Ethics in Government Law when he produced a letter of
23 endorsement for Michelle Fiori, a candidate for U.S. Congress, on the official letterhead
24 of the Storey County Sheriff's Office. The letter was electronically transmitted to Fiori,
who included the letter in a video that was posted on her social media sites and viewable
by more than 7,000 individuals."

25 *See, Executive Director's Opposition and Reply, page 1, lines 21-25.*

26
27 The Executive Director makes this statement despite the fact that there are no facts before
28 the Commission which relate to the number of persons who supposedly had access to Sheriff
Antinoro's statement via Ms. Fiori's social media pages. More to the point, the Executive

1 Director makes this statement despite the fact that it has already been determined that Sheriff
2 Antinoro gave no permission whatsoever for Ms. Fiori to use the statement at issue on social
3 media. The sole question to be determined by the Commission is whether Sheriff Antinoro's use
4 of letterhead in making the statement at issue was in violation of NRS 281A.400(7). The
5 Executive Director's references to social media and the number of persons who supposedly had
6 access to Sheriff Antinoro's statement on same is wholly irrelevant and appears to be an attempt
7 to obfuscate the single issue before the Commission.
8

9 As if reference to the social media issue was not enough, the Executive Director goes
10 further and suggests that, unless the Commission grants her motion for summary judgment, "the
11 official letterheads of all public agencies could be *digitally reproduced and widely distributed*
12 *electronically by any public officer or employee who wishes to use the letterhead for political*
13 *purposes.*" *Id.* at page 2, lines 14-16 (*emphasis added*).
14

15 As shall be discussed in greater detail below, the fact that the Executive Director has
16 asked the Commission to punish the Subject here based upon potential, future abuses by others
17 of Chapter 281A keenly demonstrates how, and why, NRS 281A.400(7) is unconstitutionally
18 overbroad and unconstitutional as-applied to Sheriff Antinoro under the circumstances at issue.
19 Further still, this comment misrepresents the stipulated facts at issue in this case. It is
20 uncontroverted that Sheriff Antinoro sent the statement in question to one person, and one person
21 only, Ms. Fiori. In other words, the Executive Director has stipulated to the fact that the
22 statement in question was not *widely distributed* by Sheriff Antinoro. This Commission is not at
23 liberty to exercise its significant punitive authority against the Subject based upon the potential
24 abuse of Chapter 281A by some unknown and unnamed public official. To the contrary, this
25 Commission must, in accordance with the stipulated facts, determine whether the actions of
26 Sheriff Antinoro taken on May 27, 2016, constituted the use of governmental time, property,
27
28

1 equipment or other facility to benefit a significant personal or pecuniary interest of the public
2 officer such that it created the appearance of impropriety. *See*, NRS 281A.400(7).

3 Perhaps recognizing that the facts presented in this matter do not, by a preponderance of
4 the evidence or otherwise, make out such a violation, the Executive Director focuses not on the
5 conduct of Sheriff Antinoro at issue, but on the use by Ms. Fiori of the statement on social media
6 and on the future perceived abuse by others should the Commission not find in her favor.
7

8 Indeed, the Executive Director warns that a contrary decision “will erode the Legislature’s
9 directive for an appropriate separation between the roles of persons who are both public servants
10 and private citizens.”

11 This Commission is tasked with determining whether the actions of Sheriff Antinoro as
12 set forth in the Stipulated Facts constitute a violation of NRS 281A.400(7) by a preponderance of
13 the evidence. *See*, NRS 281A.480(9). The Executive Director’s invitation to the Commission
14 that he go well beyond the stipulated facts and concern itself with more egregious facts as related
15 to potential future abuses of Chapter 281A does not comport with the authority given to this
16 Commission by the Legislature and such a result would be grossly unfair to the Subject of this
17 action.
18
19

20 II

21 LEGAL ANALYSIS

22 I. The Executive Director misconstrues Sheriff Antinoro’s argument as to why and 23 how there is no violation of NRS 281A.400(7) in this matter.

24 *A. The statement does not constitute the use of “governmental time, property,*
25 *equipment or other facility in violation of NRS 281A.400.*

26 In her opposition/reply, the Executive Director suggests that Sheriff Antinoro has asked
27 the Commission to grant summary judgment in his favor merely because the statement at issue
28 here was “digital” and was not reproduced on a physical piece of paper. While the fact that

1 Sheriff Antinoro did not even use governmental resources in the form of a sheet of paper is
2 certainly relevant, he did not ask the Commission to make an exception for any and all digital
3 communications. Again citing *In re Hammargren*, Comm'n Op. No. 95-35A (1996), as well as
4 several similar opinions, the Executive Director argues that Sheriff Antinoro violated NRS
5 281A.400(7) solely based upon his use of a template for his statement which bears the logo of
6 the Storey County Sheriff's Office.
7

8 At no point has Sheriff Antinoro argued that the mere fact that his statement was "digital"
9 renders NRS 281A.400(7) inapplicable. Rather, Sheriff Antinoro demonstrated that the conduct
10 at issue in *this case* is fundamentally different than that involved in the opinions relied upon by
11 the Executive Director.
12

13 In *Hammargren*, the Commission easily concluded that the then Lieutenant Governor's
14 letter to all Nevada licensed physicians on the official state letterhead of his office on a topic
15 about which Hammargren had expressed a personal (and pecuniary) interest before the Assembly
16 Judiciary Committee violated state ethics laws.¹ Hammargren's letter was written on the official
17 letterhead of his office, bore the address of his offices in both Carson City and Las Vegas,
18 identified him as the Lieutenant Governor and president of the senate and was signed by "LT
19 GOVERNOR LONNIE HAMMARGREN." *Hammargren, supra.* at p. 2/5.
20

21 At no point in his opposition and cross-motion did Sheriff Antinoro ever suggest that, had
22 Hammargren's letter been in "digital" form, it would not have violated NRS 281A.400(7).
23 Rather, Sheriff Antinoro demonstrated the significant differences between the circumstances at
24 bar and conduct which has previously been found unlawful by the Commission. The statement
25 in question, while bearing the Sheriff's title and depicting a logo of the Storey County Sheriff's
26 Office, was signed as "Gerald Antinoro," not as Gerald Antinoro, "Storey County Sheriff." The
27
28

¹Hammargren was a licensed neurosurgeon and the subject of his letter was his advocacy of Assembly Bill 520 which called for sweeping changes to Nevada's medical malpractice statutes. At the time of the events in that case, Hammargren was actually involved in an ongoing medical malpractice case.

1 statement does not contain the address or telephone number of the Sheriff's Office. The
2 statement in question is simply not akin to that at issue in *Hammargren*.

3 Nor does the Commission's opinion in *In re Tiffany*, Comm'n Op. No. 05-21 (2005), also
4 cited by the Executive Director, support her opinion. In that case, a sitting state senator, Sandra
5 Tiffany, had several conversations with an official with the State of Pennsylvania's Bureau of
6 Unclaimed Property in her official capacity during which she promoted her personal business, an
7 online auction service. While the Commission referenced the fact that Tiffany followed up her
8 calls with a letter on her official letterhead, it noted with significance that one of the intended
9 purposes of the letter was to promote Tiffany as the owner of her private business, thereby
10 creating an appearance of impropriety. Such is not the case here.

11
12
13 Simply put, Sheriff Antinoro has not argued to the Commission that his actions in
14 *emailing* the statement, rather than printing it out and mailing it to Ms. Fiori, renders his actions
15 lawful under Chapter 281A. Rather, Sheriff Antinoro has demonstrated, based on prior decisions
16 of the Commission, that the statement in question does not violate NRS 281A.400(7).

17
18 ***B. Sheriff Antinoro's actions were not undertaken to benefit a "significant personal or
19 pecuniary interest" within the meaning of NRS 281A.400(7).***

20 The Executive Director has also misconstrued Sheriff Antinoro's argument which
21 addresses that part of the statute which requires the Executive Director to prove, by a
22 preponderance of the evidence, that his actions were taken to benefit a "significant personal
23 interest" and she does so with reference to the First Amendment. Specifically, the Executive
24 Director suggests that Sheriff Antinoro *must* have had a significant personal interest in the
25 endorsement letter at issue because he has argued that NRS 281A.400(7) violates core First
26 Amendment rights. This argument completely misstates the issue.

27
28 One of the elements which the Executive Director must prove in this case is that Sheriff
Antinoro's use of governmental time, property, equipment or other facility was done to benefit a

1 *significant personal interest.* See, NRS 281A.400(7). The Executive Director has provided no
2 evidence on this element but has, instead, asked the Commission to *assume* that Sheriff Antinoro
3 had some *significant personal interest* in the election of Ms. Fiori. This evidence does not exist
4 and NRS 281A.400(7) does not permit the Commission to assume it.

5
6 Reference back to the Commission's decision in *Hammargren* and *Tiffany* is illustrative
7 of this point. In *Hammargren*, the then Lieutenant Governor testified before the Judiciary
8 Committee on the subject of AB 520. During his testimony, Hammargren declared that he was
9 "emotionally involved" with the issues associated with AB 520 and commented that he was,
10 "mad as Hell and was not going to take it anymore." *Hammargren, supra.* at p. 2/5. He gave
11 further testimony about his own medical malpractice insurance premiums at a time when he was
12 a defendant in a pending malpractice case. *Id.* In *Tiffany*, the Subject was found to have used
13 Nevada State Senate letterhead to promote herself as the owner of her own private business. *In*
14 *re Tiffany, supra.* at p. 3.

15
16 While Sheriff Antinoro does not suggest that a public officer's motives must be so
17 blatantly on display as they were in *Hammargren*, the existence of a *significant personal*
18 *interest* simply cannot be glossed over or *assumed* by the Commission. All the evidence in this
19 case demonstrates is that Ms. Fiori called Sheriff Antinoro and requested his endorsement. The
20 burden of proof rests with the Executive Director on this issue and there is nothing contained
21 within the stipulated facts which even addresses it.

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23
24 As to this issue of "significant personal interest," the Executive Director's citation to, and
25 reliance on, the Commission's opinion in *In re: Matson*, Comm'n Op. No. 14-70C, is puzzling
26 but exemplifies how and why there is no such evidence in this case. The *Matson* case involved
27 the actions of then Nye County Assessor Shirley Matson towards numerous individuals in and
28 after January of 2014, when one of her subordinates, Sheree Stringer, informed her that she was

1 going to run against her for County Assessor. *Id.* at p. 14. Thereafter, “tensions increased”
2 between Matson and Stringer. In March or April of 2014, Stringer admitted that she had placed
3 a hidden camera in Matson’s office. *Id.* Matson discovered the camera in mid-August of 2014.
4 *Id.* at p. 4. Later in August, Matson reported the hidden camera to Detective Joseph McGill. *Id.*
5 Detective McGill’s wife, Tammy, worked part-time in the Assessor’s Office, and Matson was
6 aware of their relationship. *Id.* at p. 5. At the completion of Detective McGill’s investigation,
7 the Nye County District Attorney’s Office decided against the filing of any criminal charges
8 against Stringer, and Matson was advised of this fact by Detective McGill in September of 2014.
9 *Id.* As Detective McGill was leaving the Assessor’s office, Matson called Stringer into her
10 office and advised her she was going to be terminated. *Id.* An hour later, Matson terminated
11 Tammy McGill. *Id.*

12
13
14 In addition to the above, the Commission found that Matson, in violation of applicable
15 regulations, ordered out-of-cycle appraisals on property owned by a number of Nye County
16 officials, including those who had signed a petition to recall Matson in 2010. *Id.* at p. 6.

17
18 Ultimately, and not surprisingly, this Commission concluded that Matson had committed
19 several willful violations of Chapter 281A. In so doing, the Commission found ample evidence
20 of documented tensions between Matson and the officials whose property she had ordered be re-
21 appraised in violation of regulations. *Id.* The Commission further found ample evidence that
22 Matson had used her position to intimidate and harass her subordinates in a personnel context
23 while in the midst of a campaign. *Id.* The Commission noted that Matson’s conduct implicated
24 the “very underpinnings of the Ethics Law within the context of employment and personnel
25 issues” and found that she had engaged in a series of activities motivated by her bid for re-
26 election and personal retaliation. *Id.* at p. 10.
27
28

1 At page 6 of her opposition/reply, the Executive Director, citing to *Matson*, states the
2 following: “[i]f the Commission found that a public officer’s personal animus towards co-
3 workers is the type of ‘significant personal interest’ contemplated by NRS 281A.400(7), the
4 Commission logically must conclude that Antinoro’s endorsement of a political candidate is also
5 a significant personal interest within the meaning of NRS 281A.400(7).” *See*, Opposition/Reply,
6 p. 6, lines 15-19. With all due respect to the Executive Director, this statement, and her reliance
7 on *Matson* on this point is puzzling as the conduct at issue in that case could not be more
8 diametrically opposed from that set forth in the stipulated facts in the case at bar. *Matson*
9 terminated her political rival after being informed that the District Attorney’s Office would not
10 prosecute her for placing a camera in her office. She then terminated the wife of the police
11 detective who delivered her the bad news. Not to be outdone, she also ordered re-appraisals to
12 be performed, in violation of regulations, on property owned by public officials who had signed
13 a recall petition against her. Under such circumstances, the Commission had little trouble with
14 the “significant personal interest” requirement of NRS 281A.400(7).

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18 Again, while Sheriff Antinoro does not suggest that conduct must be *so* blatant to rise to
19 the level of *significant personal interest*, here, the record is totally devoid of such evidence.² As
20 such, the Executive Director’s motion fails and judgment must be entered in favor of Sheriff
21 Antinoro as a matter of law before consideration is even given to the exceptions set forth at NRS
22 281A.400(7)(a)(1) through (4).

23
24 ***C. Sheriff Antinoro’s actions do not create the appearance of impropriety and are not***
25 ***in violation of NRS 281A.400(7).***

26 Although the stipulated facts in this case do not support a conclusion that Sheriff
27 Antinoro used governmental resources to benefit a significant personal interest in violation of
28

² At all times during the pendency of RFO 16-54C, Sheriff Antinoro has cooperated with the Commission. He appeared for an interview with Commission counsel and its investigator and answered all questions posed to him.

1 NRS 281A.400(7), application of the exceptions set forth in NRS 281A.400(7)(a)(1) through (4)
2 provides further justification for an order granting summary judgment in his favor.

3 The Executive Director has admitted that Sheriff Antinoro's actions did not interfere with
4 the performance of his public duties and that the cost or value related to the use was nominal.
5 Thus, the requirements of NRS 281A.400(7)(a)(2) and (3) are not at issue.
6

7 First, as to NRS 281A.400(7)(a)(1), the policy of the Storey County Sheriff's Office *does*
8 permit exceptions to be made to the general rule that employees are restricted from endorsing a
9 political campaign or initiative. *See*, Exhibit 5 to Subject's opposition and cross-motion for
10 summary judgment. While the Executive Director is quick to note that the policy authorizes the
11 Sheriff to make such exceptions, the policy in question goes well further and sets forth a list of
12 considerations to be undertaken by the Sheriff, or authorized designee of the Sheriff, in making
13 such exceptions, including: (a) whether the speech or conduct would negatively affect the
14 efficiency of delivering public services; (b) whether the speech or conduct would be contrary to
15 the good order of the Office or the efficiency or morale of its members; (c) whether the speech or
16 conduct would reflect unfavorably upon the office; (d) whether the speech or conduct would
17 negatively affect the member's appearance of impartiality in the performance of his/her duties;
18 (e) whether similar speech or conduct has been previously authorized; and (f) whether the speech
19 or conduct may be protected and outweighs any interest of the Office. *Id.* at p. 5, Section
20 1060.60, Storey County Sheriff's Office Policy Manual. Based on the uncontroverted evidence,
21 the requirements of NRS 281A.400(7)(a)(1) are met.
22
23
24

25 Second, the evidence presented by Sheriff Antinoro demonstrates that there was no
26 appearance of impropriety with respect to the statement at issue. Remarkably, in her opposition
27 and reply, the Executive Director suggests that the Hatch Act, and opinions and decisions which
28 relate to same, are irrelevant to this proceeding. She does so despite the fact that this

1 Commission relied upon the Hatch Act in the *Kirkland* matter as the very justification for placing
2 limitations on Richard Kirkland's First Amendment rights. Here, although Storey County has
3 not adopted what are routinely referred to as "little Hatch Acts," the Storey County Sheriff's
4 Office policy discussed in the Stipulated Facts is such a policy. While Sheriff Antinoro did not
5 argue that decisions of the U.S. Office of Special Counsel are binding on this Commission, the
6 suggestion that they are irrelevant is misguided.
7

8 One need look no further than this Commission's decision in *Kirkland* to apprehend the
9 importance of the Hatch Act and decisions and opinions interpreting same to the analysis of the
10 issues in the matter at bar. At issue in *Kirkland* were the actions of former Sheriff Kirkland in
11 endorsing Justice James Hardesty during his campaign for the Nevada Supreme Court. The
12 Commission outlined the question in *Kirkland* as whether Sheriff Kirkland's use of "any or all of
13 his position, title, badge, uniform, facilities, deputies, or other accouterments in political
14 advertisements endorsing the candidates of individuals might violate either NRS 281.481(2) or
15 (7). *In re Kirkland*, Comm'n Op. No. 98-41 p. 2/5. The Commission further noted that, in order
16 to decide this question, a "careful analysis of the Ethics in Government Law, the federal
17 Constitution, federal statutes, case law, and the WCC" was necessary. *Id.* The Washoe County
18 Code section at issue was WCC §5.341, also described by the Commission as Washoe County's
19 version of a "little Hatch Act." *Id.* The language of WCC §5.341 is similar to that set forth in
20 Storey County Sheriff's Office Policy No. 1060.
21
22
23

24 At the outset of its analysis of the issues in *Kirkland*, the Commission recognized the
25 importance of political speech as protected by the First Amendment of the United States
26 Constitution. *Id.* The Commission then noted, however, that First Amendment limitations on
27 the speech of government employees is permitted under the Hatch Act. *Id.* Specifically, the
28 Commission noted the following:

1 “Many states, counties, and municipalities have adopted ‘little Hatch Acts’ that similarly
2 seek to prohibit or limit the political activities of their employees. These ‘little Hatch
3 Acts’ have been upheld under a variety of constitutional challenges.”

4 *Id.*

5 Thus, despite the Executive Director’s suggestion to the contrary, the Hatch Act and
6 opinions interpreting same are far from irrelevant here.

7 The facts at issue in *Kirkland* were fully discussed in Sheriff Antinoro’s opposition and
8 cross-motion for summary judgment and will not be described at length herein. However, it is
9 indisputable that the scope of Sheriff Kirkland’s conduct in appearing in television
10 advertisements went far beyond the conduct at issue herein. Ultimately, the Commission found
11 that, if government itself cannot endorse candidacies, then its elected officials could not create
12 the impression of government sanction by doing so. *Id.* at p. 4/5. In so finding, the Commission
13 noted that it was *for this reason* that the Hatch Act and little Hatch Acts prohibit or limit certain
14 political activities of government actors. *Id.*

15 The Commission would go on to hold that a public officer will not create an appearance
16 of impropriety under the precursor to NRS 281A.400(7) by endorsing a person’s candidacy if he
17 or she uses his or her name and official title in an advertisement but that he or she would do so if,
18 in the course of endorsing a person’s candidacy, he or she uses the physical accouterments of
19 office to bolster the endorsement. *Id.* “So, for example, a public officer should not use his
20 uniform, badge, employees, private office, or other non-public facilities for the purposes of
21 making an endorsement advertisement.” *Id.* The Commission described the use by Sheriff
22 Kirkland of his “uniform and badge” as the “critical difference.” *Id.* Sheriff Antinoro did none
23 of these things with respect to the statement at issue. The Commission decided *Kirkland* in
24 1999.

1 The U.S. Office of Special Counsel (OSC) is responsible for interpreting the Hatch Act
2 and is the entity authorized to issue advisory opinions and investigate violations of the Hatch
3 Act. *See*, 5 U.S.C. §1216(a)(2). While perhaps not binding authority on the Commission, the
4 interpretation of the Hatch Act and its limitations on the speech of elected officials by the agency
5 tasked with interpreting it is certainly not irrelevant.

6
7 On February 29, 2012, the OSC issued a response to a request for an advisory opinion on
8 the issue of whether an incumbent sheriff may wear his uniform to political events such as
9 rallies, fundraisers, and campaign booths or in printed and/or electronic campaign materials.
10 *See*, Exhibit "C" to opposition and cross-motion for summary judgment. In its opinion, the OSC
11 began by noting that it had recently *reevaluated* issues associated with participation by elected
12 officials in such conduct as it relates to the Hatch Act. *Id.* at p. 1. Specifically, the OSC stated
13 that elected officials such as a sitting sheriff would not violate the Hatch Act by wearing their
14 uniforms or using their titles while campaigning for reelection. *Id.* The OSC extended this
15 reasoning to the actions of an elected sheriff while participating in campaign activities on behalf
16 of other candidates running for office. Specifically, the OCS stated that an elected official who
17 used his title when endorsing a partisan candidate and/or wore his or her uniform while
18 campaigning for another candidate would not be in violation of the Hatch Act. *Id.* at p. 2.

19
20
21 In her opposition /reply, the Executive Director attempts to distinguish the OSC's opinion
22 on a very similar subject by suggesting that it was limited to the question of whether an
23 incumbent sheriff violates the Hatch Act by wearing his uniform to political events. *See*,
24 Executive Director's opposition and reply, p. 7, lines 23-24. This argument lends a far too
25 narrow reading of that decision and the OSC extended its rationale concerning the rights of
26 incumbent sheriffs' to participate in the political process not only to in-person campaign events,
27 but to campaign advertisements, and *political correspondence*.

1 While the Commission is not bound to follow an advisory opinion of the OSC, when
2 dealing with the issue of core political speech, it would certainly be appropriate to consider
3 changing views of the permissible scope of the Hatch Act and, in turn, “little Hatch Acts”
4 modeled after federal law.

5 Given all of the foregoing and, most notably, this Commission’s prior opinions, the
6 Executive Director simply cannot demonstrate, by a preponderance of the evidence or otherwise,
7 that the actions of Sheriff Antinoro in emailing the three paragraph statement to Ms. Fiori, a
8 candidate running for office in Clark County, created the appearance of impropriety. Certainly,
9 the evidence does not suggest that the statement in question in any way created an appearance
10 that the Storey County Sheriff’s Office or Storey County endorsed Ms. Fiori. In fact, the
11 Executive Director acknowledged as much in her opposition/reply when she argued that Sheriff
12 Antinoro’s “use of a government resource for a political endorsement created an impropriety
13 because it *may* indicate to the public that Fiore is endorsed by the entire Storey County Sheriff’s
14 Office, not just Antinoro.” See, Executive Director’s opposition and reply, p. 3, lines 3-6.
15
16
17 (*Emphasis added*).

18
19 That an action *may* violate NRS 281A.400(7) is insufficient, as a matter of law, and the
20 Commission must grant summary judgment in favor of Sheriff Antinoro in this matter.

21 **II. NRS 281A.400(7) is Unconstitutional**

22 The First Amendment of the United States Constitution provides that Congress “shall
23 make no law . . . abridging the freedom of speech” and this prohibition is applicable to the states
24 by virtue of the Fourteenth Amendment.³ See, *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1658
25 (2015). The United States Supreme Court has repeatedly held that, “[t]he First Amendment has
26 its fullest and most urgent application to speech uttered during a campaign for political office.”
27
28

³See also, Article 1, Section 9 of the Nevada Constitution.

1 *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2009). "As we have long recognized, speech
2 about public issues and the qualifications of candidates for elected office commands the highest
3 level of First Amendment protection." *See, Eu v. San Francisco County Democratic Cent.*
4 *Comm.*, 489 U.S. 214, 282 (1989). The Courts have cautioned that this principle requires them
5 to "err on the side of protecting political speech rather than suppressing it." *FEC v. Wis. Right to*
6 *Life, Inc.*, 551 U.S. 449, 457 (2007). The United States Supreme Court has further held that an
7 "exacting scrutiny" must be applied to laws restricting such speech. *Williams-Yulee, supra.* at
8 1664. As such, in order for NRS 281A.400(7) to be used in such a way as to prohibit the
9 political speech at issue, it must be shown that the statute is narrowly tailored to serve a
10 compelling government interest. *Id.* at 1665. While the United States Supreme Court has held
11 that the government has an interest in regulating the conduct and speech of its employees, in this
12 case, that interest is outweighed by the wholesale infringement on the First Amendment rights of
13 the Subject.

16 ***A. NRS 281A.400(7) is Unconstitutionally Vague***

17 Chapter 281A does not contain any language prohibiting a public official from exercising
18 his or her First Amendment right to free speech. Thus, the Executive Director asks the
19 Commission to impose a tremendous burden on core First Amendment rights by application of
20 NRS 281A.400(7). In her opposition/reply, the Executive Director, citing to the Nevada
21 Supreme Court's decision in *Carrigan v. Nev. Comm'n on Ethics*, suggests that the Commission
22 need not give much credence to Sheriff Antinoro's constitutional arguments in this matter
23 because this case involves an ethics law, versus a criminal one. This commentary ignores the
24 tremendous punitive power enjoyed by the Commission when it comes to its oversight of public
25 officials. NRS 281A.480(1)(a) authorizes the Commission to impose on a public officer or
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1 employee, or former public officer or employee, civil penalties of up to \$5,000.00 for a *first*
2 willful violation of Chapter 281A.

3 Further, and significantly, NRS 281A.480(4)(c) provides as follows:

4 “*One or more* willful violations of this chapter have been committed by a public officer
5 other than a public officer described in paragraphs (a) and (b), the willful violations shall
6 be deemed malfeasance in office for the purpose of NRS 283.440 and the Commission:

7 (1) May file a complaint in the appropriate court for removal of the public officer
8 pursuant to NRS 283.440 when the public officer is found in the opinion to have
9 committed fewer than three willful violations of this chapter.

10 (2) Shall file a complaint in the appropriate court for removal of the public officer
11 pursuant to NRS 283.440 when the public officer is found in the opinion to have
12 committed three or more willful violations of this chapter.”

13 (*Emphasis added*).

14 Thus, while Chapter 281A is “civil” in nature, this Commission wields enormous power
15 over those subject to it, including the power to seek the removal of the public official from
16 office.

17 The vagueness doctrine requires legislatures to set reasonably clear guidelines for
18 enforcement officials in order to prevent arbitrary and discriminatory enforcement of the law.
19 *See, Smith v. Goguen*, 415 U.S. 566, 572-73 (1974). A vague statute is one which operates to
20 hinder free speech through the use of language so vague as to allow the inclusion of protected
21 speech in its prohibition or to leave the individual with no clear guidance as to the nature of the
22 acts which are subject to punishment. “Where First Amendment rights are involved, an even
23 greater degree of specificity is required.” *Id.* at 573. As discussed in Sheriff Antinoro’s
24 opposition and cross-motion for summary judgment, nowhere in Chapter 281A are the terms
25 “significant” or “personal” defined, nor is there guidance in the statute in terms of a definition
26 for “appearance of impropriety.” *See*, NRS 281A.400(7) and Chapter 281A generally.
27
28

1 In her opposition/reply, the Executive Director cites to the Third Edition of the American
2 Heritage College Dictionary and suggests that its definitions of these terms provides sufficient
3 guidance to those covered by Chapter 281A to resolve any vagueness issue. However,
4 substituting synonyms such as “meaningful” and “important” does nothing to place a Subject
5 such as Sheriff Antinoro on notice that his conduct was unlawful nor do they offer any protection
6 against arbitrary and discriminatory application of NRS 281A.400(7). The same is true of the
7 dictionary definition of “personal” as cited by the Executive Director in her moving papers.
8

9 The United States District Court has previously found that the terms “false,” “deceptive,”
10 “misleading,” and “bad faith” as set forth within Nevada’s Ethics laws were so vague as to
11 render NRS 281.525(1) and 281.551(2)(2) unconstitutional in violation of the First Amendment.
12 *See, Dehne v. Avaino*, 219 F. Supp.2d 1096, 1102 (D. Nev. 2001). In her Report and
13 Recommendation which was adopted on this issue by Judge David Hagen, United States
14 Magistrate Judge Valerie Cooke pointed out that the terms described above were not clearly
15 drawn and, that, “[i]f the Legislature wishes to trod on First Amendment ground and regulate
16 speech, it must do so with the utmost specificity and clarity.” *See*, Exhibit “D,” Report and
17 Recommendation of U.S. Magistrate Judge, August 6, 2001. The terms “significant personal
18 interest” and “appearance of impropriety” are equally as vague as those discussed by the Court in
19 *Dehne*. As such, NRS 281A.400(7) does not pass constitutional muster.
20
21

22 The Executive Director goes on to suggest that the vagueness problem incumbent in NRS
23 281A.400(7) may be solved by reference to prior opinions of the Commission. Respectfully, the
24 prior opinions of the Commission do not make clear that the conduct of Sheriff Antinoro would
25 be in violation of the statute at issue. In fact, the Executive Director appears to recognize that
26 such is the case when she invites the Commission to “restate and *clarify* the ethical boundaries
27
28

1 applicable to the use of government letterhead for personal purposes. *See*, Executive Director's
2 opposition and reply, p. 12, lines 23-25. (*Emphasis added*).

3 ***B. NRS 281A.400(7) is unconstitutional as applied.***

4 Further, the use of NRS 281A.400(7) to punish the conduct at issue in this case is
5 unconstitutional and in violation of the First Amendment of the United States Constitution as
6 applied to Sheriff Antinoro. While the government may regulate speech of public employees to
7 a greater extent than that of citizens at large, in this case, punishment of the core political speech
8 of the Subject under the circumstances goes much too far. Sheriff Antinoro's three paragraph
9 endorsement of Michele Fiore is unquestionably core political speech entitled to the highest level
10 of First Amendment protection. *See, Eu, supra.* at 282. The endorsement goes no further than to
11 identify the Subject as the Sheriff of Storey County, an action which is permissible even under
12 the prior decisions of this Commission. The fact that the endorsement was typed on letterhead
13 bearing the logo of the Storey County Sheriff's Office cannot be used by the Commission as a
14 means of punishing Sheriff Antinoro's core First Amendment right to engage in speech on
15 political issues and matters of public concern. To punish the conduct at issue here would be in
16 gross violation of the First Amendment.

17 ***C. NRS 281A.400(7) is unconstitutionally overbroad.***

18 NRS 281A.400(7) is further unconstitutional here under the overbreadth doctrine. A
19 statute is overbroad when its language, given its normal meaning, is so sweeping that its
20 sanctions may be applied to constitutionally protected conduct which the state is not permitted to
21 regulate. *See, Dehne v. Avaino*, 219 F. Supp.2d 1096, 1102 (D. Nev. 2001). As the courts have
22 recognized, the threat to free expression created by overbroad statutes is that, by potentially
23 sweeping in constitutionally protected activity, individuals and groups may self-censor out of
24

1 fear of vindictive or selective protection. *See, Bates v. State Bar of Arizona*, 433 U.S. 350, 380
2 (1977).

3 That NRS 281A.400(7) is constitutionally overbroad is apparent from even a cursory
4 reading of the Executive Director's opposition and reply. Far from demonstrating that Sheriff
5 Antinoro's conduct in this case was in violation of NRS 281A.400(7), the Executive Director
6 points to the potential evils which would result from a finding in favor of the Subject *based upon*
7 *future conduct of other persons*. The Executive Director suggests that, if the Commission does
8 not find in her favor, it would allow the official letterhead of *all public officers* to be *digitally*
9 *reproduced* and *widely distributed* electronically. *See*, Executive Director's opposition/reply, p.
10 2, lines 14-16. She further argues that, "[w]ithout a clear line drawn with respect to this conduct,
11 the Commission opens the door to a multitude of other limited uses of government resources for
12 political purposes, particularly uses that involve government email and other electronic
13 medium." *Id.* a p. 8, lines 19-22 and p. 9, lines 1-2.

14 Thus, the Executive Director asks the Commission not to focus on the conduct of the
15 Subject in this case, but to render a decision to avoid purported future abuses by other public
16 officials. There can be no clearer evidence that NRS 281A.400(7) is unconstitutionally
17 overbroad in that the constitutionally protected activity of Sheriff Antinoro is being swept up in
18 conduct which the Commission *may* regulate depending upon the circumstances. Such a result is
19 not permissible under the First Amendment of the United States Constitution.

20 IV

21 CONCLUSION

22 Based upon all of the foregoing, it is clear that (1) Sheriff Antinoro's actions were not in
23 violation of NRS 281A.400(7) and (2) any attempt to apply NRS 281A.400(7) to the conduct at
24 issue would violate the First Amendment of the United States Constitution. Certainly, there is

1 insufficient evidence for the Commission to conclude that the actions at issue constitute a *willful*
2 violation of NRS 281A.400(7). In that regard, there is one, single violation before the
3 Commission in this case, the costs of the investigation are nominal (the only interview of which
4 the undersigned is aware is that of the Subject), the parties agreed to brief the legal issues
5 presented in this matter to the Commission, thereby avoiding any costs associated with a hearing,
6 Sheriff Antinoro has cooperated fully with the investigation, the Executive Director concluded
7 that there was no financial gain associated with the actions at issue, and there are no affected
8 parties to whom restitution would be made. *See*, NRS 281A.475.

10 Based on all of the following, Sheriff Antinoro respectfully requests that the Executive
11 Director's motion for summary judgment be denied. Further, Sheriff Antinoro submits that the
12 undisputed facts in this matter, when weighed under the preponderance of the evidence standard,
13 compel the issuance of an order granting judgment in his favor as a matter of law.

15 DATED this 27th day of March, 2017.

16 THORNDAL ARMSTRONG
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CERTIFICATE OF SERVICE

I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **GERALD ANTINORO'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

_____ electronic mail

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

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DATED this 27 day of March, 2017.

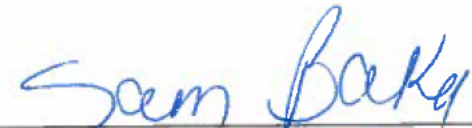

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EXHIBIT “D”

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U.S. DISTRICT COURT
DISTRICT OF NEVADA
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LANCE S. WILSON

BY

DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SAM DEHNE, et al.,

Plaintiff(s),

vs.

SKIP AVANINO, et al.,

Defendant(s).

CV-N-99-0642-DWH (VPC)

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable David W. Hagen, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4. Before the court is defendants' motion for judgment on the pleadings or, in the alternative, motion for summary judgment (#36) ("defendants' motion for summary judgment"). Plaintiffs filed papers in opposition (#38) and filed a counter-motion for partial summary judgment (#39) ("plaintiffs' cross-motion for summary judgment").¹ Defendants replied in support of their motion (#40) and filed an opposition to plaintiffs' cross-motion for partial summary judgment (#41). Plaintiffs replied in support of their cross-motion for partial summary judgment (#44). The court reviewed the submissions and held oral argument on May 23, 2001. For the reasons stated below, the undersigned magistrate judge recommends that the District Court rule that plaintiffs are entitled to summary judgment, and that the defendants are not entitled to summary judgment or judgment on the pleadings.

¹Although the title of plaintiffs' motion is styled as one for partial summary judgment, the text of the motion and reply states that plaintiffs seek summary judgment, not partial summary judgment. Therefore, the court construes plaintiffs' motion (#39) as one for full summary judgment.

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1 I. Factual Background

2 On or about March 26, 1999, plaintiff, Sam Dehne ("plaintiff Dehne"), wrote a letter to the
3 Nevada Commission on Ethics ("Commission") concerning the conduct of Reno Mayor Jeff Griffin.
4 Plaintiff Dehne's letter to the Commission expressed concern that Mayor Griffin had possibly engaged
5 in a conflict of interest through Mayor Griffin's alleged interaction with Krys Bart ("Ms. Bart"), Executive
6 Director of the Airport Authority of Washoe County, and that Mayor Griffin had possibly violated a
7 previous Commission ruling. At about this same time, plaintiff wrote a similar letter to the Commission
8 concerning Ms. Bart.

9 Pursuant to Nev. Rev. Stat. ("N.R.S.") § 281.511, the Commission assumed jurisdiction over
10 plaintiff Dehne's letters and treated them as requests for opinions from the Commission. The Commission
11 held a closed hearing on June 10, 1999, and the Commission received testimony from plaintiff Dehne,
12 Mayor Griffin, Ms. Bart, and others. Based on the evidence and testimony before it, the Commission
13 decided that just and sufficient cause did not exist to proceed and dismissed the matter against Mayor
14 Griffin and Ms. Bart.

15 The Commission found that plaintiff Dehne's letters contained false information and were
16 submitted in violation of N.R.S. §§ 281.525(1) and 281.511(2)(a). Based upon these findings, the
17 Commission imposed a civil penalty against plaintiff Dehne of \$5,000 for violating N.R.S. §
18 281.511(2)(a). The Commission also indicated that it would inform the Washoe County District
19 Attorney's Office of plaintiff Dehne's violation of N.R.S. § 281.525 pursuant to N.R.S. § 281.525(3).

20 Nevada Revised Statutes § 281.525 provides:

- 21 1. It is unlawful for any person to make, use, publish or disseminate
22 any statement which is known or through the exercise of reasonable care
23 should be known to be false, deceptive or misleading in order to induce
24 the commission to render an opinion or to take any action related to the
25 rendering of an opinion.
26 2. Any person who knowingly violates the provisions of subsection
27 1 is guilty of a misdemeanor.
28 3. The commission shall inform the attorney general or the district
 attorney of any case involving a violation of subsection 1.

1 Nevada Revised Statutes § 281.551(2)(a) states:

2 2. In addition to other penalties provided by law, the commission may
3 impose a civil penalty not to exceed \$5,000 and assess an amount equal
4 to the amount of attorney's fees and costs actually and reasonably incurred
by the person about whom an opinion was requested pursuant to NRS
281.511, against a person who:

5 (a) Submits to the commission, in bad faith or with a
6 vexatious purpose, an accusation or information that is
false; . . .

7 Plaintiffs' complaint (#1) originally consisted of five counts; however, on August 29, 2000, the
8 District Court entered an order (#25) granting in part the Commission's motion to dismiss counts three
9 through five. The Court denied defendants' motion as to counts one and two to the extent they requested
10 declaratory and prospective injunctive relief, since the Commission may apply N.R.S. §§ 281.511 and
11 281.525 in the future.²

12 In their first claim for relief, plaintiffs seek an order from the court declaring N.R.S. §§ 281.525(2)
13 and 281.551(2)(a) unconstitutional and for injunctive relief because they violate the First Amendment
14 of the United States Constitution. Plaintiffs challenge these statutes as facially unconstitutional and
15 overbroad in that they prohibit speech on matters of public concern, namely the alleged misconduct of
16 public officials. In the second claim for relief, plaintiffs contend that these statutes are facially
17 unconstitutional and infringe on fundamental Fourteenth Amendment rights because they provide no
18 notice or opportunity to be heard before the Commission may impose a fine of up to \$5,000.00 against
19 citizens who are found in violation of N.R.S. § 281.525(1), as the Commission did against plaintiff Dehne.
20 Plaintiffs seek an order declaring N.R.S. §§ 281.525(1) and 281.551(2) unconstitutional and for
21 permanent injunctive relief.

22 II. Analysis

23 A. Summary Judgment Standard

24 Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to
25 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine

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27 ² The Court granted the Commission's motion in part as to counts one and two only to the extent
28 plaintiffs sought an order from the Court striking the fine imposed against plaintiff by the Commission.

1 issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.
2 R. Civ. P. 56(c). The burden of demonstrating the absence of a genuine issue of material fact lies with
3 the moving party. See *Zoslaw v. MCA Distr. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982), *cert. denied*, 460
4 U.S. 1085 (1983). For this purpose, the material lodged by the moving party must be viewed in the light
5 most favorable to the nonmoving party. See *Adickes v. S.H. Kress and Co.*, 398 U.S. 144, 157 (1970);
6 *Baker v. Centennial Ins. Co.*, 970 F.2d 660, 662 (9th Cir. 1992). A material issue of fact is one that affects
7 the outcome of the litigation and requires a trial to resolve the differing versions of the truth. See *S.E.C.*
8 *v. Seaboard Corp.*, 667 F.2d 1301, 1306 (9th Cir. 1982).

9 Once the moving party presents evidence that would call for judgment as a matter of law at trial
10 if left uncontroverted, the respondent must show by specific facts the existence of a genuine issue for trial.
11 See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

12 [T]here is no genuine issue of fact for trial unless there is sufficient
13 evidence favoring the nonmoving party for a jury to return a verdict for
14 the party. If the evidence is merely colorable, or is not significantly
15 probative, summary judgment may be granted.

16 *Id.* at 249-50 (citations omitted). "A mere scintilla of evidence will not do, for a jury is permitted to draw
17 only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation."
18 *British Airways Board v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978), *cert. denied*, 440 U.S. 981 (1979).
19 Moreover, if the factual context makes the nonmoving party's claim implausible, that party must come
20 forward with more persuasive evidence than otherwise would be necessary to show there is a genuine issue
21 for trial. See *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *California*
22 *Architectural Bldg. Products v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987), *cert. denied*,
23 484 U.S. 1006 (1988).

24 The parties agree that the only issues for the court's consideration are whether N.R.S. §§
25 281.525(1) and 281.551(2)(a) facially violate the First and Fourteenth Amendments. See Plaintiffs' cross-
26 motion for summary judgment at p. 4 (#39); defendants' opposition to plaintiff's cross-motion for
27 summary judgment at p. 2 (#41). Therefore, any issue of fact as to the nature of plaintiffs' particular
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1 activities is immaterial and is not an obstacle to the granting of summary judgment. See, e.g., *Village of*
2 *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 627 (1980).

3 B. Facial Challenge

4 Plaintiffs raise a facial challenge to these statutes, which regulate statements made to the
5 Commission about a public official for alleged ethical violations and which authorize the Commission
6 to impose monetary penalties against citizens who violate the statutes. "Although facial challenges to
7 legislation are generally disfavored, they have been permitted in the First Amendment context where
8 the licensing scheme vests unbridled discretion in the decisionmaker and where the regulation is
9 challenged as overbroad." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 223 (1990) (citing *City Council*
10 *of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 798 and n. 15 (1984)). Litigants also have standing
11 in First Amendment overbreadth cases to "challenge a statute by showing that it substantially abridges
12 the First Amendment rights of other parties not before the court." *Village of Schaumburg v. Citizens for*
13 *a Better Environment*, 444 U.S. 620, 634 (1980), accord, *Perry v. Los Angeles Police Dept.*, 121 F.3d 1365,
14 1368 (9th Cir. 1997), cert. denied, 523 U.S. 1047 (1998). This occurs "because of the possibility that
15 protected speech or associative activities may be inhibited by the overly broad reach of the statute."
16 *Village of Schaumburg*, 444 U.S. at 634. The court finds that plaintiffs' claims are grounded on the First
17 Amendment, and they may argue the impact of the statutes on their own expressive activities, as well
18 as those of others. *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 66 (1981). Thus, plaintiffs have
19 standing to bring a facial challenge to these statutes.

20 C. Level of Scrutiny

21 "The First Amendment generally prevents the government from proscribing speech . . . because
22 of disapproval of the ideas expressed." *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377, 382 (1992)
23 (citations omitted). Content-based laws are presumptively invalid. *Id.* (citing *Simon & Schuster, Inc. v.*
24 *Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991)). Therefore, the initial inquiry must
25 be whether the statute regulating the speech is content-neutral; that is, whether the state can justify it
26 without reference either to the content of the speech it restricts or to the direct effect of that speech on
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1 listeners. *Ward v. Rock Against Racism*, 491 U.S. 781, 791-92 (1989); see also *Lind v. Grimmer*, 30 F.3d
2 1115 (9th Cir. 1994), cert. denied, *Wang v. Lind*, 513 U.S. 1111 (1995).

3 The Commission is generally charged with oversight of the ethical conduct of public officials in
4 the State of Nevada. N.R.S. § 281.471. This includes reviewing and investigating requests for opinions
5 made by citizens to the Commission regarding allegations that a public official has breached the code of
6 ethical standards established by N.R.S. § 281.481. See generally N.R.S. §§ 281.465 and 281.511. The
7 purposes of N.R.S. §§ 281.525(1) and 281.551(2)(a) are to "regulate against false statements of fact"
8 and to "prohibit [the making of] false statements in the context of petitioning the commission for redress
9 against a public official." Defendants' motion for summary judgment at p. 7, lines 14-15 (#36);
10 defendants' reply in support of motion for summary judgment at p. 5, lines 23-24 (#s 40-41).

11 In *Lind v. Grimmer*, 30 F.3d 1115 (9th Cir. 1994), cert. denied, *Wang v. Lind*, 513 U.S. 1111 (1995),
12 the court considered the content-neutrality of a Hawaii statute regulating speech concerning alleged
13 campaign spending violations in light of the purposes of the statute, which included preventing candidates
14 and their supporters from being "unduly tarred by a vindictive complaint," and "to prevent the
15 Commission's credibility from being invoked to support 'scandalous charges.'" *Id.* at 1117-18. The court
16 said:

17 Because these concerns all stem from the direct communicative impact
18 of speech, we conclude that section 11-216(d) regulates speech on the
19 basis of its content. Moreover, the speech it restricts, speech about
20 political processes and governmental investigations of wrongdoing by
21 public officials, falls near to the core of the First Amendment. See *New*
22 *York Times v. Sullivan*, 376 U.S. 254, 270-71, 84 S. Ct. 710, 720-21, 11
23 L.Ed.2d 686 (1964). Therefore, the statute is presumptively
24 unconstitutional. See *R.A.V. v. City of St. Paul*, 505 U.S. 377, ---, 112 S.Ct.
25 2538, 2542, 120 L.Ed.2d 305 (1992). It will survive scrutiny only if it is
26 narrowly drawn and is necessary to serve a compelling state interest, *Boos*
27 *v. Barry*, 485 U.S. 312, 321, 108 S.Ct. 1157, 1164, 99 L.Ed.2d 333 (1988),
28 or if the speech it regulates otherwise is undeserving of full protection, see,
e.g., *R.A.V.*, 505 U.S. at ---, 112 S.Ct. at 2543 (listing categories); *Seattle*
Times Co. v. Rhinehart, 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d 17
(1984) (devaluing information acquired through civil discovery).

1 *Id.* at 1118. This court finds *Lind v. Grimmer* compelling. As with the Hawaii statute, the Nevada
 2 statutes seek to regulate speech that is not content-neutral because the asserted purposes for these statutes
 3 stem from the "direct communicative impact of speech." *Id.* These statutes are designed to prohibit
 4 speech based upon its content and its effect upon listeners. Like the Hawaii statute, the Nevada statutes
 5 regulate speech about allegations of wrongdoing of public officials, which, indeed, "falls near to the core
 6 of the First Amendment." The court must now decide whether N.R.S. §§ 281.525(1) and 281.551(2)(a)
 7 are narrowly drawn and necessary to serve a compelling state interest, or whether the speech being
 8 regulated is unprotected speech.

9 1. *Whether the speech proscribed by N.R.S. §§ 281.525(1) and*
 10 *281.551(2)(a) is protected under the First Amendment*

11 The Commission contends that the speech these statutes regulate is not protected speech because
 12 N.R.S. § 281.525(1) prohibits the making of false, deceptive, or misleading statements to induce the
 13 Commission to take action against a public official, and N.R.S. § 281.551(2)(a) prohibits citizens from
 14 submitting to the Commission "in bad faith or with a vexatious purpose, an accusation or information
 15 that is false." Unlike truthful statements, false statements of fact do not enjoy First Amendment
 16 protection, since "there is no constitutional value in false statements of fact." *Gertz v. Robert Welsh, Inc.*,
 17 418 U.S. 323, 340 (1974). However, although false statements may be deemed unprotected speech in
 18 some instances, this general constitutional maxim does not apply to statements made about the conduct
 19 of public officials. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). In *New York Times*, the United
 20 States Supreme Court held that even false statements made about public officials are protected unless
 21 it can be shown that the statements were made "with 'actual malice' - that is, with knowledge that it was
 22 false or with reckless disregard that it was false or not." *Id.* at 279-80.

23 The *New York Times* standard for criticism of public officials stems from "a profound national
 24 commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,
 25 and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government
 26 and public officials." *Id.* at 270-71 (citations omitted). The Court analogized the conditional privilege
 27 of criticism of official conduct with the protection afforded a public official when he or she is sued for

1 libel by a private citizen and noted that in *Barr v. Mateo*, 360 U.S. 564, 575 (1959), the Court held
2 statements of federal officials to be absolutely privileged if made within the scope of his or her duties.

3 The reason for the official privilege is said to be that the threat of damage
4 suits would otherwise 'inhibit the fearless, vigorous, and effective
5 administration of the policies of government' and 'dampen the ardor of all
6 but the most resolute, or the most irresponsible, in the unflinching
7 discharge of their duties.' *Barr v. Mateo*, *supra*, 360 U.S. at 571, 79 S.Ct.
8 at 1339, 3 L.Ed.2d 1434. Analogous considerations support the privilege
9 for the citizen-critic of government. It is as much his duty to criticize as
10 it is the official's duty to administer....It would give public servants an
11 unjustified preference over the public they serve, if critics of official
12 conduct did not have a fair equivalent of the immunity granted to the
13 officials themselves. We conclude that such a privilege is required by the
14 First and Fourteenth Amendments.

15 *New York Times Co. v. Sullivan*, 376 U.S. 254 at 282-83 (citations omitted).

16 This court rejects the Commission's arguments that the *New York Times* standard does not apply
17 to these statutes, which plainly regulate citizens' speech about public officials. The Commission maintains
18 that the *New York Times* standard is limited only to cases in which a public official brings suit for
19 defamatory statements published by the media but offers no citation to authority in support of that
20 proposition. The Supreme Court has considered the application of the *New York Times* standard in a
21 variety of contexts, most particularly in *Garrison v. Louisiana*, 379 U.S. 64 (1964). In that case, the
22 question was whether Louisiana's criminal defamation statute unconstitutionally abridged the district
23 attorney's right to criticize state court judges at a press conference. *Id.* In finding the Louisiana statute
24 unconstitutional, the Court held that "only those false statements made with the high degree of awareness
25 of their probable falsity demanded by *New York Times* may be the subject of either civil or criminal
26 sanctions." *Id.* at 74.

27 In light of the Court's extension of the *New York Times* standard in *Garrison v. Louisiana* to
28 legislatively-created standards that restrict criticism of public officials, this court rejects the notion that
the *New York Times* standard is limited solely to private defamation suits brought by a public official made
or published in the media.

 This court also rejects the Commission's contention that *McDonald v. Smith*, 472 U.S. 479 (1985),
and not *New York Times Co. v. Sullivan*, is the controlling authority in plaintiffs' challenge of these

1 statutes. The issue in *McDonald v. Smith* was whether the Petition Clause provides absolute immunity
2 to a defendant charged with expressing libelous and damaging falsehoods in petitions to government
3 officials. 472 U.S. 479 (1985). In holding that the Petition Clause does not provide such absolute
4 immunity, the Court said that "there is no sound basis for granting greater constitutional protection to
5 statements made in a petition to the President than other First Amendment expressions." *Id.* at 485.
6 Plaintiffs' challenge here does not rest on a claim that plaintiff Dehne, or any other citizen who lodges
7 a complaint with the Commission in the future, has absolute immunity to make false statements about
8 public officials pursuant to the Petition Clause; therefore, *McDonald v. Smith* does not control.

9 The Commission's argument that N.R.S. §§ 281.525(1) and 281.551(2)(a) do not proscribe
10 protected speech is based upon a misconception of the effect of these statutes. A statute that regulates
11 speech critical of public officials and which implicitly requires the critic to guarantee the truth of every
12 factual assertion made to the Commission on pain of statutorily imposed civil liability (and potential
13 criminal liability) results in self-censorship and discourages public debate. These statutes are not content-
14 neutral laws of general applicability, but are, like the campaign spending statutes in *Lind v. Grimmer*,
15 "intended to impose direct and significant restrictions on speech." 30 F.3d 1115 at 1118. The underlying
16 principle of the *New York Times* standard is the protection of open public debate critical of official
17 conduct, and it applies with equal force when the legislative branch attempts to regulate citizens'
18 comments through a legislatively-created commission. This court finds that N.R.S. §§ 281.525(1) and
19 281.551(2)(a) regulate protected speech, and that the *New York Times* standard governs consideration
20 of the constitutionality of the statutes.

21 2. *Whether N.R.S. §§ 281.525(1) and 281.551(2)(a)*
22 *serve a compelling state interest*

23 The Commission is charged with investigating and taking appropriate action against alleged
24 violations of Nevada's ethics in government laws by public officers or employees. Nevada's statutory
25 scheme creates a public forum for the investigation and review of ethics complaints, but also attempts
26 to protect public officials from complaints based upon false statements or those motivated by bad faith
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1 or ill will. The statutes endeavor to strike a balance between these competing, legitimate interests, and
 2 the court finds that the statutes serve a compelling state interest.

3 3. *Whether N.R.S. §§ 281.525(1) and 281.551(2)(a) are narrowly*
 4 *drawn and comport with the New York Times standard*

5 "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must
 6 be the touchstone. . . ." *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637
 7 (1980) (quoting *NAACP v. Button*, 371 U.S. 415, 438 (1963)). A statute may be deemed constitutionally
 8 overbroad if a law is written so broadly that it inhibits protected speech. *City Council of Los Angeles v.*
 9 *Taxpayers for Vincent*, 406 U.S. 789, 796 (1984). Moreover, because these statutes regulate speech
 10 critical of public officials, the *New York Times* standard requires that the speech regulated by the statutes
 11 must be made with "actual malice" – that is, with ... reckless disregard of whether it was false or not."
 12 *New York Times Co. v. Sullivan*, 376 U.S. 254 at 279. This court finds that these statutes do not satisfy
 13 these standards.

14 a. The New York Times Standard

15 Nevada Revised Statutes § 281.525(1) makes statements unlawful which are "known or through
 16 the exercise of reasonable care should be known to be false, deceptive or misleading," and N.R.S. §
 17 281.551(2)(a) punishes not only false statements, but also those found to be vexatious or made in bad
 18 faith. This language falls short of the *New York Times* standard because N.R.S. § 281.525(1) employs
 19 a "reasonable care" standard as opposed to the higher "reckless disregard" standard required by *New York*
 20 *Times Co. v. Sullivan*. 376 U.S. 254 at 279. Nevada Revised Statutes § 281.551(2)(a) employs no
 21 standard at all. "[R]eckless conduct is not measured by whether a reasonably prudent man would have
 22 published, or would have investigated before publishing. There must be sufficient evidence to permit
 23 the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.
 24 Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice."
 25 *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). If the legislature wishes to regulate speech critical
 26 of public officials, such statutes must incorporate the "actual malice" standard. *Id.*; *New York Times*, 376
 27 U.S. 254 at 279. Nevada Revised Statutes § 281.551(2)(a) is also defective because it has no standard
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1 at all by which the Commission may evaluate statements it may deem untrue, vexatious, or made in bad
2 faith.

3 b. Vagueness

4 To enable citizens to steer between lawful and unlawful conduct, "we insist that laws give the
5 person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he [or she]
6 may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Vague laws that may be
7 a trap for the unwary are disfavored, particularly when the statute at issue "abut(s) upon sensitive areas
8 of basic First Amendment freedoms" and it may "inhibit the exercise of (those) freedoms." *Id.* at 109
9 (citations omitted). The question then is whether the boundaries of N.R.S. §§ 281.525(1) and
10 281.551(2)(a) are clearly drawn. It is this court's view that they are not. The terms "false," "deceptive,"
11 "misleading," and "bad faith" are not defined, which is of great importance because the statutes seek
12 to regulate speech critical of public officials. If the legislature wishes to tread on First Amendment ground
13 and regulate such speech, it must do so with the utmost specificity and clarity. There lies in the plain
14 meaning of these statutes the potential to punish protected expression about the conduct of public
15 officials, along with the equally troubling prospect of subjective or discriminatory enforcement. "A vague
16 law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad
17 hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id.* at
18 108-09.

19 c. Overbreadth

20 Plaintiffs also challenge N.R.S. §§ 281.525(1) and 281.551(2)(a) as overbroad because they are
21 content-based laws which proscribe more speech than is necessary to fulfill a compelling state interest.
22 *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637 (1980). To find that a statute
23 is overbroad, "there must be a realistic danger that the statute itself will significantly compromise
24 recognized First Amendment protections of parties not before the Court" *City Council of Los Angeles*
25 *v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984) (citations omitted). These statutes may have the
26 general effect of chilling citizens' willingness to lodge complaints about possible ethical violations by public
27 officials. The obvious intent of the statutes is to discourage citizens from filing false allegations of ethical

1 misconduct about public officials with the motive to harass public officials and damage their reputations.
2 However, the statutes go beyond that compelling state interest. For example, a citizen may file a
3 complaint about an official's alleged ethical misconduct that he or she believes is true. Even if the
4 allegations are deemed true, the Commission may decide they are in some way deceptive or misleading;
5 hence, the citizen may be subject to criminal and civil penalties. Nevada Revised Statutes §
6 281.551(2)(a) authorizes the Commission to adjudge whether a citizen is motivated by bad faith or is
7 acting with a vexatious purpose in filing an ethics complaint. Even if the allegations of the complaint
8 are true, a citizen may nevertheless be charged with a misdemeanor or a fine of up to \$5,000.00 because
9 the Commission finds the complaint was lodged in bad faith or for a vexatious purpose. The Commission
10 is entitled to serve legitimate state interests, "but it must do so by narrowly drawn [statutes] designed
11 to serve those interests without unnecessarily interfering with First Amendment freedoms." *Village of*
12 *Schaumburg*, 444 U.S. 620 at 637 (citations omitted). This court finds these statutes overbroad because
13 they proscribe more speech than is necessary and there is a realistic potential that they will discourage
14 protected speech.

15 D. Procedural Due Process

16 Apart from plaintiffs' challenge to the constitutionality of the statutes pursuant on First
17 Amendment grounds, they also contend that the statutes violate the Fourteenth Amendment because
18 the statutory framework offers no procedural due process by which a citizen is given notice of a violation
19 of the statutes, and citizens are afforded no hearing prior to imposition of a fine or referral to the district
20 attorney or attorney general. N.R.S. 281.525(3). Plaintiffs are correct.

21 In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (citation omitted), the Supreme Court identified
22 three factors to determine whether a procedural due process violation has occurred:

23 First, the private interest that will be affected by the official action;
24 second, the risk of an erroneous deprivation of such interest through the
25 procedures used, and the probable value, if any, of additional or substitute
26 procedural safeguards; and finally, the Government's interest, including
27 the function involved and the fiscal and administrative burdens that the
28 additional or substitute procedural requirement would entail.

1 The private interest at issue here is the loss of the First Amendment right of free expression, the loss of
2 which has been held to constitute irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Jacobsen*
3 *v. United States Postal Service*, 812 F.2d 1151, 1154 (9th Cir. 1987). In addition, N.R.S. § 281.525(2)
4 characterizes a violation of N.R.S. § 281.525(1) as a misdemeanor. Not only does a citizen stand to lose
5 his or her First Amendment rights, but also faces a misdemeanor criminal penalty and a fine of up to
6 \$5,000.00.

7 As to the second factor, the statutes provide neither notice of the Commission's intention to
8 impose the sanctions allowed, nor do they provide for a hearing. The value of additional procedural
9 safeguards is obvious. Notice of the Commission's finding that a citizen has violated N.R.S. 281.525(1),
10 a procedure for filing a response to the notice, the opportunity for a hearing, and providing a citizen the
11 opportunity to secure counsel are additional safeguards that should be implemented before depriving a
12 person of the property interests described above.

13 The third factor concerns the government's interest, fiscal and otherwise, that will result if
14 additional procedural safeguards are implemented. The Commission offered no evidence that providing
15 notice and a hearing before imposing a penalty would unduly burden the Commission, and the court does
16 not view such a procedure as unduly expensive or burdensome.

17 The Supreme Court has repeatedly held that "some form of hearing is required before an
18 individual is finally deprived of a property interest," and that a basic tenet of due process "is the
19 opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424
20 U.S. 319, 333 (1976) (citations omitted). The importance of such safeguards is particularly important
21 here, where the legislature seeks to regulate speech critical of public officials. In *St. Amant v. Thompson*,
22 390 U.S. 727, 730-31 (1968), the Court held that under the *New York Times* malice standard, the finder
23 of fact must establish by sufficient evidence that the statement was either a deliberate falsification, or
24 there was evidence of reckless publication "despite the publisher's awareness of probable falsity. . . ."
25 Here, the importance of a hearing is especially compelling because "reckless conduct is not measured
26 by whether a reasonably prudent man would have published, or would have investigated before publishing.
27 There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious

doubt as to the truth of his publication." *Id.* at 731. Because the statutes provide for no notice or an evidentiary hearing, the Commission cannot determine actual malice and must instead rely on its members' own perceptions of the citizen's intent in filing an ethics complaint. The court finds that process violates the Fourteenth Amendment and is unconstitutional.

E. Conclusion


Nevada Revised Statutes §§ 281.525(1) and 281.551(2)(a) are unconstitutional both on their face and as applied to plaintiff Dehne. These statutes are also unconstitutionally overbroad, and they violate the Due Process provisions of the Fourteenth Amendment. Plaintiffs' cross-motion for summary judgment (#39) is granted, and it is recommended that judgment be entered declaring N.R.S. §§ 281.525(1) and 281.551(2)(a) violate the First and Fourteenth Amendments to the United States Constitution, and that permanent injunction issue enjoining enforcement of these statutes. It is recommended that defendants' motion for summary judgment (#36) be denied.

RECOMMENDATION

IT IS THEREFORE RECOMMENDED that the District Court enter an order **GRANTING** plaintiffs' cross-motion for summary judgment (#39) and that judgment be entered declaring N.R.S. §§ 281.525(1) and 281.551(2)(a) violate the First and Fourteenth Amendments to the United States Constitution, and that permanent injunction issue enjoining enforcement of these statutes.

IT IS FURTHER RECOMMENDED that defendants' motion for summary judgment (#36) be **DENIED**.

DATED: August 6, 2001.


UNITED STATES MAGISTRATE JUDGE

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

Section B1: Summary by GL

Budget Account: 1343 COMMISSION ON ETHICS

The Nevada Commission on Ethics is an eight member body appointed by the Governor and Legislative Commission to interpret and enforce the provisions of the Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"). The Ethics Law establishes the public policy and standards of conduct necessary to ensure the integrity and impartiality of government, free from conflicts of interest between public duties and private interests of state, local public officers and employees. The commission and its staff focus on four main functions: 1) interpreting and enforcing the provisions of the Ethics Law; 2) investigating and adjudicating public complaints alleging ethics violations by public officers and employees; 3) providing outreach and education to public officers and employees to enhance their awareness and understanding of ethics requirements and prohibitions under Nevada law; and 4) accepting and monitoring various filings required of certain public officers.

[See Attachment]

Item No	Description	Actual 2015-2016	Work Program 2016-2017	G01 Year 1 2017-2018	G01 Year 2 2018-2019
REVENUE					
2501	APPROPRIATION CONTROL	174,489	173,701	218,632	221,617
2510	REVERSIONS	-20,382	0	0	0
2511	BALANCE FORWARD FROM PREVIOUS YEAR	110,929	67,625	67,625	67,625
2512	BALANCE FORWARD TO NEW YEAR	-67,624	0	0	0
4103	COUNTY REIMBURSEMENTS	544,932	600,605	562,196	569,874
4203	PRIOR YEAR REFUNDS	102	0	0	0
TOTAL REVENUES FOR BUDGET ACCOUNT 1343		742,446	841,931	848,453	859,116
EXPENDITURE					
01	PERSONNEL				
5100	SALARIES	408,748	454,002	440,398	440,398
5200	WORKERS COMPENSATION	5,959	5,118	5,118	5,118
5300	RETIREMENT	91,515	77,157	101,871	101,871
5400	PERSONNEL ASSESSMENT	2,695	2,724	1,253	1,300
5500	GROUP INSURANCE	48,750	50,346	53,496	53,346
5700	PAYROLL ASSESSMENT	635	635	508	498
5750	RETIRED EMPLOYEES GROUP INSURANCE	8,731	10,713	11,714	11,230
5800	UNEMPLOYMENT COMPENSATION	393	316	484	641
5840	MEDICARE	5,696	6,582	6,386	6,386
5860	BOARD AND COMMISSION PAY	4,480	7,680	7,680	7,680
5929	ELIMINATE LONGEVITY PAY	0	-350	0	0
5930	LONGEVITY PAY	0	350	0	0
TOTAL FOR CATEGORY 01		577,602	615,273	628,908	628,468
03	IN-STATE TRAVEL				
6200	PER DIEM IN-STATE	7,108	8,655	7,108	7,108
6210	FS DAILY RENTAL IN-STATE	596	1,102	596	596
6215	NON-FS VEHICLE RENTAL IN-STATE	438	223	438	438
6230	PUBLIC TRANSPORTATION IN-STATE	85	0	85	85
6240	PERSONAL VEHICLE IN-STATE	1,893	3,856	1,893	1,893
6250	COMM AIR TRANS IN-STATE	14,233	9,876	14,233	14,233
TOTAL FOR CATEGORY 03		24,353	23,712	24,353	24,353
04	OPERATING EXPENSES				
7020	OPERATING SUPPLIES	903	763	903	903

State of Nevada - Budget Division
Line Item Detail & Summary
2017-2019 Biennium (FY18-19)

Item No	Description	Actual 2015-2016	Work Program 2016-2017	G01 Year 1 2017-2018	G01 Year 2 2018-2019
7025	OPERATING SUPPLIES-E	4	0	4	4
7026	OPERATING SUPPLIES-F	532	208	532	532
7030	FREIGHT CHARGES	708	1,279	708	708
7044	PRINTING AND COPYING - C	1,220	1,275	1,220	1,220
7045	STATE PRINTING CHARGES	145	62	145	145
7050	EMPLOYEE BOND INSURANCE	7	7	9	9
7051	AGENCY OWNED - PROP. & CONT. INSURANCE	66	0	0	0
7054	AG TORT CLAIM ASSESSMENT	694	694	591	582
705A	NON B&G - PROP. & CONT. INSURANCE	0	23	22	22
705B	B&G - PROP. & CONT. INSURANCE	0	43	42	42
7060	CONTRACTS	80	92	0	0
7061	CONTRACTS - A	135	0	0	0
7080	LEGAL AND COURT	0	500	0	0
7100	STATE OWNED BLDG RENT-B&G	3,434	3,574	3,509	3,746
7103	STATE OWNED MEETING ROOM RENT	303	1,486	1,275	1,275
7110	NON-STATE OWNED OFFICE RENT	26,777	27,457	27,457	28,138
7230	MINOR IMPRV-BLGS/FIXTRS	5,373	0	0	0
7255	B & G LEASE ASSESSMENT	442	454	397	465
7285	POSTAGE - STATE MAILROOM	650	4,407	650	650
7286	MAIL STOP-STATE MAILROM	4,366	0	4,366	4,366
7290	PHONE, FAX, COMMUNICATION LINE	1,582	1,309	1,582	1,582
7291	CELL PHONE/PAGER CHARGES	3,157	3,360	3,157	3,157
7294	CONFERENCE CALL CHARGES	223	329	223	223
7296	EITS LONG DISTANCE CHARGES	175	137	175	175
7301	MEMBERSHIP DUES	445	445	445	445
7340	INSPECTIONS & CERTIFICATIONS	44	47	44	44
7370	PUBLICATIONS AND PERIODICALS	1,526	198	1,526	946
7430	PROFESSIONAL SERVICES	495	0	0	0
7980	OPERATING LEASE PAYMENTS	4,815	5,008	4,815	4,815
8241	NEW FURNISHINGS <\$5,000 - A	74	0	0	0
	TOTAL FOR CATEGORY 04	58,375	53,157	53,797	54,194
05	EQUIPMENT				
7060	CONTRACTS	1,200	0	0	0
7460	EQUIPMENT PURCHASES < \$1,000	2,655	0	0	0
7771	COMPUTER SOFTWARE <\$5,000 - A	200	0	0	0
8271	SPECIAL EQUIPMENT <\$5,000 - A	2,385	0	0	0
	TOTAL FOR CATEGORY 05	6,440	0	0	0
11	COURT REPORTING SERVICES				
7060	CONTRACTS	12,727	30,189	13,198	13,198
7750	NON EMPLOYEE IN-STATE TRAVEL	0	1,066	0	0

State of Nevada - Budget Division
Line Item Detail & Summary
2017-2019 Biennium (FY18-19)

Item No	Description	Actual 2015-2016	Work Program 2016-2017	G01 Year 1 2017-2018	G01 Year 2 2018-2019
	TOTAL FOR CATEGORY 11	12,727	31,255	13,198	13,198
15	INVESTIGATIONS/PARALEGAL COSTS				
7060	CONTRACTS	2,861	2,947	3,035	3,126
	TOTAL FOR CATEGORY 15	2,861	2,947	3,035	3,126
26	INFORMATION SERVICES				
7020	OPERATING SUPPLIES	196	310	196	196
7023	OPERATING SUPPLIES-C	0	25	0	0
7026	OPERATING SUPPLIES-F	162	0	162	162
7060	CONTRACTS	770	1,430	770	1,540
7290	PHONE, FAX, COMMUNICATION LINE	1,392	1,392	2,760	2,760
7460	EQUIPMENT PURCHASES < \$1,000	689	280	339	339
7532	EITS SHARED WEB SERVER HOSTING	2,342	2,889	842	842
7533	EITS EMAIL SERVICE	310	275	2,448	2,446
7542	EITS SILVERNET ACCESS	3,387	3,328	1,650	1,650
7545	EITS 18-19 ELIM (OLD EITS VPN SECURE LINK)	418	0	0	0
7554	EITS INFRASTRUCTURE ASSESSMENT	891	928	1,175	1,269
7556	EITS SECURITY ASSESSMENT	585	640	566	772
7771	COMPUTER SOFTWARE <\$5,000 - A	1,936	0	0	0
8371	COMPUTER HARDWARE <\$5,000 - A	5,703	0	0	8,930
	TOTAL FOR CATEGORY 26	18,781	11,497	10,908	20,906
30	TRAINING				
6100	PER DIEM OUT-OF-STATE	2,659	2,454	2,659	2,659
6130	PUBLIC TRANS OUT-OF-STATE	263	155	263	263
6140	PERSONAL VEHICLE OUT-OF-STATE	86	216	86	86
6150	COMM AIR TRANS OUT-OF-STATE	246	2,759	246	246
6240	PERSONAL VEHICLE IN-STATE	102	0	102	102
6250	COMM AIR TRANS IN-STATE	857	0	857	857
7300	DUES AND REGISTRATIONS	2,334	2,140	2,334	2,334
7302	REGISTRATION FEES	849	0	849	849
7306	DUES & REG - EMPLOYEE REIMBURSEMENT	120	0	120	120
	TOTAL FOR CATEGORY 30	7,516	7,724	7,516	7,516
82	DEPT COST ALLOCATION				
7389	16-17 CENTRALIZED PERSONNEL SERVICES COST ALLOC	2,615	2,998	2,921	3,040
7439	DEPT OF ADMIN - ADMIN SER DIV	22,278	25,260	34,953	35,815
	TOTAL FOR CATEGORY 82	24,893	28,258	37,874	38,855
86	RESERVE				
9178	RESERVE - BAL FWD TO SUBSEQUENT FY	0	67,625	67,625	67,625

State of Nevada - Budget Division
Line Item Detail & Summary
2017-2019 Biennium (FY18-19)

Item No	Description	Actual 2015-2016	Work Program 2016-2017	G01 Year 1 2017-2018	G01 Year 2 2018-2019
	TOTAL FOR CATEGORY 86	0	67,625	67,625	67,625
87	PURCHASING ASSESSMENT				
7393	PURCHASING ASSESSMENT	294	483	407	569
	TOTAL FOR CATEGORY 87	294	483	407	569
88	STATEWIDE COST ALLOCATION PLAN				
9159	STATEWIDE COST ALLOCATION	8,572	0	0	0
	TOTAL FOR CATEGORY 88	8,572	0	0	0
89	AG COST ALLOCATION PLAN				
7391	ATTORNEY GENERAL COST ALLOC	0	0	832	306
	TOTAL FOR CATEGORY 89	0	0	832	306
93	RESERVE FOR REVERSION TO GENERAL FUND				
9169	TRANSFER OF GENERAL FD APPROPS	32	0	0	0
	TOTAL FOR CATEGORY 93	32	0	0	0
	TOTAL EXPENDITURES FOR BUDGET ACCOUNT 1343	742,446	841,931	848,453	859,116

CONTRACT SUMMARY

(This form must accompany all contracts submitted to the Board of Examiners (BOE) for review and approval)

I. DESCRIPTION OF CONTRACT1. Contract Number: **18520**Agency Name: **COMMISSION ON ETHICS**Agency Code: **150**Appropriation Unit: **1343-26**Is budget authority available?: **Yes**If "No" please explain: **Not Applicable**Legal Entity Name: **COMPLETE DOCUMENTS MANAGEMENT SOLUTIONS, INC.**Contractor Name: **PRECISION DOCUMENT IMAGING**Address: **2440 VASSAR STREET**City/State/Zip: **RENO, NV 89502**Contact/Phone: **JUSTIN LONG 775/337-1987**Vendor No.: **PUR0002739A**NV Business ID: **NV20031298906**To what State Fiscal Year(s) will the contract be charged? **2017-2018**

What is the source of funds that will be used to pay the contractor? Indicate the percentage of each funding source if the contractor will be paid by multiple funding sources.

X	General Funds	21.00 %	Fees	0.00 %
	Federal Funds	0.00 %	Bonds	0.00 %
	Highway Funds	0.00 %	X Other funding	79.00 % Local governments

Agency Reference #: **ASD #2465019**

2. Contract start date:

a. Effective upon Board of Examiner's approval? **No** or b. other effective date **04/17/2017**Anticipated BOE meeting date **06/2017**Retroactive? **No**

If "Yes", please explain

Not Applicable**RETURN TO
DoA/ASD****RECEIVED****APR 11 2017****GOVERNOR'S FINANCE OFFICE
BUDGET DIVISION**3. Termination Date: **04/30/2018**Contract term: **1 year and 13 days**4. Type of contract: **Contract**Contract description: **Case Mgmt Database**

5. Purpose of contract:

This is a new contract to provide the Nevada Commission on Ethics (NCOE) with a hosted Opinion Database and internal user interface, a hosted Electronic Forms Database, public access solutions, and a limited, hosted document management system for internal processing of requests for Opinion.

6. NEW CONTRACT

The maximum amount of the contract for the term of the contract is: **\$23,250.00****II. JUSTIFICATION**

7. What conditions require that this work be done?

An electronic case management/database system will ensure compliance with state law as established in Assembly Bill 60 (2015) and Assembly Bill 236 (2013), including efficiencies in Request for Opinion (RFO) management, providing an online searchable database of published Commission opinions that is accessible through the Commission's website, and providing an online application for electronic forms and submission via the Commission's website

8. Explain why State employees in your agency or other State agencies are not able to do this work:

The NCOE has limited internal IT staff and utilizes a state contracted vendor (CTS) for desktop/server support only. Several requests were made to EITS to inquire about paid programmers to assist the NCOE with the project, but EITS declined stating they had a backlog and were understaffed.9. Were quotes or proposals solicited? **Yes**Was the solicitation (RFP) done by the Purchasing Division? **No**

a. List the names of vendors that were solicited to submit proposals (include at least three):

Precision Document Imaging
OnBase
Michael Matters, Inc.
WingSwept

b. Solicitation Waiver: **Not Applicable**

c. Why was this contractor chosen in preference to other?

Lowest bidder

d. Last bid date:

Anticipated re-bid date:

10. Does the contract contain any IT components? No

III. OTHER INFORMATION

11. a. Is the contractor a current employee of the State of Nevada or will the contracted services be performed by a current employee of the State of Nevada?

No

b. Was the contractor formerly employed by the State of Nevada within the last 24 months or will the contracted services be performed by someone formerly employed by the State of Nevada within the last 24 months?

No

c. Is the contractor employed by any of Nevada's political subdivisions or by any other government?

No If "Yes", please explain

Not Applicable

12. Has the contractor ever been engaged under contract by any State agency?

No If "Yes", specify when and for which agency and indicate if the quality of service provided to the identified agency has been verified as satisfactory:

Not Applicable

13. Is the contractor currently involved in litigation with the State of Nevada?

No If "Yes", please provide details of the litigation and facts supporting approval of the contract:

Not Applicable

14. The contractor is registered with the Nevada Secretary of State's Office as a:
Nevada Corporation

15. a. Is the Contractor Name the same as the legal Entity Name?

No b. If "No", please explain:

Precision Document Imaging is an alternate name.

16. a. Does the contractor have a current Nevada State Business License (SBL)?

Yes

17. a. Is the legal entity active and in good standing with the Nevada Secretary of State's Office?

Yes

18. Agency Field Contract Monitor:

19. Contract Status:

Contract Approvals:

Approval Level	User	Signature Date
Budget Account Approval	csweeney	04/05/2017 09:57:28 AM
Division Approval	csweeney	04/05/2017 09:57:33 AM
Department Approval	csweeney	04/05/2017 09:57:36 AM
Contract Manager Approval	csweeney	04/05/2017 09:57:40 AM
Budget Analyst Approval	Pending	

CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR FOR LESS THAN \$50,000

A Contract Between the State of Nevada
Acting by and Through its

Agency Name:	Commission on Ethics
Address:	704 W. Nye Lane, Suite 204
City, State, Zip Code:	Carson City, NV 89703
Contact:	Yvonne Nevarez-Goodson
Phone:	775/687-5469
Fax:	775/687-1279
Email:	ynevarez@ethics.nv.gov

Contractor Name:	Precision Document Imaging
Address:	2440 Vassar Street
City, State, Zip Code:	Reno, NV 89502
Contact:	Justin Long
Phone:	775/337-1987
Fax:	N/A
Email:	jlong@precisiondi.com

WHEREAS, NRS 333.700 authorizes officers, departments, institutions, boards, commissions, and other agencies in the Executive Branch of the State Government which derive their support from public money in whole or in part to engage services of persons as independent contractors; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the State of Nevada.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

- CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 7, Contract Termination*. Contracts requiring approval of the Nevada Board of Examiners or the Clerk of the Board are not effective until such approval has occurred, however, after such approval, the effective date will be the date noted below.

Effective from:	April 17, 2017	To:	April 30, 2018
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- NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; or (iii) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or electronic mail to the address(es) such party has specified in writing.

3. **SCOPE OF WORK.** The scope of work is described below, which is incorporated herein by reference:

DESCRIPTION OF SCOPE OF WORK:

See Attachment AA

An Attachment must be limited to the scope of work to be performed by Contractor. Any provision, term or condition of an Attachment that contradicts the terms of this Contract, or that would change the obligations of the State under this Contract, shall be void and unenforceable.

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 3, Scope of Work* at a cost as noted below:

\$17,250.00	per	Fiscal Year 2017
\$6,000.00	per	Fiscal Year 2018

Total Contract or installments payable at:	Upon completion of project/deliverables and upon approved invoice
--	---

Total Contract Not to Exceed:	\$23,250
-------------------------------	----------

The State does not agree to reimburse Contractor for expenses unless otherwise specified in the Scope of Work or incorporated attachments (if any). Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the result of legislative appropriation may require.

5. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.
6. **INSPECTION & AUDIT.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) and as required by State and federal law, complete and accurate records as are necessary to fully disclose to the State or United States Government, sufficient information to determine compliance with all State and federal regulations and statutes, and compliance with the terms of this contract, and agrees that such documents will be made available for inspection upon reasonable notice from authorized representatives of the State or Federal Government.
7. **CONTRACT TERMINATION.**
- A. Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 2, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided.
- B. State Termination for Non-Appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

C. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under subsection 7D. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:

- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- 2) If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
- 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- 5) If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- 6) If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

D. Time to Correct. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in *Section 2, Notice*, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under subsection 7C, above, shall run concurrently, unless the notice expressly states otherwise.

8. **REMEDIES.** Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
9. **LIMITED LIABILITY.** The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the Fiscal Year budget in existence at the time of the breach. Contractor's tort liability shall not be limited.
10. **INDEMNIFICATION AND DEFENSE.** To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Contractor under this Contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the State shall apply in all cases

except for claims arising solely from the State's own negligence or willful misconduct. Contractor waives any rights of subrogation against the State. Contractor's duty to defend begins when the State requests defense of any claim arising from this Contract.

11. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS.** Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.

12. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the Contracting Agency, Contractor must procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum requirements specified below. Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307, for losses arising from work/materials/equipment performed or provided by or on behalf of Contractor. By endorsement to Contractor's automobile and general liability policies, the State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Contractor. Contractor shall not commence work before Contractor has provided evidence of the required insurance in the form of a certificate of insurance and endorsement to the Contracting Agency of the State.

A. Workers' Compensation and Employer's Liability Insurance.

- 1) Contractor shall provide proof of worker's compensation insurance as required per Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) If Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed "Affidavit of Rejection of Coverage" form under NRS 616B.627 and NRS 617.210.

B. Commercial General Liability – Occurrence Form. The Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- | | |
|--|-------------|
| 1) General Aggregate | \$2,000,000 |
| 2) Products – Completed Operations Aggregate | \$1,000,000 |
| 3) Personal and Advertising Injury | \$1,000,000 |
| 4) Each Occurrence | \$1,000,000 |

Mail all required insurance documents to the Contracting Agency identified on page one of the Contract.

13. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

14. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

15. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract ("State Materials") shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.

16. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State may have the duty to disclose unless a particular record is made confidential by law or a common law balance of interests.

17. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry;

shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

18. **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES.** For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.
19. **GOVERNING LAW: JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.

CETS#18520

RFP#

20. **ENTIRE CONTRACT AND MODIFICATION.** This Contract and its scope of work constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners, as required. This form of Contract, including any amendments to the Contract, is not authorized for use if the "not to exceed" value *Section 4, Consideration exceeds \$49,999*. This Contract, and any amendments, may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.


Independent Contractor's Signature

4/5/17
Date

CEO
Independent Contractor's Title


State of Nevada Authorized Signature

4/10/17
Date

Executive Director, Ethics Commission
Title



Signature - Clerk of the Board of Examiners for James R. Wells

APPROVED BY BOARD OF EXAMINERS

On:

4/11/2017
Date

Approved as to form by:


Commission Counsel, Commission on
Ethics

On:

April 10, 2017
Date

ATTACHMENT AA

SCOPE OF WORK



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

April 3, 2017

Precision Document Imaging – SCOPE OF WORK

Contract Deliverables/Goals:

1. Provide the Nevada Commission on Ethics (NCOE) with a hosted Opinion Database, with internal user interface (web application).
2. Provide the NCOE with a hosted Electronic Forms Database, with internal user interface.
3. Provide Public Access solutions which will provide the public with the following resources through the NCOE website:
 - a. Searchable database to view and research published Commission Opinions.
 - b. Electronic forms that allow customers to fill out, attach documentation (if required), and submit all NCOE forms online.
 - i. Electronic Forms include:
 - Third-Party Request for Opinion (Ethics Complaint)
 - First-Party Request for Opinion (Advisory Request)
 - Nevada Acknowledgement of Ethical Standards for Public Officers
 - Agency Representation Disclosure
 - Public Records Requests.
4. Provide the NCOE with a hosted document management system that will allow for the storage and retrieval of RFO/Case Documents.
5. Provide the NCOE a limited case management system that will have the following capabilities:
 - a. Create new case records that will allow for the creation and management of case notes, case and party contact information and documents.
 - b. Automated deadline tracking for RFO/case related to statutory timeframes/deadlines.
 - c. Case Reports
 - i. Case Status
 - ii. Pleadings (Document Index Based on Date)

6. Provide technical support for all systems described herein, including customer support regarding user interface and operations. Technical support does not include enhancements to the products after initial customization and rollout.

Cost:

1. Cost to build/customize the Opinions/Forms Database and Case Management System:
 - One time Set-up Cost: \$1,500
 - \$150/hour, not to exceed 80 hours (\$12,000)
2. Cost to provide professional training to the NCOE regarding the user interface:
 - \$150/hour, not to exceed 25 hours (\$3,500)
3. Hosting of the Opinions/Forms Database and NCOE case files (500GB of storage), including unlimited technical support for user interface:
 - \$600/month = \$7,200/year
4. Any additional functionality enhancements or system changes once the system is rolled out will be billed at \$150/hour.
5. Time will be billed in 30 minute increments.

Time-frame on Deliverables: System build/customization and training to be completed on or before June 30, 2017. Monthly billing of \$600/month will begin after the system is customized and fully functional.

Project Definition and Pricing Document

Nevada Commission on Ethics (hereinafter referred to as NCE)

Hosted Opinion/Electronic Forms Database

Prepared by: Justin Long

Date of Publication: 01/19/2016

Project Goals

- Provide NCE with a hosted Opinion/Electronic Forms Database
- Public Access (provide a solution that will allow the public to search and view published opinions online)
- Ability to accept complaint forms from the NCE website

System Functionality

- Opinion Database Management
 - Internal User Interface
 - Public Interface for linking to your website for searching and document viewing
- Electronic Forms Database
 - Allow users to fill out and submit forms and attach supporting documentation electronically
 - Third-Party Request for Opinion (Ethics Complaint)
 - First-Party Request for Opinion (Advisory)
 - Acknowledgement of Ethical Standards
 - Public Records Request
 - Agency Representation Disclosure
 - E-mail notifications for specific forms as directed by the Ethics Commission

Precision Document Imaging
Power for your processes

Option 1: Hosted Opinion/Forms Database

The initial contract for 12 months. After the initial contract term, you can cancel at any time with 60 day's written notice. This approach give you complete control over the system functionality. You can add additional functionality at any time. The professional service cost associated with all system changes will be bill at \$150.00 hr.

Product Name	Product Code	Monthly Cost	Qty.	Extended Monthly Cost	Total
*Opinion/Forms Database Hosting	Host	600.00	1	600.00	600.00
Professional Services					
**System Build/Customization	PRO-SVC	12,000.00	1	N/A	12,000.00
***System Rollout & Training	PRO-SVC	150.00	25		3,750.00
Solution Total Cost					
Ongoing Monthly Cost					
Opinion/Forms Database Hosting included 500GB of Storage					\$600.00
Total Monthly Cost					\$600.00
One-Time Project Cost					
One Time Set-Up Cost					\$1,500.00
Professional Services					\$15,750.00

* The monthly hosting fee includes Technical Support

**The System Build/Customization includes 80 hrs. of professional services time.

***System Rollout and Training (You will only be billed for the actual time used)

SENATE BILL NO. 84—COMMITTEE ON
LEGISLATIVE OPERATIONS AND ELECTIONS

(ON BEHALF OF THE COMMISSION ON ETHICS)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Legislative Operations and Elections

SUMMARY—Makes various changes relating to ethics in government. (BDR 23-250)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

AN ACT relating to ethics in government; revising certain procedures of the Commission on Ethics and the remedial authority of the Commission; designating certain persons as public officers and employees for the purposes of the Nevada Ethics in Government Law; revising the code of ethical standards applicable to public officers and employees; revising provisions governing the disclosure of certain information and the filing of certain disclosure statements by public officers and employees; providing for the execution and filing by a public officer of a single acknowledgment of statutory ethical standards for all public offices held concurrently by the officer; revising provisions relating to the employment of former public officers and employees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under the Nevada Ethics in Government Law (Ethics Law), the Commission
- 2 on Ethics is authorized to issue opinions interpreting the statutory ethical standards
- 3 established by the Ethics Law and applying those standards to a given set of facts
- 4 and circumstances. (Chapter 281A of NRS) The Commission generally issues the
- 5 following types of opinions: (1) advisory opinions requested by a public officer or
- 6 employee who is seeking guidance on matters which directly relate to the propriety
- 7 of his or her own past, present or future conduct under the statutory ethical
- 8 standards; (2) advisory opinions requested by a public officer or employee who is



* S B 8 4 R 1 *

requesting relief from certain provisions of the Ethics Law that allow the Commission to grant such relief; and (3) opinions issued in response to an ethics complaint which has been filed with the Commission or initiated by the Commission on its own motion regarding the propriety of the conduct of a public officer or employee under the statutory ethical standards. (NRS 281A.410, 281A.430, 281A.440, 281A.550)

The Ethics Law also establishes various procedures that the Commission and its staff must follow when processing, handling, investigating, reviewing, evaluating and adjudicating requests for advisory opinions and ethics complaints. (NRS 281A.440-281A.480) Most of those procedures are contained in a single section of the Nevada Revised Statutes, NRS 281A.440, which embraces numerous and extensive procedural provisions governing: (1) the filing of requests for advisory opinions and ethics complaints; (2) the initial review and evaluation of such requests and complaints; (3) the requirements for responding to such requests and complaints; and (4) the procedures and standards for conducting investigations, making discovery requests, disclosing information, holding hearings and other proceedings and determining issues of confidentiality with regard to such information, hearings and proceedings. Because NRS 281A.440 includes so many extensive procedural provisions, it has become a particularly lengthy and complex statute.

Section 30 of this bill repeals NRS 281A.440, and **sections 1.3-11 and 14** of this bill generally reorganize and reenact the existing provisions of NRS 281A.440, with certain modifications, to effectuate the orderly and logical arrangement of the statutes, improve readability and clarity and reduce repetitious or lengthy words or phrases. For example, **sections 1.3-2.7** define several terms, including "advisory opinion" and "ethics complaint," that replace repetitious or lengthy words or phrases throughout the Ethics Law and thereby improve readability and clarity.

Because proceedings concerning advisory opinions are functionally different from proceedings concerning ethics complaints, **sections 3.1-3.5** contain procedures that apply only to advisory opinions. However, these procedures do not differ materially from the existing procedures that apply to advisory opinions in NRS 281A.440.

Sections 3.6-11 contain procedures that apply only to ethics complaints. **Section 3.7** sets forth the requirements for properly filing an ethics complaint, and **section 3.8** provides that after the ethics complaint is properly filed, the Commission must determine, based on the evidence submitted with the ethics complaint, whether it has jurisdiction in the matter and whether an investigation is warranted in the matter. If the Commission determines that it has jurisdiction and an investigation is warranted, **sections 3.9-5** provide for an investigation and review of the ethics complaint to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter.

In conducting the investigation and review, **sections 3.9-5** require the Executive Director of the Commission to: (1) provide the public officer or employee an opportunity to submit a response; (2) investigate the facts and circumstances; and (3) prepare and submit a recommendation to a review panel, consisting of three members of the eight-member Commission, that must determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. If the review panel determines that there is not just and sufficient cause, **section 5** requires the review panel to dismiss the matter, but the review panel may issue a confidential letter of caution or instruction to the public officer or employee as part of the dismissal.

If the review panel determines that there is just and sufficient cause but reasonably believes that the conduct at issue may be appropriately addressed through additional training or other corrective action, **sections 5 and 6** authorize the review panel to approve a deferral agreement between the Executive Director



and the public officer or employee to defer further proceedings in the matter under the terms and conditions of the deferral agreement. If the public officer or employee complies with the terms and conditions of the deferral agreement, the matter must be dismissed. However, if the public officer or employee fails to comply with the terms and conditions of the deferral agreement, the deferral agreement may be vacated and further proceedings conducted in the matter before the Commission.

If the review panel does not believe that a deferral agreement is appropriate or if the public officer or employee declines to enter into such a deferral agreement, **section 5** requires the review panel to refer the ethics complaint to the Commission for further proceedings in the matter. If further proceedings are conducted in the matter, **section 16.6** of this bill provides that the three members of the review panel cannot participate in the proceedings before the remaining five members of the Commission.

Sections 6.5-11 reorganize and reenact the existing provisions of NRS 281A.440 governing the procedures and standards for making discovery requests, disclosing information, holding hearings and other proceedings and determining issues of confidentiality with regard to such information, hearings and proceedings. In addition, **section 8** revises the procedures for protecting the identity of requesters of ethics complaints who ask for confidential status because their complaints are akin to whistleblower complaints that allege unethical conduct within their own public agencies or because they offer sufficient facts and circumstances showing that they will face a bona fide threat of physical force or violence from filing their complaints. Under **section 8**, if the Executive Director intends to present the testimony of such a confidential requester during the ethics proceedings, the name of the confidential requester must be disclosed but only as a proposed witness and not as the requester of the ethics complaint.

Sections 12, 12.5 and 13 of this bill provide the Commission with additional remedial options in proceedings concerning ethics complaints which allow the Commission to utilize different types of remedies that progress in scope and severity depending upon the scope and severity of the unethical conduct. Currently, the Ethics Law grants the Commission certain remedial options, including civil monetary penalties, if it finds a violation of the statutory ethical standards. The Ethics Law also authorizes the Commission to resolve matters before it by stipulation, agreed settlement, consent order or default. (NRS 233B.121, 281A.135, 281A.480) **Sections 12, 12.5 and 13** expand the remedies available to the Commission to include: (1) a requirement that a public officer or employee complete a period of compliance, receive additional training or issue a public apology; and (2) the issuance of a confidential letter of caution or instruction or a public admonition, reprimand or censure.

The Ethics Law generally defines a person as a public officer if the person holds a position that: (1) involves the exercise of a public power, trust or duty; and (2) is established by the Nevada Constitution or any provision of statute, charter or ordinance. (NRS 281A.160) Certain additional persons are designated as public officers notwithstanding the fact that their positions are not so established. (NRS 281A.182) In addition, the Ethics Law defines a person as a public employee if the person performs public duties under the direction and control of a public officer and is paid compensation with public money. (NRS 281A.150) **Sections 15.7 and 16** of this bill provide that certain additional persons are designated as public officers and employees solely and exclusively for the purposes of the Ethics Law if such persons enter into contracts with public agencies, are paid compensation with public money and serve in certain positions which ordinarily would be held or filled by public officers and employees. **Section 16** also provides that its provisions must be interpreted and applied to ensure that a person does not evade the Ethics Law because a public agency elects to use a contractual relationship instead of an



employment relationship for these types of positions which ordinarily would be held or filled by public officers and employees.

Section 18 of this bill provides that the Commission does not have jurisdiction regarding alleged discrimination or harassment for which a complaint or employment-related grievance may be filed with an appropriate agency with jurisdiction to redress such alleged discrimination or harassment. (NRS 281A.280) However, **section 18** also provides that the Commission has jurisdiction regarding the alleged conduct if such conduct is sanctionable separately or concurrently under the Ethics Law, irrespective of the alleged discrimination or harassment.

In performing their functions under the Ethics Law, the Commission and its presiding officers may issue subpoenas to compel the attendance of witnesses and the production of books and papers. (NRS 281A.300) **Section 19** of this bill clarifies that such subpoenas may be issued during the course of any investigation under the Ethics Law to compel the participation of potential witnesses and the production of books and papers.

Section 20 of this bill revises the existing statutory ethical standards which generally prohibit public officers and employees from engaging in certain unethical conduct that benefits their own private interests. (NRS 281A.400) **Section 20** expands these existing prohibitions so that a public officer or employee cannot engage in certain unethical conduct when it benefits any other person to whom the public officer or employee has a commitment in a private capacity. The Ethics Law defines such other persons to include: (1) the spouse or domestic partner of the public officer or employee, a member of his or her household or a relative within the third degree of consanguinity or affinity; (2) a person who employs the public officer or employee, his or her spouse or domestic partner or a member of his or her household; (3) a person with whom the public officer or employee has a substantial and continuing business relationship; or (4) a person with whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to the foregoing commitments, interests or relationships. (NRS 281A.065)

The Ethics Law permits certain public officers and employees to represent or counsel private persons before certain public agencies in which the public officers or employees do not serve and also requires certain public officers to file annual disclosure statements regarding such representation or counseling with the Commission. (NRS 281A.410) The Ethics Law also requires certain public officers and employees to disclose publicly certain personal or private interests which may create potential conflicts of interests at the time the public officers and employees consider or act upon a matter affecting those interests. (NRS 281A.420) **Section 20.3** of this bill eliminates the requirement for certain public officers to file annual disclosure statements regarding representation or counseling of private persons before public agencies. Instead, **section 20.5** of this bill requires certain public officers and employees to disclose publicly certain information regarding representation or counseling of private persons before public agencies at the time the public officers and employees consider or act upon a matter which is reasonably related to the nature of such representation or counseling.

The Ethics Law requires each elected and appointed public officer to execute and file with the Commission a written acknowledgment of the officer's understanding of the statutory ethical standards applicable to him or her, and the officer's obligation to become familiar with any amendments to those standards. A public officer is required to execute and file the acknowledgment for each office, including each appointive office, held by the officer. (NRS 281A.500) **Section 25** of this bill provides that a public officer who executes and files the acknowledgment for one office as required by law thereby satisfies the execution and filing requirements for any other office held concurrently by him or her.

Under existing law, various public officers and employees are subject to a "cooling-off" period after the termination of their public service or employment,



during which they are precluded from soliciting or accepting certain kinds of employment. A similar "cooling-off period" exists for a former public officer's or employee's representation or counseling of a private person on any issue which was under consideration by the agency in which the officer or employee served. The Commission is authorized to grant relief from the application of these provisions in specified circumstances. (NRS 281A.410, 281A.550) **Section 27** of this bill: (1) clarifies that a grant of relief from the application of the cooling-off provisions as they relate to employment does not affect the ban on representation or counseling; and (2) provides that the ban on employment extends to circumstances in which any oral or written agreement for personal services is sought, negotiated or exists during the cooling-off period, even if such an agreement does not or will not become effective until after the cooling-off period.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 281A of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 to 14, inclusive, of this act.

Sec. 1.3. *"Adjudicatory hearing" means a hearing held by the Commission pursuant to section 6.5 of this act to receive evidence concerning an ethics complaint and render an opinion in the matter.*

Sec. 1.5. *"Advisory opinion" means an advisory opinion rendered by the Commission pursuant to sections 3.1 to 3.5, inclusive, of this act.*

Sec. 2. *"Deferral agreement" means an agreement entered into between the Executive Director and the subject of an ethics complaint pursuant to section 6 of this act.*

Sec. 2.2. *"Ethics complaint" means a request for an opinion which is filed with the Commission or initiated by the Commission on its own motion pursuant to section 3.7 of this act regarding the propriety of the conduct of a public officer or employee under the statutory ethical standards set forth in this chapter.*

Sec. 2.5. *"Request for an advisory opinion" means a request for an advisory opinion which is filed with the Commission pursuant to section 3.2 of this act by a public officer or employee who is:*

1. Seeking guidance on matters which directly relate to the propriety of his or her own past, present or future conduct as a public officer or employee under the statutory ethical standards set forth in this chapter; or

2. Requesting relief pursuant to NRS 281A.410, 281A.430 or 281A.550.

Sec. 2.7. *"Review panel" means a review panel appointed pursuant to NRS 281A.220.*



1 Sec. 3. (Deleted by amendment.)

2 Sec. 3.1. *The provisions of sections 3.1 to 3.5, inclusive, of*
3 *this act apply to proceedings concerning a request for an advisory*
4 *opinion.*

5 Sec. 3.2. 1. *A public officer or employee may file with the*
6 *Commission a request for an advisory opinion to:*

7 (a) *Seek guidance on matters which directly relate to the*
8 *propriety of his or her own past, present or future conduct as a*
9 *public officer or employee under the statutory ethical standards set*
10 *forth in this chapter; or*

11 (b) *Request relief pursuant to NRS 281A.410, 281A.430*
12 *or 281A.550.*

13 2. *The request for an advisory opinion must be:*

14 (a) *Filed on a form prescribed by the Commission; and*

15 (b) *Submitted with all necessary information for the*
16 *Commission to render an advisory opinion in the matter.*

17 3. *The Commission may decline to render an advisory*
18 *opinion if the public officer or employee does not:*

19 (a) *Submit all necessary information for the Commission to*
20 *render an advisory opinion in the matter; or*

21 (b) *Declare by oath or affirmation that he or she will testify*
22 *truthfully regarding the matter.*

23 Sec. 3.3. 1. *If a public officer or employee properly files a*
24 *request for an advisory opinion, the Commission shall render an*
25 *advisory opinion that interprets the statutory ethical standards and*
26 *applies those standards to the given set of facts and circumstances.*
27 *The Commission shall render the advisory opinion within 45 days*
28 *after receiving the request, unless the requester waives this time*
29 *limit.*

30 2. *If the advisory opinion rendered by the Commission relates*
31 *to the propriety of the present or future conduct of the requester,*
32 *the advisory opinion is:*

33 (a) *Binding upon the requester with regard to the future*
34 *conduct of the requester; and*

35 (b) *A final decision that is subject to judicial review pursuant*
36 *to NRS 233B.130.*

37 3. *If the requester seeks judicial review pursuant to NRS*
38 *233B.130, any proceedings concerning such judicial review must*
39 *be confidential and held in closed court without admittance of*
40 *persons other than those necessary to the proceedings, unless the*
41 *requester waives this right to confidential proceedings.*

42 Sec. 3.4. 1. *Except as otherwise provided in this section, the*
43 *following materials are confidential and are not public records*
44 *pursuant to chapter 239 of NRS:*

45 (a) *A request for an advisory opinion;*



1 (b) *The advisory opinion rendered by the Commission in*
2 *response to the request; and*

3 (c) *Any information, communications, records, documents or*
4 *other materials in the possession of the Commission or its staff*
5 *that are related to the request.*

6 2. *The provisions of subsection 1 do not apply if the current*
7 *or former public officer or employee who files the request for an*
8 *advisory opinion:*

9 (a) *Acts in contravention of the advisory opinion, in which*
10 *case the Commission may disclose the request, the advisory*
11 *opinion and any information, communications, records,*
12 *documents or other materials in the possession of the Commission*
13 *or its staff that are related to the request;*

14 (b) *Authorizes the Commission, in writing, to make the*
15 *request, the advisory opinion or any information,*
16 *communications, records, documents or other materials in the*
17 *possession of the Commission or its staff that are related to the*
18 *request publicly available; or*

19 (c) *Voluntarily discloses, in any manner, the request, the*
20 *advisory opinion or any information, communications, records,*
21 *documents or other materials in the possession of the Commission*
22 *or its staff that are related to the request, except to:*

23 (1) *The public body, agency or employer of the public*
24 *officer or employee or the legal counsel of the public officer or*
25 *employee;*

26 (2) *Any person to whom the Commission authorizes the*
27 *public officer or employee to make such a disclosure; or*

28 (3) *Any person to whom the public officer or employee*
29 *makes such a disclosure for the purposes of judicial review*
30 *pursuant to section 3.3 of this act.*

31 **Sec. 3.5.** *1. Except as otherwise provided in this section, the*
32 *provisions of chapter 241 of NRS do not apply to:*

33 (a) *Any meeting or hearing held by the Commission to receive*
34 *information or evidence concerning a request for an advisory*
35 *opinion; and*

36 (b) *Any deliberations or actions of the Commission on such*
37 *information or evidence.*

38 2. *The public officer or employee who files the request for an*
39 *advisory opinion may also file a request with the Commission to*
40 *hold a public meeting or hearing regarding the request for an*
41 *advisory opinion.*

42 **Sec. 3.6.** *The provisions of sections 3.6 to 13, inclusive, of*
43 *this act and NRS 281A.450, 281A.465, 281A.475 and 281A.480*
44 *apply to proceedings concerning an ethics complaint.*



1 **Sec. 3.7. 1.** *Except as otherwise provided in this section and*
2 *NRS 281A.280, the Commission may render an opinion that*
3 *interprets the statutory ethical standards and applies those*
4 *standards to a given set of facts and circumstances regarding the*
5 *propriety of the conduct of a public officer or employee if an ethics*
6 *complaint is:*

7 (a) *Filed by a specialized or local ethics committee established*
8 *pursuant to NRS 281A.350.*

9 (b) *Filed by any person, except a person who is incarcerated in*
10 *a correctional facility in this State or any other jurisdiction.*

11 (c) *Initiated by the Commission on its own motion, except the*
12 *Commission shall not initiate such an ethics complaint based*
13 *solely upon an anonymous complaint.*

14 **2.** *An ethics complaint filed by a person must be:*

15 (a) *Verified under oath and filed on a form prescribed by the*
16 *Commission; and*

17 (b) *Submitted with sufficient evidence to support the*
18 *allegations in order for the Commission to make a determination*
19 *of whether it has jurisdiction in the matter and whether an*
20 *investigation is warranted in the matter pursuant to sections 3.8*
21 *and 3.9 of this act.*

22 **3.** *The Commission may decline to render an opinion if the*
23 *person who files the ethics complaint does not submit all necessary*
24 *evidence in the matter.*

25 **Sec. 3.8. 1.** *Based on the evidence submitted with an ethics*
26 *complaint filed with the Commission pursuant to section 3.7 of*
27 *this act, the Commission shall determine whether it has*
28 *jurisdiction in the matter and whether an investigation is*
29 *warranted in the matter. The Commission shall make its*
30 *determination within 45 days after receiving the ethics complaint,*
31 *unless the public officer or employee who is the subject of the*
32 *ethics complaint waives this time limit.*

33 **2.** *If the Commission determines that it does not have*
34 *jurisdiction in the matter, the Commission shall dismiss the*
35 *matter.*

36 **3.** *If the Commission determines that it has jurisdiction in the*
37 *matter but the evidence submitted with the ethics complaint is not*
38 *sufficient to warrant an investigation in the matter, the*
39 *Commission shall dismiss the matter, with or without issuing a*
40 *letter of caution or instruction to the public officer or employee*
41 *pursuant to section 12.5 of this act.*

42 **4.** *If the Commission determines that it has jurisdiction in the*
43 *matter and the evidence submitted with the ethics complaint is*
44 *sufficient to warrant an investigation in the matter, the*



1 *Commission may direct the Executive Director to investigate the*
2 *ethics complaint pursuant to section 3.9 of this act.*

3 **Sec. 3.9. 1.** *If the Commission directs the Executive*
4 *Director to investigate an ethics complaint pursuant to section 3.8*
5 *of this act or if the Commission initiates an ethics complaint on its*
6 *own motion pursuant to section 3.7 of this act, the Executive*
7 *Director shall investigate the facts and circumstances relating to*
8 *the ethics complaint to determine whether there is just and*
9 *sufficient cause for the Commission to render an opinion in the*
10 *matter.*

11 **2.** *The Executive Director shall notify the public officer or*
12 *employee who is the subject of the ethics complaint and provide*
13 *the public officer or employee an opportunity to submit to the*
14 *Executive Director a response to the allegations against the public*
15 *officer or employee in the ethics complaint. The response must be*
16 *submitted within 30 days after the date on which the public officer*
17 *or employee received the notice of the ethics complaint, unless the*
18 *Executive Director grants an extension.*

19 **3.** *The purpose of the response submitted pursuant to this*
20 *section is to provide the Executive Director and the review panel*
21 *with any information relevant to the ethics complaint which the*
22 *public officer or employee believes may assist:*

23 **(a)** *The Executive Director in performing his or her*
24 *investigation and other functions pursuant to this section and*
25 *section 4 of this act; and*

26 **(b)** *The review panel in performing its review and other*
27 *functions pursuant to section 5 of this act.*

28 **4.** *The public officer or employee is not required in the*
29 *response submitted pursuant to this section or in any proceedings*
30 *before the review panel to assert, claim or raise any objection or*
31 *defense, in law or fact, to the allegations against the public officer*
32 *or employee, and no objection or defense, in law or fact, is waived,*
33 *abandoned or barred by the failure to assert, claim or raise it in*
34 *the response or in any proceedings before the review panel.*

35 **Sec. 4. 1.** *Except as otherwise provided in this subsection,*
36 *the Executive Director shall complete the investigation required by*
37 *section 3.9 of this act and present a written recommendation to*
38 *the review panel within 70 days after the Commission directs the*
39 *Executive Director to investigate the ethics complaint or after the*
40 *Commission initiates the ethics complaint on its own motion, as*
41 *applicable. The public officer or employee who is the subject of the*
42 *ethics complaint may waive this time limit.*

43 **2.** *The recommendation must:*

44 **(a)** *Set forth the factual and legal basis for the*
45 *recommendation;*



1 (b) State whether the Executive Director believes that there is
2 just and sufficient cause for the Commission to render an opinion
3 in the matter; and

4 (c) If the Executive Director believes that a disposition of the
5 matter without an adjudicatory hearing is appropriate under the
6 facts and circumstances, state any suggested disposition that is
7 consistent with the provisions of this chapter, including, without
8 limitation, whether the Executive Director believes that the
9 conduct at issue may be appropriately addressed through
10 additional training or other corrective action under the terms and
11 conditions of a deferral agreement.

12 **Sec. 5.** 1. Except as otherwise provided in this section, the
13 review panel shall determine whether there is just and sufficient
14 cause for the Commission to render an opinion in the matter
15 within 15 days after the Executive Director provides the review
16 panel with the recommendation required by section 4 of this act.
17 The public officer or employee who is the subject of the ethics
18 complaint may waive this time limit.

19 2. The review panel shall cause a record of its proceedings to
20 be kept.

21 3. The review panel shall not determine that there is just and
22 sufficient cause for the Commission to render an opinion in the
23 matter unless the Executive Director has provided the public
24 officer or employee an opportunity to respond to the allegations as
25 required by section 3.9 of this act.

26 4. If the review panel determines that there is not just and
27 sufficient cause for the Commission to render an opinion in the
28 matter, it shall dismiss the matter, with or without prejudice, and
29 with or without issuing a letter of caution or instruction to the
30 public officer or employee pursuant to section 12.5 of this act.

31 5. If the review panel determines that there is just and
32 sufficient cause for the Commission to render an opinion in the
33 matter but reasonably believes that the conduct at issue may be
34 appropriately addressed through additional training or other
35 corrective action under the terms and conditions of a deferral
36 agreement, the review panel may:

37 (a) Approve a deferral agreement proposed by the Executive
38 Director and the public officer or employee instead of referring
39 the ethics complaint to the Commission for further proceedings in
40 the matter; or

41 (b) Authorize the Executive Director and the public officer or
42 employee to develop such a deferral agreement and may thereafter
43 approve such a deferral agreement instead of referring the ethics
44 complaint to the Commission for further proceedings in the
45 matter.



6. *If the review panel does not approve a deferral agreement pursuant to subsection 5 or if the public officer or employee declines to enter into such a deferral agreement, the review panel shall refer the ethics complaint to the Commission for further proceedings in the matter.*

7. *If the review panel determines that there is just and sufficient cause for the Commission to render an opinion in the matter and reasonably believes that the conduct at issue may not be appropriately addressed through additional training or other corrective action under the terms and conditions of a deferral agreement, the review panel shall refer the ethics complaint to the Commission for further proceedings in the matter.*

Sec. 5.5. *The provisions of chapter 241 of NRS do not apply to:*

1. *Any meeting or hearing held by the review panel to receive information or evidence concerning an ethics complaint; and*

2. *Any deliberations or actions of the review panel on such information or evidence.*

Sec. 6. 1. *In proceedings concerning an ethics complaint, the Executive Director and the public officer or employee who is the subject of the ethics complaint may develop a deferral agreement to defer further proceedings in the matter under the terms and conditions of the deferral agreement.*

2. *A deferral agreement does not become effective unless approved by the review panel pursuant to section 5 of this act. If the review panel approves a deferral agreement, the Commission shall enforce the terms and conditions of the deferral agreement.*

3. *A deferral agreement must:*

(a) *Specify the training or other corrective action to be completed by or imposed upon the public officer or employee;*

(b) *Specify any other terms and conditions, consistent with the provisions of this chapter, to be imposed upon the public officer or employee; and*

(c) *Provide that the Commission may vacate the deferral agreement and conduct further proceedings in the matter if the Commission finds that the public officer or employee has failed to comply with any terms and conditions of the deferral agreement.*

4. *The imposition of training or other corrective action and the imposition of any other terms and conditions in a deferral agreement is without prejudice to any other disposition of the matter, consistent with this chapter, that may be ordered by the Commission if it vacates the deferral agreement and conducts further proceedings in the matter and finds that the public officer or employee has violated any provision of this chapter.*



1 5. *The Executive Director shall monitor the compliance of*
2 *the public officer or employee who is the subject of a deferral*
3 *agreement and may require the public officer or employee to*
4 *document his or her compliance with the deferral agreement.*

5 6. *The Executive Director shall:*

6 (a) *Inform the Commission of any alleged failure of the public*
7 *officer or employee to comply with the deferral agreement;*

8 (b) *Give the public officer or employee written notice of any*
9 *alleged failure to comply with the deferral agreement; and*

10 (c) *Allow the public officer or employee not less than 15 days*
11 *to respond to such a notice.*

12 7. *Within 60 days after the date on which the public officer or*
13 *employee responds or was entitled to respond to the written notice*
14 *of any alleged failure to comply with the deferral agreement, the*
15 *Commission shall determine whether the public officer or*
16 *employee failed to comply with the deferral agreement, unless the*
17 *public officer or employee waives this time limit.*

18 8. *If the Commission determines that the public officer or*
19 *employee failed to comply with the deferral agreement, the*
20 *Commission may take any action it deems appropriate, consistent*
21 *with the terms and conditions of the deferral agreement and the*
22 *provisions of this chapter, including, without limitation, vacating*
23 *the deferral agreement and conducting further proceedings in the*
24 *matter.*

25 9. *If the public officer or employee who is the subject of the*
26 *deferral agreement complies in a satisfactory manner with the*
27 *deferral agreement, the Commission shall dismiss the matter.*

28 **Sec. 6.5.** 1. *If the review panel refers an ethics complaint to*
29 *the Commission for further proceedings in the matter pursuant to*
30 *section 5 of this act or if the Commission vacates a deferral*
31 *agreement and conducts further proceedings in the matter*
32 *pursuant to section 6 of this act, the Commission shall hold an*
33 *adjudicatory hearing and render an opinion in the matter within*
34 *60 days after the date on which the review panel refers the ethics*
35 *complaint to the Commission or the Commission vacates the*
36 *deferral agreement, as appropriate, unless the public officer or*
37 *employee who is the subject of the ethics complaint waives this*
38 *time limit.*

39 2. *If the Commission holds an adjudicatory hearing to receive*
40 *evidence concerning an ethics complaint, the Commission shall:*

41 (a) *Notify the public officer or employee who is the subject of*
42 *the ethics complaint of the date, time and place of the hearing;*

43 (b) *Allow the public officer or employee to be represented by*
44 *legal counsel; and*



1 (c) Allow the public officer or employee to hear the evidence
2 presented to the Commission and to respond and present evidence
3 on his or her own behalf.

4 3. Unless the public officer or employee agrees to a shorter
5 time, an adjudicatory hearing may not be held less than 10 days
6 after the date on which the notice of the hearing is given to the
7 public officer or employee.

8 4. For good cause shown, the Commission may take
9 testimony from a person by telephone or video conference at an
10 adjudicatory hearing or at any other proceedings concerning the
11 ethics complaint.

12 Sec. 7. (Deleted by amendment.)

13 Sec. 8. 1. Except as otherwise provided in this section and
14 section 9 of this act, all information, communications, records,
15 documents or other materials in the possession of the Commission,
16 the review panel or their staff that are related to an ethics
17 complaint are confidential and are not public records pursuant to
18 chapter 239 of NRS until:

19 (a) The review panel determines whether there is just and
20 sufficient cause to render an opinion in the matter and serves
21 written notice of its determination on the public officer or
22 employee who is the subject of the ethics complaint; or

23 (b) The public officer or employee who is the subject of the
24 ethics complaint authorizes the Commission, in writing, to make
25 the information, communications, records, documents or other
26 materials that are related to the ethics complaint publicly
27 available,

28 ↳ whichever occurs first.

29 2. Except as otherwise provided in subsection 3, if a person
30 who files an ethics complaint asks that his or her identity as the
31 requester be kept confidential, the Commission:

32 (a) Shall keep the identity of the requester confidential if he or
33 she is a public officer or employee who works for the same public
34 body, agency or employer as the public officer or employee who is
35 the subject of the ethics complaint.

36 (b) May keep the identity of the requester confidential if he or
37 she offers sufficient facts and circumstances showing a reasonable
38 likelihood that disclosure of his or her identity will subject the
39 requester or a member of his or her household to a bona fide
40 threat of physical force or violence.

41 3. If the Commission keeps the identity of the requester
42 confidential, the Commission shall not render an opinion in the
43 matter unless there is sufficient evidence without the testimony of
44 the requester to consider the propriety of the conduct of the public
45 officer or employee who is the subject of the ethics complaint. If



1 *the Executive Director intends to present the testimony of the*
2 *requester as evidence for consideration by the Commission at the*
3 *adjudicatory hearing or in rendering an opinion in the matter and*
4 *the public officer or employee who is the subject of the ethics*
5 *complaint submits a written discovery request to the Commission*
6 *pursuant to section 9 of this act, the Commission shall disclose the*
7 *name of the requester only as a proposed witness within a*
8 *reasonable time before the adjudicatory hearing on the matter.*

9 **Sec. 9.** 1. *Except as otherwise provided in this section, the*
10 *investigative file related to an ethics complaint is confidential and*
11 *is not a public record pursuant to chapter 239 of NRS.*

12 2. *At any time after being served with written notice of the*
13 *determination of the review panel regarding the existence of just*
14 *and sufficient cause for the Commission to render an opinion in*
15 *the matter, the public officer or employee who is the subject of the*
16 *ethics complaint may submit a written discovery request to the*
17 *Commission for a list of proposed witnesses and a copy of any*
18 *portion of the investigative file that the Executive Director intends*
19 *to present as evidence for consideration by the Commission at the*
20 *adjudicatory hearing or in rendering an opinion in the matter.*

21 3. *Any portion of the investigative file which the Executive*
22 *Director presents as evidence for consideration by the Commission*
23 *at the adjudicatory hearing or in rendering an opinion in the*
24 *matter becomes a public record and must be open for inspection*
25 *pursuant to chapter 239 of NRS.*

26 4. *For the purposes of this section:*

27 (a) *The investigative file includes, without limitation:*

28 (1) *Any response concerning the ethics complaint prepared*
29 *by the public officer or employee pursuant to section 3.9 of this act*
30 *and submitted to the Executive Director and the review panel*
31 *during the course of the investigation and any proceedings before*
32 *the review panel;*

33 (2) *Any recommendation concerning the ethics complaint*
34 *prepared by the Executive Director pursuant to section 4 of this*
35 *act and submitted to the review panel during the course of the*
36 *investigation and any proceedings before the review panel; and*

37 (3) *Any other information provided to or obtained by or on*
38 *behalf of the Executive Director through any form of*
39 *communication during the course of the investigation and any*
40 *proceedings before the review panel and any records, documents*
41 *or other materials created or maintained during the course of the*
42 *investigation and any proceedings before the review panel which*
43 *relate to the public officer or employee who is the subject of the*
44 *ethics complaint, including, without limitation, a transcript,*



1 *regardless of whether such information, records, documents or*
2 *other materials are obtained pursuant to a subpoena.*

3 *(b) The investigative file does not include any deferral*
4 *agreement.*

5 **Sec. 10.** (Deleted by amendment.)

6 **Sec. 11.** *The provisions of chapter 241 of NRS do not apply*
7 *to:*

8 *1. Any meeting or hearing held by the Commission to receive*
9 *information or evidence concerning an ethics complaint; and*

10 *2. Any deliberations of the Commission on such information*
11 *or evidence.*

12 **Sec. 12.** *1. If the Commission renders an opinion in*
13 *proceedings concerning an ethics complaint, the opinion must*
14 *include findings of fact and conclusions of law.*

15 *2. If, in proceedings concerning an ethics complaint, the*
16 *Commission determines that a violation of this chapter:*

17 *(a) Has not been proven, the Commission shall dismiss the*
18 *matter, with or without prejudice, and with or without issuing a*
19 *letter of caution or instruction to the public officer or employee*
20 *pursuant to section 12.5 of this act.*

21 *(b) Has been proven, the Commission may take any action*
22 *authorized by this chapter.*

23 **Sec. 12.5.** *1. In proceedings concerning an ethics*
24 *complaint, the Commission or the review panel, as appropriate,*
25 *may issue a letter of caution or instruction to the public officer or*
26 *employee who is the subject of the ethics complaint to caution or*
27 *instruct the public officer or employee regarding the propriety of*
28 *his or her conduct under the statutory ethical standards set forth*
29 *in this chapter.*

30 *2. If the Commission or the review panel issues a letter of*
31 *caution or instruction to the public officer or employee, the letter:*

32 *(a) Is confidential and is not a public record pursuant to*
33 *chapter 239 of NRS.*

34 *(b) May be considered in deciding the appropriate action to be*
35 *taken on any subsequent ethics complaint involving the public*
36 *officer or employee, unless the letter is not relevant to the issues*
37 *presented by the subsequent ethics complaint.*

38 **Sec. 13.** *1. Except as otherwise provided in this section, in*
39 *proceedings concerning an ethics complaint, the Commission,*
40 *based on a finding that a violation of this chapter has been*
41 *proven, or the review panel, as part of the terms and conditions of*
42 *a deferral agreement, may, in addition to any other penalty*
43 *provided by law and in accordance with the provisions of*
44 *NRS 281A.475:*



(a) *Require the public officer or employee who is the subject of the ethics complaint to:*

(1) *Comply in all respects with the provisions of this chapter for a specified period without being the subject of another ethics complaint arising from an alleged violation of this chapter by the public officer or employee which occurs during the specified period and for which the review panel determines that there is just and sufficient cause for the Commission to render an opinion in the matter.*

(2) *Attend and complete training.*

(3) *Follow a remedial course of action.*

(4) *Issue a public apology.*

(5) *Comply with conditions or limitations on future conduct.*

(b) *Publicly admonish, reprimand or censure the public officer or employee.*

(c) *Take any combination of such actions or any other reasonable action that the Commission or the review panel, as appropriate, determines will remedy the violation or alleged violation or deter similar violations or conduct.*

2. *In carrying out the provisions of subsection 1, the Commission, based on a finding that a violation of this chapter has been proven, or the review panel, as part of the terms and conditions of a deferral agreement, may publicly:*

(a) *Admonish a public officer or employee if it is determined that the public officer or employee has violated any provision of this chapter, but the violation is not willful, or if such an admonishment is imposed as part of the terms and conditions of a deferral agreement. An admonishment is a written expression of disapproval of the conduct of the public officer or employee.*

(b) *Reprimand a public officer or employee if it is determined that the public officer or employee has willfully violated any provision of this chapter, but there is no evidence that the willful violation involved bad faith, malicious intent or knowing or reckless disregard of the law, or if such a reprimand is imposed as part of the terms and conditions of a deferral agreement. A reprimand is a severe written reproof for the conduct of the public officer or employee.*

(c) *Censure a public officer or employee if it is determined that the public officer or employee has willfully violated any provision of this chapter and there is evidence that the willful violation involved bad faith, malicious intent or knowing or reckless disregard of the law or there are no substantial mitigating factors pursuant to NRS 281A.475 for the willful violation, or if such a censure is imposed as part of the terms and conditions of a*



1 *deferral agreement. A censure is a formal written condemnation*
2 *of the conduct of the public officer or employee.*

3 3. *Any action taken by the Commission pursuant to this*
4 *section is a final decision for the purposes of judicial review*
5 *pursuant to NRS 233B.130. Any action taken by the review panel*
6 *pursuant to this chapter, including, without limitation, any action*
7 *relating to a deferral agreement, is not a final decision for the*
8 *purposes of judicial review pursuant to NRS 233B.130.*

9 **Sec. 14.** *For the purposes of NRS 41.032, the members of the*
10 *Commission and employees of the Commission shall be deemed to*
11 *be exercising or performing a discretionary function or duty in*
12 *taking any action pursuant to the provisions of this chapter.*

13 **Sec. 15.** NRS 281A.030 is hereby amended to read as follows:
14 281A.030 As used in this chapter, unless the context otherwise
15 requires, the words and terms defined in NRS 281A.035 to
16 281A.170, inclusive, *and sections 1.3 to 2.7, inclusive, of this act*
17 have the meanings ascribed to them in those sections.

18 **Sec. 15.5.** NRS 281A.135 is hereby amended to read as
19 follows:

20 281A.135 1. "Opinion" *means an opinion rendered by the*
21 *Commission in accordance with the provisions of this chapter.*

22 2. *The term* includes, without limitation, the disposition of ~~the~~
23 ~~request for an opinion~~ *an ethics complaint* by stipulation, agreed
24 settlement, consent order or default as authorized by
25 NRS 233B.121.

26 **Sec. 15.7.** NRS 281A.150 is hereby amended to read as
27 follows:

28 281A.150 "Public employee" means any person who
29 ~~performs~~

30 1. *Performs* public duties under the direction and control of a
31 public officer for compensation paid by the State or any county, city
32 or other political subdivision ~~H~~ ; or

33 2. *Is designated as a public employee for the purposes of this*
34 *chapter pursuant to NRS 281A.182.*

35 **Sec. 16.** NRS 281A.182 is hereby amended to read as follows:
36 281A.182 1. Any person who serves in one of the following
37 positions is designated as a public officer *solely and exclusively* for
38 the purposes of this chapter:

39 (a) A president of a university, state college or community
40 college within the Nevada System of Higher Education.

41 (b) A superintendent of a county school district.

42 (c) A county manager or a city manager.

43 2. ~~[This section applies]~~ *The provisions of subsection 1 apply*
44 *to such a person regardless of whether the person serves in the*
45 *position:*



- (a) By appointment, contract or employment;
- (b) With or without compensation; or
- (c) On a temporary, interim or acting basis.

3. *A person who is not otherwise a public officer is designated as a public officer solely and exclusively for the purposes of this chapter if the person:*

- (a) *Enters into a contract with any state or local agency;*
- (b) *Is paid compensation with public money; and*
- (c) *Serves in a position which involves the exercise of a public power, trust or duty and which ordinarily would be held or filled by a public officer.*

4. *A person who is not otherwise a public employee is designated as a public employee solely and exclusively for the purposes of this chapter if:*

- (a) *The person enters into a contract with any state or local agency;*
- (b) *The person is paid compensation with public money;*
- (c) *The person serves in a position which involves the performance of public duties under the substantial and continuing direction and control of a public officer or supervisory public employee;*
- (d) *The position ordinarily would be held or filled by a public employee and would require the public employee to hold a valid professional or occupational license or similar type of authorization issued by a state or local agency to perform the public duties of the position, other than a general business license or similar type of authorization;*
- (e) *The position is entrusted with public duties of a substantial and continuing nature which ordinarily would require a public employee to avoid conflicts between the private interests of the public employee and those of the general public whom the public employee serves; and*
- (f) *The person occupies the position on a full-time basis or its equivalent for a substantial and continuing period of time.*

5. *The provisions of subsections 3 and 4 must be interpreted and applied to ensure that a person does not evade the provisions of this chapter because a state or local agency elects to use a contractual relationship instead of an employment relationship for a position which ordinarily would be held or filled by a public officer or employee.*

6. *If, pursuant to this section, any person is designated as a public officer or employee for the purposes of this chapter, that designation:*

- (a) *Does not make the person a public officer or employee for the purposes of any other law or for any other purposes; and*



(b) *Must not be used, interpreted or applied in any manner to establish, suggest or prove that the person is a public officer or employee for the purposes of any other law or for any other purposes.*

Sec. 16.5. NRS 281A.210 is hereby amended to read as follows:

281A.210 1. The Commission shall:

(a) At its first meeting and annually thereafter elect a Chair and Vice Chair from among its members.

(b) Meet regularly at least once in each calendar quarter, unless there are no *ethics complaints or* requests ~~made for an opinion~~ *for advisory opinions* pursuant to ~~NRS 281A.440,~~ *this chapter*, and at other times upon the call of the Chair.

2. Members of the Commission are entitled to receive a salary of not more than \$80 per day, as fixed by the Commission, while engaged in the business of the Commission.

3. While engaged in the business of the Commission, each member and employee of the Commission is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

4. The Commission may, within the limits of legislative appropriation, maintain such facilities as are required to carry out its functions.

Sec. 16.6. NRS 281A.220 is hereby amended to read as follows:

281A.220 1. The Chair shall appoint one or more ~~investigatory~~ *review* panels of ~~two~~ *three* members of the Commission on a rotating basis to *perform the functions assigned to such review* ~~the determinations of just and sufficient cause made by the Executive Director~~ *panels* pursuant to ~~NRS 281A.440 and make a final determination regarding whether there is just and sufficient cause for the Commission to render an opinion in a matter.~~ *this chapter.*

2. The Chair and Vice Chair of the Commission may not serve together on ~~an investigatory~~ *a review* panel.

3. ~~The~~ *Not more than two* members of ~~an investigatory~~ *a review* panel may ~~not~~ be members of the same political party.

4. If ~~an investigatory~~ *a review* panel determines that there is just and sufficient cause for the Commission to render an opinion in a matter, the members of the ~~investigatory~~ *review* panel shall not participate in any further proceedings of the Commission relating to that matter.

Sec. 17. NRS 281A.240 is hereby amended to read as follows:

281A.240 1. In addition to any other duties imposed upon the Executive Director, the Executive Director shall:



(a) Maintain complete and accurate records of all transactions and proceedings of the Commission.

(b) Receive *ethics complaints and* requests for *advisory* opinions pursuant to ~~NRS 281A.440.~~ *this chapter.*

(c) Gather information and conduct investigations regarding *ethics complaints and* requests for *advisory* opinions ~~received by the Commission and submit~~ *pursuant to this chapter.*

~~(d) Submit~~ recommendations to the ~~investigatory panel appointed pursuant to NRS 281A.220~~ *review panel* regarding whether there is just and sufficient cause *for the Commission* to render an opinion in ~~response to a particular request.~~
~~—(d)—~~ *a matter.*

(e) Recommend to the Commission any regulations or legislation that the Executive Director considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government.

~~(e)~~ (f) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations adopted by the Commission and previous opinions of the Commission. In any such training, the Executive Director shall emphasize that the Executive Director is not a member of the Commission and that only the Commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances. The Commission may charge a reasonable fee to cover the costs of training provided by the Executive Director pursuant to this subsection.

~~(f)~~ (g) Perform such other duties, not inconsistent with law, as may be required by the Commission.

2. The Executive Director shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of the Executive Director's duties relating to:

(a) The administration of the affairs of the Commission; and

(b) The investigation of matters under the jurisdiction of the Commission.

3. If the Executive Director is prohibited from acting on a particular matter or is otherwise unable to act on a particular matter, the Chair of the Commission shall designate a qualified person to perform the duties of the Executive Director with regard to that particular matter.

Sec. 18. NRS 281A.280 is hereby amended to read as follows:

281A.280 1. ~~The~~ *Except as otherwise provided in this section, the* Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of this chapter by a



1 public officer or employee or former public officer or employee in
2 any proceeding commenced by ~~†~~

3 ~~—(a) The filing of a request for an opinion†~~ *an ethics complaint,*
4 *which is filed* with the Commission ~~†; or~~

5 ~~—(b) The†~~ *or initiated by the* Commission on its own motion,
6 ~~††~~ within 2 years after the alleged violation or reasonable
7 discovery of the alleged violation.

8 *2. The Commission does not have jurisdiction regarding*
9 *alleged conduct by a public officer or employee or former public*
10 *officer or employee for which:*

11 *(a) A complaint may be filed or, if the applicable limitations*
12 *period has expired, could have been filed with the United States*
13 *Equal Employment Opportunity Commission or the Nevada Equal*
14 *Rights Commission; or*

15 *(b) A complaint or employment-related grievance may be filed*
16 *or, if the applicable limitations period has expired, could have*
17 *been filed with another appropriate agency with jurisdiction to*
18 *redress alleged discrimination or harassment, including, without*
19 *limitation, a state or local employee-management relations board*
20 *or similar state or local agency,*

21 *↪ but any bar on the Commission's jurisdiction imposed by this*
22 *subsection applies only to the extent that it pertains to the alleged*
23 *discrimination or harassment, and this subsection does not deprive*
24 *the Commission of jurisdiction regarding the alleged conduct if*
25 *such conduct is sanctionable separately or concurrently under the*
26 *provisions of this chapter, irrespective of the alleged*
27 *discrimination or harassment.*

28 *3. For the purposes of this section, a proceeding is commenced:*

29 *(a) On the date on which ~~†a request for an opinion†~~ *an ethics**
30 *complaint* is filed in the proper form with the Commission in
31 accordance with the regulations of the Commission; or

32 *(b) If the ~~†proceeding is commenced†~~ *ethics complaint is**
33 *initiated* by the Commission on its own motion, on the date on
34 which the Commission serves the public officer or employee or
35 former public officer or employee with notice of the ~~†proceeding†~~
36 *ethics complaint* in accordance with the regulations of the
37 Commission.

38 **Sec. 18.5.** NRS 281A.290 is hereby amended to read as
39 follows:

40 281A.290 The Commission shall:

41 1. Adopt procedural regulations that are necessary and proper
42 to carry out the provisions of this chapter, including, without
43 limitation:

44 (a) To facilitate the receipt of inquiries by the Commission;



(b) For the filing of *an ethics complaint or* a request for an *advisory* opinion with the Commission;

(c) For the withdrawal of *an ethics complaint or* a request for an *advisory* opinion by the person who filed the *ethics complaint or* request; and

(d) To facilitate the prompt rendition of opinions by the Commission.

2. Prescribe, by regulation, forms and procedures for the submission of statements of acknowledgment filed by public officers pursuant to NRS 281A.500, maintain files of such statements and make the statements available for public inspection.

3. Cause the making of such investigations as are reasonable and necessary for the rendition of its opinions pursuant to this chapter.

4. Inform the Attorney General or district attorney of all cases of noncompliance with the requirements of this chapter.

5. Recommend to the Legislature such further legislation as the Commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government.

6. Publish a manual for the use of public officers and employees that explains the requirements of this chapter.

➔ The Legislative Counsel shall prepare annotations to this chapter for inclusion in the Nevada Revised Statutes based on the published opinions of the Commission.

Sec. 19. NRS 281A.300 is hereby amended to read as follows:

281A.300 1. The Chair and Vice Chair of the Commission may administer oaths.

2. The Commission, upon majority vote, may issue a subpoena to compel the attendance of a witness and the production of *any* books and papers *for any hearing before the Commission.*

3. *Upon the request of the Executive Director, the Chair or, in the Chair's absence, the Vice Chair, may issue a subpoena to compel the participation of a potential witness and the production of any books and papers during the course of any investigation.*

4. Upon the request of the Executive Director or the public officer or employee who is the subject of ~~for a request for an opinion,~~ *an ethics complaint,* the Chair or, in the Chair's absence, the Vice Chair, may issue a subpoena to compel the attendance of a witness and the production of *any* books and papers *for any hearing before the Commission.* A public officer or employee who requests the issuance of a subpoena pursuant to this subsection must serve the subpoena in the manner provided in the Nevada Rules of Civil Procedure for service of subpoenas in a civil action and must pay the costs of such service.



~~13-1~~ 5. Before issuing a subpoena to a public officer or employee who is the subject of ~~1a request for an opinion~~ *an ethics complaint* to compel *his or her participation in any investigation*, his or her attendance as a witness or his or her production of *any* books ~~or~~ *and* papers, the Executive Director shall submit a written request to the public officer or employee requesting:

(a) The ~~appearance~~ *voluntary participation of the public officer or employee in the investigation;*

(b) *The voluntary attendance* of the public officer or employee as a witness; or

~~(b)~~ (c) The *voluntary* production by the public officer or employee of any books and papers relating to the ~~request for an opinion.~~

~~4-1~~ *ethics complaint.*

6. Each written request submitted by the Executive Director pursuant to subsection ~~13-1~~ 5 must specify the time and place for the *voluntary participation of the public officer or employee in the investigation*, attendance of the public officer or employee *as a witness* or ~~the~~ production of any books and papers, and designate with certainty the books and papers requested, if any.

7. If the public officer or employee fails or refuses to *respond to the Executive Director's written request pursuant to subsection 5 to voluntarily participate or* attend at the time and place specified or produce the books and papers requested by the Executive Director within 5 business days after receipt of the *written* request, the Chair *or, in the Chair's absence, the Vice Chair*, may issue the subpoena. Failure of the public officer or employee to comply with the written request of the Executive Director shall be deemed a waiver by the public officer or employee of the time *limits* set forth in ~~subsections 4, 5 and 6 of NRS 281A.440-1~~ *NRS 281A.450, 281A.465, 281A.475 and 281A.480 and sections 3.6 to 13, inclusive, of this act that apply to proceedings concerning the ethics complaint.*

8. If any witness *fails or* refuses to *participate*, attend, testify or produce any books and papers as required by the subpoena, the Chair ~~of the Commission~~ *or, in the Chair's absence, the Vice Chair*, may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of *the participation or* attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed ~~by the Commission~~

pursuant to this section; and
(c) The witness has failed or refused to *participate*, attend , *testify* or produce the books and papers *as* required by the subpoena



1 , ~~before the Commission,~~ or has *failed or* refused to answer
2 questions propounded to the witness,
3 *and* asking for an order of the court compelling the witness to
4 *participate, attend, and* testify or produce the books and papers
5 ~~before the Commission.~~

6 ~~—6—~~ *as required by the subpoena.*

7 9. Upon such a petition, the court shall enter an order directing
8 the witness to appear before the court at a time and place to be fixed
9 by the court in its order, the time to be not more than 10 days after
10 the date of the order, and then and there show cause why the witness
11 has not *participated, attended, testified or produced* the books or
12 papers ~~before the Commission,~~ *as required by the subpoena.* A
13 certified copy of the order must be served upon the witness.

14 ~~17—~~ 10. If it appears to the court that the subpoena was
15 regularly issued ~~by the Commission,~~ *pursuant to this section,* the
16 court shall enter an order that the witness ~~appear before the~~
17 ~~Commission,~~ *comply with the subpoena,* at the time and place
18 fixed in the order, and *participate, attend,* testify or produce the
19 required books and papers. Upon failure to obey the order, the
20 witness must be dealt with as for contempt of court.

21 **Sec. 20.** NRS 281A.400 is hereby amended to read as follows:

22 281A.400 A code of ethical standards is hereby established to
23 govern the conduct of public officers and employees:

24 1. A public officer or employee shall not seek or accept any
25 gift, service, favor, employment, engagement, emolument or
26 economic opportunity , *for the public officer or employee or any*
27 *person to whom the public officer or employee has a commitment*
28 *in a private capacity,* which would tend improperly to influence a
29 reasonable person in the public officer's or employee's position to
30 depart from the faithful and impartial discharge of the public
31 officer's or employee's public duties.

32 2. A public officer or employee shall not use the public
33 officer's or employee's position in government to secure or grant
34 unwarranted privileges, preferences, exemptions or advantages for
35 the public officer or employee, any business entity in which the
36 public officer or employee has a significant pecuniary interest ~~;~~ or
37 any person to whom the public officer or employee has a
38 commitment in a private capacity . ~~to the interests of that person.~~
39 As used in this subsection, "unwarranted" means without
40 justification or adequate reason.

41 3. A public officer or employee shall not participate as an agent
42 of government in the negotiation or execution of a contract between
43 the government and *the public officer or employee,* any business
44 entity in which the public officer or employee has a significant



1 pecuniary interest **†† or any person to whom the public officer or**
2 **employee has a commitment in a private capacity.**

3 4. A public officer or employee shall not accept any salary,
4 retainer, augmentation, expense allowance or other compensation
5 from any private source , **for the public officer or employee or any**
6 **person to whom the public officer or employee has a commitment**
7 **in a private capacity,** for the performance of the public officer's or
8 employee's duties as a public officer or employee.

9 5. If a public officer or employee acquires, through the public
10 officer's or employee's public duties or relationships, any
11 information which by law or practice is not at the time available to
12 people generally, the public officer or employee shall not use the
13 information to further a significant pecuniary interest of the public
14 officer or employee or any other person or business entity.

15 6. A public officer or employee shall not suppress any
16 governmental report or other official document because it might
17 tend to affect unfavorably a significant pecuniary interest of the
18 public officer or employee **†† or any person to whom the public**
19 **officer or employee has a commitment in a private capacity.**

20 7. Except for State Legislators who are subject to the
21 restrictions set forth in subsection 8, a public officer or employee
22 shall not use governmental time, property, equipment or other
23 facility to benefit a significant personal or pecuniary interest of the
24 public officer or employee **†† or any person to whom the public**
25 **officer or employee has a commitment in a private capacity.** This
26 subsection does not prohibit:

27 (a) A limited use of governmental property, equipment or other
28 facility for personal purposes if:

29 (1) The public officer or employee who is responsible for
30 and has authority to authorize the use of such property, equipment
31 or other facility has established a policy allowing the use or the use
32 is necessary as a result of emergency circumstances;

33 (2) The use does not interfere with the performance of the
34 public officer's or employee's public duties;

35 (3) The cost or value related to the use is nominal; and

36 (4) The use does not create the appearance of impropriety;

37 (b) The use of mailing lists, computer data or other information
38 lawfully obtained from a governmental agency which is available to
39 members of the general public for nongovernmental purposes; or

40 (c) The use of telephones or other means of communication if
41 there is not a special charge for that use.

42 ➔ If a governmental agency incurs a cost as a result of a use that is
43 authorized pursuant to this subsection or would ordinarily charge a
44 member of the general public for the use, the public officer or



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1 employee shall promptly reimburse the cost or pay the charge to the
2 governmental agency.

3 8. A State Legislator shall not:

4 (a) Use governmental time, property, equipment or other facility
5 for a nongovernmental purpose or for the private benefit of the State
6 Legislator or any other person. This paragraph does not prohibit:

7 (1) A limited use of state property and resources for personal
8 purposes if:

9 (I) The use does not interfere with the performance of the
10 State Legislator's public duties;

11 (II) The cost or value related to the use is nominal; and

12 (III) The use does not create the appearance of
13 impropriety;

14 (2) The use of mailing lists, computer data or other
15 information lawfully obtained from a governmental agency which is
16 available to members of the general public for nongovernmental
17 purposes; or

18 (3) The use of telephones or other means of communication
19 if there is not a special charge for that use.

20 (b) Require or authorize a legislative employee, while on duty,
21 to perform personal services or assist in a private activity, except:

22 (1) In unusual and infrequent situations where the
23 employee's service is reasonably necessary to permit the State
24 Legislator or legislative employee to perform that person's official
25 duties; or

26 (2) Where such service has otherwise been established as
27 legislative policy.

28 9. A public officer or employee shall not attempt to benefit a
29 significant personal or pecuniary interest of the public officer or
30 employee *or any person to whom the public officer or employee*
31 *has a commitment in a private capacity* through the influence of a
32 subordinate.

33 10. A public officer or employee shall not seek other
34 employment or contracts *for the public officer or employee or any*
35 *person to whom the public officer or employee has a commitment*
36 *in a private capacity* through the use of the public officer's or
37 employee's official position.

38 **Sec. 20.3.** NRS 281A.410 is hereby amended to read as
39 follows:

40 281A.410 In addition to the requirements of the code of ethical
41 standards and the other provisions of this chapter:

42 1. If a public officer or employee serves in a state agency of the
43 Executive Department or an agency of any county, city or other
44 political subdivision, the public officer or employee:



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(a) Shall not accept compensation from any private person to represent or counsel the private person on any issue pending before the agency in which that public officer or employee serves, if the agency makes decisions; and

(b) If the public officer or employee leaves the service of the agency, shall not, for 1 year after leaving the service of the agency, represent or counsel for compensation a private person upon any issue which was under consideration by the agency during the public officer's or employee's service. As used in this paragraph, "issue" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures or administrative regulations.

2. Except as otherwise provided in subsection 3, a State Legislator or a member of a local legislative body, or a public officer or employee whose public service requires less than half of his or her time, may represent or counsel a private person before an agency in which he or she does not serve.

3. A member of a local legislative body shall not represent or counsel a private person for compensation before another local agency if the territorial jurisdiction of the other local agency includes any part of the county in which the member serves. The Commission may relieve the member from the strict application of the provisions of this subsection if:

(a) The member ~~requests~~ *files a request for* an *advisory* opinion from the Commission pursuant to ~~subsection 1 of NRS 281A-440;~~ *section 3.2 of this act;* and

(b) The Commission determines that such relief is not contrary to:

(1) The best interests of the public;

(2) The continued ethical integrity of each local agency affected by the matter; and

(3) The provisions of this chapter.

4. *For the purposes of subsection 3, the request for an advisory opinion, the advisory opinion and all meetings, hearings and proceedings of the Commission in such a matter are governed by the provisions of sections 3.1 to 3.5, inclusive, of this act.*

5. Unless permitted by this section, a public officer or employee shall not represent or counsel a private person for compensation before any state agency of the Executive or Legislative Department.

~~5. Not later than January 15 of each year, if any State Legislator, member of a local legislative body or other public officer permitted by this section has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Department, he or she shall disclose for~~



~~each such representation or counseling during the previous calendar year:~~

~~—(a) The name of the client;~~

~~—(b) The nature of the representation; and~~

~~—(c) The name of the state agency.~~

~~6. The disclosure required by subsection 5 must be made in writing and filed with the Commission on a form prescribed by the Commission. For the purposes of this subsection, the disclosure is timely filed if, on or before the last day for filing, the disclosure is filed in one of the following ways:~~

~~—(a) Delivered in person to the principal office of the Commission in Carson City.~~

~~—(b) Mailed to the Commission by first class mail, or other class of mail that is at least as expeditious, postage prepaid. Filing by mail is complete upon timely depositing the disclosure with the United States Postal Service.~~

~~—(c) Dispatched to a third party commercial carrier for delivery to the Commission within 3 calendar days. Filing by third party commercial carrier is complete upon timely depositing the disclosure with the third party commercial carrier.~~

~~—(d) Transmitted to the Commission by facsimile machine or other electronic means authorized by the Commission. Filing by facsimile machine or other electronic means is complete upon receipt of the transmission by the Commission.~~

~~7. The Commission shall retain a disclosure filed pursuant to this section for 6 years after the date on which the disclosure was filed.~~

Sec. 20.5. NRS 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a significant pecuniary interest; ~~for~~

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interests of another person ~~or~~ ; or

(d) Which would reasonably be related to the nature of any representation or counseling that the public officer or employee provided to a private person for compensation before another agency within the immediately preceding year, provided such representation or counseling is permitted by NRS 281A.410,



1 ↳ without disclosing information concerning the gift or loan, *the*
2 significant pecuniary interest ~~for~~, *the* commitment in a private
3 capacity to the interests of the *other* person *or the nature of the*
4 *representation or counseling of the private person* that is sufficient
5 to inform the public of the potential effect of the action or abstention
6 upon the person who provided the gift or loan, upon the public
7 officer's or employee's significant pecuniary interest, ~~for~~ upon the
8 person to whom the public officer or employee has a commitment in
9 a private capacity ~~for~~ *or upon the private person who was*
10 *represented or counseled by the public officer or employee.* Such a
11 disclosure must be made at the time the matter is considered. If the
12 public officer or employee is a member of a body which makes
13 decisions, the public officer or employee shall make the disclosure
14 in public to the chair and other members of the body. If the public
15 officer or employee is not a member of such a body and holds an
16 appointive office, the public officer or employee shall make the
17 disclosure to the supervisory head of the public officer's or
18 employee's organization or, if the public officer holds an elective
19 office, to the general public in the area from which the public officer
20 is elected.

21 2. The provisions of subsection 1 do not require a public
22 officer to disclose:

23 (a) Any campaign contributions that the public officer reported
24 in a timely manner pursuant to NRS 294A.120 or 294A.125; or

25 (b) Any contributions to a legal defense fund that the public
26 officer reported in a timely manner pursuant to NRS 294A.286.

27 3. Except as otherwise provided in this section, in addition to
28 the requirements of subsection 1, a public officer shall not vote upon
29 or advocate the passage or failure of, but may otherwise participate
30 in the consideration of, a matter with respect to which the
31 independence of judgment of a reasonable person in the public
32 officer's situation would be materially affected by:

33 (a) The public officer's acceptance of a gift or loan;

34 (b) The public officer's significant pecuniary interest; or

35 (c) The public officer's commitment in a private capacity to the
36 interests of another person.

37 4. In interpreting and applying the provisions of subsection 3:

38 (a) It must be presumed that the independence of judgment of a
39 reasonable person in the public officer's situation would not be
40 materially affected by the public officer's acceptance of a gift or
41 loan, significant pecuniary interest or commitment in a private
42 capacity to the interests of another person where the resulting
43 benefit or detriment accruing to the public officer, or if the public
44 officer has a commitment in a private capacity to the interests of
45 another person, accruing to the other person, is not greater than that



1 accruing to any other member of any general business, profession,
2 occupation or group that is affected by the matter. The presumption
3 set forth in this paragraph does not affect the applicability of the
4 requirements set forth in subsection 1 relating to the *duty of the*
5 *public officer to make a proper* disclosure ~~of the acceptance of a~~
6 ~~gift or loan, significant pecuniary interest or commitment in a~~
7 ~~private capacity to the interests of another person.~~ *at the time the*
8 *matter is considered and in the manner required by subsection 1.*

9 (b) The Commission must give appropriate weight and proper
10 deference to the public policy of this State which favors the right of
11 a public officer to perform the duties for which the public officer
12 was elected or appointed and to vote or otherwise act upon a matter,
13 provided the public officer ~~has properly disclosed the public~~
14 ~~officer's acceptance of a gift or loan, significant pecuniary interest~~
15 ~~or commitment in a private capacity to the interests of another~~
16 ~~person.~~ *makes a proper disclosure at the time the matter is*
17 *considered and* in the manner required by subsection 1. Because
18 abstention by a public officer disrupts the normal course of
19 representative government and deprives the public and the public
20 officer's constituents of a voice in governmental affairs, the
21 provisions of this section are intended to require abstention only in
22 clear cases where the independence of judgment of a reasonable
23 person in the public officer's situation would be materially affected
24 by the public officer's acceptance of a gift or loan, significant
25 pecuniary interest or commitment in a private capacity to the
26 interests of another person.

27 5. Except as otherwise provided in NRS 241.0355, if a public
28 officer declares to the body or committee in which the vote is to be
29 taken that the public officer will abstain from voting because of the
30 requirements of this section, the necessary quorum to act upon and
31 the number of votes necessary to act upon the matter, as fixed by
32 any statute, ordinance or rule, is reduced as though the member
33 abstaining were not a member of the body or committee.

34 6. The provisions of this section do not, under any
35 circumstances:

36 (a) Prohibit a member of a local legislative body from
37 requesting or introducing a legislative measure; or

38 (b) Require a member of a local legislative body to take any
39 particular action before or while requesting or introducing a
40 legislative measure.

41 7. The provisions of this section do not, under any
42 circumstances, apply to State Legislators or allow the Commission
43 to exercise jurisdiction or authority over State Legislators. The
44 responsibility of a State Legislator to make disclosures concerning
45 gifts, loans, interests or commitments and the responsibility of a



1 State Legislator to abstain from voting upon or advocating the
2 passage or failure of a matter are governed by the Standing Rules of
3 the Legislative Department of State Government which are adopted,
4 administered and enforced exclusively by the appropriate bodies of
5 the Legislative Department of State Government pursuant to Section
6 6 of Article 4 of the Nevada Constitution.

7 8. As used in this section, “public officer” and “public
8 employee” do not include a State Legislator.

9 **Sec. 20.7.** NRS 281A.430 is hereby amended to read as
10 follows:

11 281A.430 1. Except as otherwise provided in this section and
12 NRS 218A.970 and 332.800, a public officer or employee shall not
13 bid on or enter into a contract between an agency and any business
14 entity in which the public officer or employee has a significant
15 pecuniary interest.

16 2. A member of any board, commission or similar body who is
17 engaged in the profession, occupation or business regulated by such
18 board, commission or body may, in the ordinary course of his or her
19 business, bid on or enter into a contract with an agency, except the
20 board, commission or body on which he or she is a member, if the
21 member has not taken part in developing the contract plans or
22 specifications and the member will not be personally involved in
23 opening, considering or accepting offers.

24 3. A full- or part-time faculty member or employee of the
25 Nevada System of Higher Education may bid on or enter into a
26 contract with an agency, or may benefit financially or otherwise
27 from a contract between an agency and a private entity, if the
28 contract complies with the policies established by the Board of
29 Regents of the University of Nevada pursuant to NRS 396.255.

30 4. Except as otherwise provided in subsection 2, 3 or 5, a
31 public officer or employee may bid on or enter into a contract with
32 an agency if:

33 (a) The contracting process is controlled by the rules of open
34 competitive bidding or the rules of open competitive bidding are not
35 employed as a result of the applicability of NRS 332.112
36 or 332.148;

37 (b) The sources of supply are limited;

38 (c) The public officer or employee has not taken part in
39 developing the contract plans or specifications; and

40 (d) The public officer or employee will not be personally
41 involved in opening, considering or accepting offers.

42 ➤ If a public officer who is authorized to bid on or enter into a
43 contract with an agency pursuant to this subsection is a member of
44 the governing body of the agency, the public officer, pursuant to the
45 requirements of NRS 281A.420, shall disclose the public officer’s



1 interest in the contract and shall not vote on or advocate the
2 approval of the contract.

3 5. A member of a local legislative body shall not, either
4 individually or through any business entity in which the member has
5 a significant pecuniary interest, sell goods or services to the local
6 agency governed by his or her local legislative body unless:

7 (a) The member, or the business entity in which the member has
8 a significant pecuniary interest, offers the sole source of supply of
9 the goods or services within the territorial jurisdiction of the local
10 agency governed by his or her local legislative body;

11 (b) The local legislative body includes in the public notice and
12 agenda for the meeting at which it will consider the purchase of
13 such goods or services a clear and conspicuous statement that it is
14 considering purchasing such goods or services from one of its
15 members, or from a business entity in which the member has a
16 significant pecuniary interest;

17 (c) At the meeting, the member discloses his or her significant
18 pecuniary interest in the purchase of such goods or services and
19 does not vote upon or advocate the approval of the matter pursuant
20 to the requirements of NRS 281A.420; and

21 (d) The local legislative body approves the purchase of such
22 goods or services in accordance with all other applicable provisions
23 of law.

24 6. The Commission may relieve a public officer or employee
25 from the strict application of the provisions of this section if:

26 (a) The public officer or employee ~~requests~~ *files a request for*
27 *an advisory opinion* from the Commission pursuant to ~~subsection 1~~
28 ~~of NRS 281A.440;~~ *section 3.2 of this act;* and

29 (b) The Commission determines that such relief is not contrary
30 to:

31 (1) The best interests of the public;

32 (2) The continued ethical integrity of each agency affected
33 by the matter; and

34 (3) The provisions of this chapter.

35 7. *For the purposes of subsection 6, the request for an*
36 *advisory opinion, the advisory opinion and all meetings, hearings*
37 *and proceedings of the Commission in such a matter are governed*
38 *by the provisions of sections 3.1 to 3.5, inclusive, of this act.*

39 **Sec. 21.** (Deleted by amendment.)

40 **Sec. 21.5.** NRS 281A.450 is hereby amended to read as
41 follows:

42 281A.450 1. If ~~if a request for an opinion is submitted to~~ *an*
43 *ethics complaint is filed with* or initiated by the Commission
44 concerning a present or former state officer or employee, unless the
45 state officer or employee retains his or her legal counsel or the



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1 Attorney General tenders the defense of the state officer or
2 employee to an insurer who, pursuant to a contract of insurance, is
3 authorized to defend the state officer or employee, the Attorney
4 General shall defend the state officer or employee or employ special
5 counsel to defend the state officer or employee in any proceeding
6 relating to the ~~request for the opinion~~ *ethics complaint* if:

7 (a) The state officer or employee submits a written request for
8 defense in the manner provided in NRS 41.0339; and

9 (b) Based on the facts and allegations known to the Attorney
10 General, the Attorney General determines that the act or omission
11 on which the alleged violation is based:

12 (1) Appears to be within the course and scope of public duty
13 or employment of the state officer or employee; and

14 (2) Appears to have been performed or omitted in good faith.

15 2. The Attorney General shall create a written record setting
16 forth the basis for the Attorney General's determination of whether
17 to defend the state officer or employee pursuant to paragraph (b) of
18 subsection 1. The written record is not admissible in evidence at
19 trial or in any other judicial or administrative proceeding in which
20 the state officer or employee is a party, except in connection with an
21 application to withdraw as the attorney of record.

22 **Sec. 22.** NRS 281A.465 is hereby amended to read as follows:

23 281A.465 In any matter in which the Commission disposes of
24 ~~a request for an opinion~~ *an ethics complaint* by stipulation, agreed
25 settlement or consent order ~~or~~ *or in which the review panel*
26 *approves a deferral agreement*, the Commission *or the review*
27 *panel, as appropriate*, shall treat comparable situations in a
28 comparable manner and shall ensure that the disposition of the
29 matter bears a reasonable relationship to the severity of the violation
30 or alleged violation.

31 **Sec. 23.** NRS 281A.475 is hereby amended to read as follows:

32 281A.475 1. ~~Has~~ *The Commission, in* determining whether a
33 violation of this chapter is a willful violation and, if so, the ~~amount~~
34 ~~of any civil~~ penalty to be imposed on a public officer or employee
35 or former public officer or employee pursuant to NRS 281A.480 ~~or~~
36 *or section 13 of this act, or the* ~~Commission~~ *review panel, in*
37 *determining whether to approve a deferral agreement regarding*
38 *an alleged violation*, shall consider, without limitation:

39 (a) The seriousness of the *violation or alleged* violation,
40 including, without limitation, the nature, circumstances, extent and
41 gravity of the *violation or alleged* violation;

42 (b) The number and history of previous warnings ~~issued to~~ ,
43 *letters of caution or instruction, deferral agreements or violations*
44 *or alleged* violations of the provisions of this chapter ~~by~~ *relating*
45 *to* the public officer or employee;



(c) The cost to ~~the Commission to~~ conduct the investigation and any ~~hearing~~ *meetings, hearings or other proceedings* relating to the *violation or alleged* violation;

(d) Any mitigating factors, including, without limitation, any self-reporting, prompt correction of the *violation or alleged* violation, any attempts to rectify the *violation or alleged* violation before any *ethics* complaint is filed and any cooperation by the public officer or employee in resolving the *ethics* complaint;

(e) Any restitution or reimbursement paid to parties affected by the *violation or alleged* violation;

(f) The extent of any financial gain resulting from the *violation or alleged* violation; and

(g) Any other matter justice may require.

2. The factors set forth in this section are not exclusive or exhaustive, and the Commission *or the review panel, as appropriate*, may consider other factors in the disposition of the matter if they bear a reasonable relationship to the ~~Commission's~~ determination of the severity of the *violation or alleged* violation.

3. In applying the factors set forth in this section, the Commission *or the review panel, as appropriate*, shall treat comparable situations in a comparable manner and shall ensure that the disposition of the matter bears a reasonable relationship to the severity of the *violation or alleged* violation.

Sec. 24. NRS 281A.480 is hereby amended to read as follows:

281A.480 1. In addition to any other penalties provided by law and in accordance with the provisions of NRS 281A.475, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

(a) Not to exceed \$5,000 for a first willful violation of this chapter;

(b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and

(c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

2. In addition to any other penalties provided by law, *if any person prevents, interferes with or attempts to prevent or interfere with any investigation or proceedings pursuant to this chapter or the discovery of a violation of this chapter*, the Commission may, upon its own motion or upon the motion of the ~~person about whom an opinion was requested pursuant to NRS 281A.440, impose a~~ *current or former public officer or employee who is the subject of the investigation or proceedings*:

(a) *Impose on the person committing such an act a* civil penalty not to exceed \$5,000 ; and



1 ***(b) If appropriate under the facts and circumstances,*** assess
2 ***against the person committing such an act*** an amount equal to the
3 amount of attorney's fees and costs actually and reasonably incurred
4 by the ~~person about whom an opinion was requested pursuant to~~
5 ~~NRS 281A.440 against a person who prevents, interferes with or~~
6 ~~attempts to prevent or interfere with the discovery or investigation~~
7 ~~of a violation of this chapter.~~ ***current or former public officer or***
8 ***employee as a result of the act.***

9 3. If the Commission finds that a violation of a provision of
10 this chapter by a public officer or employee or former public officer
11 or employee has resulted in the realization of a financial benefit by
12 the current or former public officer or employee or another person,
13 the Commission may, in addition to any other penalties provided by
14 law, require the current or former public officer or employee to pay
15 a civil penalty of not more than twice the amount so realized.

16 4. In addition to any other penalties provided by law, if a
17 proceeding results in an opinion that:

18 (a) One or more willful violations of this chapter have been
19 committed by a State Legislator removable from office only through
20 expulsion by the State Legislator's own House pursuant to Section 6
21 of Article 4 of the Nevada Constitution, the Commission shall:

22 (1) If the State Legislator is a member of the Senate, submit
23 the opinion to the Majority Leader of the Senate or, if the Majority
24 Leader of the Senate is the subject of the opinion or the person who
25 requested the opinion, to the President Pro Tempore of the Senate;
26 or

27 (2) If the State Legislator is a member of the Assembly,
28 submit the opinion to the Speaker of the Assembly or, if the Speaker
29 of the Assembly is the subject of the opinion or the person who
30 requested the opinion, to the Speaker Pro Tempore of the Assembly.

31 (b) One or more willful violations of this chapter have been
32 committed by a state officer removable from office only through
33 impeachment pursuant to Article 7 of the Nevada Constitution, the
34 Commission shall submit the opinion to the Speaker of the
35 Assembly and the Majority Leader of the Senate or, if the Speaker
36 of the Assembly or the Majority Leader of the Senate is the person
37 who requested the opinion, to the Speaker Pro Tempore of the
38 Assembly or the President Pro Tempore of the Senate, as
39 appropriate.

40 (c) One or more willful violations of this chapter have been
41 committed by a public officer other than a public officer described
42 in paragraphs (a) and (b), the willful violations shall be deemed to
43 be malfeasance in office for the purposes of NRS 283.440 and the
44 Commission:



(1) May file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed fewer than three willful violations of this chapter.

(2) Shall file a complaint in the appropriate court for removal of the public officer pursuant to NRS 283.440 when the public officer is found in the opinion to have committed three or more willful violations of this chapter.

➔ This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation found in the opinion.

5. Notwithstanding any other provision of this chapter, any act or failure to act by a public officer or employee or former public officer or employee relating to this chapter is not a willful violation of this chapter if the public officer or employee establishes by sufficient evidence that:

(a) The public officer or employee relied in good faith upon the advice of the legal counsel retained by his or her public body, agency or employer; and

(b) The advice of the legal counsel was:

(1) Provided to the public officer or employee before the public officer or employee acted or failed to act; and

(2) Based on a reasonable legal determination by the legal counsel under the circumstances when the advice was given that the act or failure to act by the public officer or employee would not be contrary to ~~any prior published opinion issued by the Commission which was publicly available on the Internet website of the Commission.~~ *the provisions of this chapter as interpreted by the Commission.*

6. In addition to any other penalties provided by law, *if* a public employee ~~who~~ commits a willful violation of this chapter *or fails to complete a period of compliance imposed by the Commission pursuant to section 13 of this act or by the review panel as part of the terms and conditions of a deferral agreement, the public employee* is subject to disciplinary proceedings by the employer of the public employee and must be referred for action in accordance to the applicable provisions governing the employment of the public employee.

7. The provisions of this chapter do not abrogate or decrease the effect of the provisions of the Nevada Revised Statutes which define crimes or prescribe punishments with respect to the conduct of public officers or employees. If the Commission finds that a public officer or employee has committed a willful violation of this chapter which it believes may also constitute a criminal offense, the



1 Commission shall refer the matter to the Attorney General or the
2 district attorney, as appropriate, for a determination of whether a
3 crime has been committed that warrants prosecution.

4 8. The imposition of a civil penalty pursuant to subsection 1, 2
5 or 3 is a final decision for the purposes of judicial review pursuant
6 to NRS 233B.130.

7 9. A finding by the Commission that a public officer or
8 employee has violated any provision of this chapter must be
9 supported by a preponderance of the evidence unless a greater
10 burden is otherwise prescribed by law.

11 **Sec. 25.** NRS 281A.500 is hereby amended to read as follows:

12 281A.500 1. On or before the date on which a public officer
13 swears or affirms the oath of office, the public officer must be
14 informed of the statutory ethical standards and the duty to file an
15 acknowledgment of the statutory ethical standards in accordance
16 with this section by:

17 (a) For an appointed public officer, the appointing authority of
18 the public officer; and

19 (b) For an elected public officer of:

20 (1) The county and other political subdivisions within the
21 county except cities, the county clerk;

22 (2) The city, the city clerk;

23 (3) The Legislative Department of the State Government, the
24 Director of the Legislative Counsel Bureau; and

25 (4) The Executive Department of the State Government, the
26 Director of the Department of Administration, or his or her
27 designee.

28 2. Within 30 days after a public employee begins employment:

29 (a) The Director of the Department of Administration, or his or
30 her designee, shall provide each new public employee of a state
31 agency with the information prepared by the Commission
32 concerning the statutory ethical standards; and

33 (b) The manager of each local agency, or his or her designee,
34 shall provide each new public employee of the local agency with the
35 information prepared by the Commission concerning the statutory
36 ethical standards.

37 3. Each public officer shall acknowledge that the public
38 officer:

39 (a) Has received, read and understands the statutory ethical
40 standards; and

41 (b) Has a responsibility to inform himself or herself of any
42 amendments to the statutory ethical standards as soon as reasonably
43 practicable after each session of the Legislature.

44 4. The acknowledgment must be executed on a form prescribed
45 by the Commission and must be filed with the Commission:



1 (a) If the public officer is elected to office at the general
2 election, on or before January 15 of the year following the public
3 officer's election.

4 (b) If the public officer is elected to office at an election other
5 than the general election or is appointed to office, on or before the
6 30th day following the date on which the public officer swears or
7 affirms the oath of office.

8 5. Except as otherwise provided in this subsection, a public
9 officer shall execute and file the acknowledgment once for each
10 term of office. If the public officer serves at the pleasure of
11 the appointing authority and does not have a definite term of office,
12 the public officer, in addition to executing and filing the
13 acknowledgment after the public officer swears or affirms the oath
14 of office in accordance with subsection 4, shall execute and file the
15 acknowledgment on or before January 15 of each even-numbered
16 year while the public officer holds that office.

17 6. For the purposes of this section, the acknowledgment is
18 timely filed if, on or before the last day for filing, the
19 acknowledgment is filed in one of the following ways:

20 (a) Delivered in person to the principal office of the
21 Commission in Carson City.

22 (b) Mailed to the Commission by first-class mail, or other class
23 of mail that is at least as expeditious, postage prepaid. Filing by mail
24 is complete upon timely depositing the acknowledgment with the
25 United States Postal Service.

26 (c) Dispatched to a third-party commercial carrier for delivery to
27 the Commission within 3 calendar days. Filing by third-party
28 commercial carrier is complete upon timely depositing the
29 acknowledgment with the third-party commercial carrier.

30 (d) Transmitted to the Commission by facsimile machine or
31 other electronic means authorized by the Commission. Filing by
32 facsimile machine or other electronic means is complete upon
33 receipt of the transmission by the Commission.

34 7. *If a public officer is serving in a public office and executes*
35 *and files the acknowledgment for that office as required by the*
36 *applicable provisions of this section, the public officer shall be*
37 *deemed to have satisfied the requirements of this section for any*
38 *other office held concurrently by him or her.*

39 8. The form for making the acknowledgment must contain:

40 (a) The address of the Internet website of the Commission where
41 a public officer may view the statutory ethical standards and print a
42 copy of the standards; and

43 (b) The telephone number and mailing address of the
44 Commission where a public officer may make a request to obtain a
45 printed copy of the statutory ethical standards from the Commission.



~~18-1~~ 9. Whenever the Commission, or any public officer or employee as part of the public officer's or employee's official duties, provides a public officer with a printed copy of the form for making the acknowledgment, a printed copy of the statutory ethical standards must be included with the form.

~~19-1~~ 10. The Commission shall retain each acknowledgment filed pursuant to this section for 6 years after the date on which the acknowledgment was filed.

~~110-1~~ 11. Willful refusal to execute and file the acknowledgment required by this section shall be deemed to be:

(a) A willful violation of this chapter for the purposes of NRS 281A.480 ~~11-1~~ and section 13 of this act; and

(b) Nonfeasance in office for the purposes of NRS 283.440 and, if the public officer is removable from office pursuant to NRS 283.440, the Commission may file a complaint in the appropriate court for removal of the public officer pursuant to that section. This paragraph grants an exclusive right to the Commission, and no other person may file a complaint against the public officer pursuant to NRS 283.440 based on any violation of this section.

~~111-1~~ 12. As used in this section, "general election" has the meaning ascribed to it in NRS 293.060.

Sec. 26. NRS 281A.510 is hereby amended to read as follows:

281A.510 1. A public officer or public employee shall not accept or receive an honorarium.

2. An honorarium paid on behalf of a public officer or public employee to a charitable organization from which the officer or employee does not derive any financial benefit is deemed not to be accepted or received by the officer or employee for the purposes of this section.

3. This section does not prohibit:

(a) The receipt of payment for work performed outside the normal course of a person's public office or employment if the performance of that work is consistent with the applicable policies of the person's public employer regarding supplemental employment.

(b) The receipt of an honorarium by the spouse of a public officer or public employee if it is related to the spouse's profession or occupation.

4. As used in this section, "honorarium" means the payment of money or anything of value for an appearance or speech by the public officer or public employee in the officer's or employee's capacity as a public officer or public employee. The term does not include the payment of:

(a) The actual and necessary costs incurred by the public officer or public employee, the officer's or employee's spouse or the



1 officer's or employee's aid for transportation and for lodging and
2 meals while the public officer or public employee is away from the
3 officer's or employee's residence.

4 (b) Compensation which would otherwise have been earned by
5 the public officer or public employee in the normal course of the
6 officer's or employee's public office or employment.

7 (c) A fee for a speech related to the officer's or employee's
8 profession or occupation outside of the officer's or employee's
9 public office or employment if:

10 (1) Other members of the profession or occupation are
11 ordinarily compensated for such a speech; and

12 (2) The fee paid to the public officer or public employee is
13 approximately the same as the fee that would be paid to a member
14 of the private sector whose qualifications are similar to those of the
15 officer or employee for a comparable speech.

16 (d) A fee for a speech delivered to an organization of
17 legislatures, legislators or other elected officers.

18 5. In addition to any other ~~penalty imposed pursuant to NRS~~
19 ~~281A.480,~~ *penalties provided by law*, a public officer or public
20 employee who violates the provisions of this section shall forfeit the
21 amount of the honorarium.

22 **Sec. 27.** NRS 281A.550 is hereby amended to read as follows:

23 281A.550 1. A former member of the Public Utilities
24 Commission of Nevada shall not:

25 (a) Be employed by a public utility or parent organization or
26 subsidiary of a public utility; or

27 (b) Appear before the Public Utilities Commission of Nevada to
28 testify on behalf of a public utility or parent organization or
29 subsidiary of a public utility,

30 ➔ for 1 year after the termination of the member's service on the
31 Public Utilities Commission of Nevada.

32 2. A former member of the Nevada Gaming Control Board or
33 the Nevada Gaming Commission shall not:

34 (a) Appear before the Nevada Gaming Control Board or the
35 Nevada Gaming Commission on behalf of a person who holds a
36 license issued pursuant to chapter 463 or 464 of NRS or who is
37 required to register with the Nevada Gaming Commission pursuant
38 to chapter 463 of NRS; or

39 (b) Be employed by such a person,

40 ➔ for 1 year after the termination of the member's service on the
41 Nevada Gaming Control Board or the Nevada Gaming Commission.

42 3. In addition to the prohibitions set forth in subsections 1 and
43 2, and except as otherwise provided in subsections 4 and 6, a former
44 public officer or employee of a board, commission, department,
45 division or other agency of the Executive Department of State



1 Government, except a clerical employee, shall not solicit or accept
2 employment from a business or industry whose activities are
3 governed by regulations adopted by the board, commission,
4 department, division or other agency for 1 year after the termination
5 of the former public officer's or employee's service or period of
6 employment if:

7 (a) The former public officer's or employee's principal duties
8 included the formulation of policy contained in the regulations
9 governing the business or industry;

10 (b) During the immediately preceding year, the former public
11 officer or employee directly performed activities, or controlled or
12 influenced an audit, decision, investigation or other action, which
13 significantly affected the business or industry which might, but for
14 this section, employ the former public officer or employee; or

15 (c) As a result of the former public officer's or employee's
16 governmental service or employment, the former public officer or
17 employee possesses knowledge of the trade secrets of a direct
18 business competitor.

19 4. The provisions of subsection 3 do not apply to a former
20 public officer who was a member of a board, commission or similar
21 body of the State if:

22 (a) The former public officer is engaged in the profession,
23 occupation or business regulated by the board, commission or
24 similar body;

25 (b) The former public officer holds a license issued by the
26 board, commission or similar body; and

27 (c) Holding a license issued by the board, commission or similar
28 body is a requirement for membership on the board, commission or
29 similar body.

30 5. Except as otherwise provided in subsection 6, a former
31 public officer or employee of the State or a political subdivision,
32 except a clerical employee, shall not solicit or accept employment
33 from a person to whom a contract for supplies, materials, equipment
34 or services was awarded by the State or political subdivision, as
35 applicable, for 1 year after the termination of the officer's or
36 employee's service or period of employment, if:

37 (a) The amount of the contract exceeded \$25,000;

38 (b) The contract was awarded within the 12-month period
39 immediately preceding the termination of the officer's or
40 employee's service or period of employment; and

41 (c) The position held by the former public officer or employee at
42 the time the contract was awarded allowed the former public officer
43 or employee to affect or influence the awarding of the contract.

44 6. A current or former public officer or employee may *file a*
45 request ~~that the Commission apply~~ *for an advisory opinion*



1 *pursuant to section 3.2 of this act concerning the application of*
2 the relevant facts in that person's case to the provisions of
3 subsection 3 or 5, as applicable, and determine whether relief from
4 the strict application of those provisions is proper. If the
5 Commission determines that relief from the strict application of the
6 provisions of subsection 3 or 5, as applicable, is not contrary to:

7 (a) The best interests of the public;

8 (b) The continued ethical integrity of the State Government or
9 political subdivision, as applicable; and

10 (c) The provisions of this chapter,

11 ➔ it may issue an *advisory* opinion to that effect and grant such
12 relief. ~~{The}~~

13 *7. For the purposes of subsection 6, the request for an*
14 *advisory opinion, the advisory opinion and all meetings, hearings*
15 *and proceedings of the Commission in such a* ~~case is final and~~
16 ~~subject to judicial review pursuant to NRS 233B.130, except that a~~
17 ~~proceeding regarding this review must be held in closed court~~
18 ~~without admittance of persons other than those necessary to the~~
19 ~~proceeding, unless this right to confidential proceedings is waived~~
20 ~~by the current or former public officer or employee.}~~ *matter are*
21 *governed by the provisions of sections 3.1 to 3.5, inclusive, of this*
22 *act.*

23 *8. The advisory opinion does not relieve the current or former*
24 *public officer or employee from the strict application of any*
25 *provision of NRS 281A.410.*

26 ~~{7. Each request for an opinion that a current or former public~~
27 ~~officer or employee submits to the Commission pursuant to~~
28 ~~subsection 6, each opinion rendered by the Commission in response~~
29 ~~to such a request and any motion, determination, evidence or record~~
30 ~~of a hearing relating to such a request are confidential unless the~~
31 ~~current or former public officer or employee who requested the~~
32 ~~opinion:~~

33 ~~—(a) Acts in contravention of the opinion, in which case the~~
34 ~~Commission may disclose the request for the opinion, the contents~~
35 ~~of the opinion and any motion, evidence or record of a hearing~~
36 ~~related thereto; (b) Discloses the request for the opinion, the~~
37 ~~contents of the opinion or any motion, evidence or record of a~~
38 ~~hearing related thereto in any manner except to:~~

39 ~~——(1) The public body, agency or employer of the public officer~~
40 ~~or employee or a prospective employer of the public officer or~~
41 ~~employee; or~~

42 ~~——(2) Any person to whom the Commission authorizes the~~
43 ~~current or former public officer or employee to make such a~~
44 ~~disclosure; or~~



~~(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.~~

~~8. A meeting or hearing that the Commission or an investigatory panel holds to receive information or evidence concerning the propriety of the conduct of a current or former public officer or employee pursuant to this section and the deliberations of the Commission and the investigatory panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.]~~

9. *For the purposes of this section:*

(a) A former member of the Public Utilities Commission of Nevada, the Nevada Gaming Control Board or the Nevada Gaming Commission; or

(b) Any other former public officer or employee governed by this section,

↳ is employed by or is soliciting or accepting employment from a business, industry or other person described in this section if any oral or written agreement is sought, negotiated or exists during the restricted period pursuant to which the personal services of the public officer or employee are provided or will be provided to the business, industry or other person, even if such an agreement does not or will not become effective until after the restricted period.

10. As used in this section, "regulation" has the meaning ascribed to it in NRS 233B.038 and also includes regulations adopted by a board, commission, department, division or other agency of the Executive Department of State Government that is exempted from the requirements of chapter 233B of NRS.

Sec. 28. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 41.071, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 130.712, 136.050, 159.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270,



1 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300,
2 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
3 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
4 241.030, 241.039, 242.105, 244.264, 244.335, 250.087, 250.130,
5 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195,
6 281A.350, ~~281A.440, 281A.550,~~ 284.4068, 286.110, 287.0438,
7 289.025, 289.080, 289.387, 289.830, 293.5002, 293.503, 293.558,
8 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335,
9 338.070, 338.1379, 338.16925, 338.1725, 338.1727, 348.420,
10 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100,
11 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.610,
12 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008,
13 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259,
14 388.501, 388.503, 388.513, 388.750, 391.035, 392.029, 392.147,
15 392.264, 392.271, 392.850, 394.167, 394.1698, 394.447, 394.460,
16 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
17 408.3886, 408.3888, 408.5484, 412.153, 416.070, 422.2749,
18 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872,
19 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430,
20 432B.560, 433.534, 433A.360, 439.840, 439B.420, 440.170,
21 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665,
22 445B.570, 449.209, 449.245, 449.720, 450.140, 453.164, 453.720,
23 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866,
24 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240,
25 463.3403, 463.3407, 463.790, 467.1005, 480.365, 481.063, 482.170,
26 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484E.070,
27 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655,
28 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070,
29 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315,
30 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.137, 624.110,
31 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230,
32 628B.760, 629.047, 629.069, 630.133, 630.30665, 630.336,
33 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301,
34 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085,
35 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
36 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190,
37 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524,
38 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082,
39 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,
40 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945,
41 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110,
42 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310,
43 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243,
44 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690,
45 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873,



1 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115,
2 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190,
3 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615,
4 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 706A.230,
5 710.159, 711.600, *and sections 3.3, 3.4, 8, 9 and 12.5 of this act*,
6 sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and
7 section 2 of chapter 391, Statutes of Nevada 2013 and unless
8 otherwise declared by law to be confidential, all public books and
9 public records of a governmental entity must be open at all times
10 during office hours to inspection by any person, and may be fully
11 copied or an abstract or memorandum may be prepared from those
12 public books and public records. Any such copies, abstracts or
13 memoranda may be used to supply the general public with copies,
14 abstracts or memoranda of the records or may be used in any other
15 way to the advantage of the governmental entity or of the general
16 public. This section does not supersede or in any manner affect the
17 federal laws governing copyrights or enlarge, diminish or affect in
18 any other manner the rights of a person in any written book or
19 record which is copyrighted pursuant to federal law.

20 2. A governmental entity may not reject a book or record
21 which is copyrighted solely because it is copyrighted.

22 3. A governmental entity that has legal custody or control of a
23 public book or record shall not deny a request made pursuant to
24 subsection 1 to inspect or copy or receive a copy of a public book or
25 record on the basis that the requested public book or record contains
26 information that is confidential if the governmental entity can
27 redact, delete, conceal or separate the confidential information from
28 the information included in the public book or record that is not
29 otherwise confidential.

30 4. A person may request a copy of a public record in any
31 medium in which the public record is readily available. An officer,
32 employee or agent of a governmental entity who has legal custody
33 or control of a public record:

34 (a) Shall not refuse to provide a copy of that public record in a
35 readily available medium because the officer, employee or agent has
36 already prepared or would prefer to provide the copy in a different
37 medium.

38 (b) Except as otherwise provided in NRS 239.030, shall, upon
39 request, prepare the copy of the public record and shall not require
40 the person who has requested the copy to prepare the copy himself
41 or herself.

42 **Sec. 29.** NRS 241.016 is hereby amended to read as follows:

43 241.016 1. The meetings of a public body that are quasi-
44 judicial in nature are subject to the provisions of this chapter.



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2. The following are exempt from the requirements of this chapter:

(a) The Legislature of the State of Nevada.

(b) Judicial proceedings, including, without limitation, proceedings before the Commission on Judicial Selection and, except as otherwise provided in NRS 1.4687, the Commission on Judicial Discipline.

(c) Meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke the parole of a prisoner or to establish or modify the terms of the parole of a prisoner.

3. Any provision of law, including, without limitation, NRS 91.270, 219A.210, 239C.140, 281A.350, ~~281A.440, 281A.550,~~ 284.3629, 286.150, 287.0415, 288.220, 289.387, 295.121, 360.247, 388.261, 388A.495, 388C.150, 392.147, 392.467, 394.1699, 396.3295, 433.534, 435.610, 463.110, 622.320, 622.340, 630.311, 630.336, 639.050, 642.518, 642.557, 686B.170, 696B.550, 703.196 and 706.1725, *and sections 3.5, 5.5 and 11 of this act* which:

(a) Provides that any meeting, hearing or other proceeding is not subject to the provisions of this chapter; or

(b) Otherwise authorizes or requires a closed meeting, hearing or proceeding,

➔ prevails over the general provisions of this chapter.

4. The exceptions provided to this chapter, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

Sec. 29.5. 1. Except as otherwise provided in this section, the Commission on Ethics:

(a) Shall apply the amendatory provisions of this act which govern the procedures applicable to administrative proceedings arising under chapter 281A of NRS to any such proceedings that are within the jurisdiction of the Commission and are commenced on or after July 1, 2017, whether or not the conduct at issue in such proceedings occurred before July 1, 2017.

(b) May apply the amendatory provisions of this act which govern the procedures applicable to administrative proceedings arising under chapter 281A of NRS to any such proceedings that were commenced before July 1, 2017, and are still within the jurisdiction of the Commission and pending before the Commission on July 1, 2017, unless the Commission determines that such an application would be impracticable, unreasonable or unconstitutional under the circumstances, in which case the Commission shall apply the procedures in effect before July 1, 2017.



1 2. The amendatory provisions of sections 15.7, 16, 20, 20.3,
2 20.5 and 27 of this act do not apply to any conduct occurring before
3 July 1, 2017.

4 **Sec. 30.** NRS 281A.108 and 281A.440 are hereby repealed.

5 **Sec. 31.** This act becomes effective on July 1, 2017.

TEXT OF REPEALED SECTIONS

281A.108 “Investigatory panel” or “panel” defined.
“Investigatory panel” or “panel” means an investigatory panel
appointed by the Commission pursuant to NRS 281A.220.

**281A.440 Rendering of opinions by Commission: Requests;
determination of jurisdiction; investigations; determination of
just and sufficient cause; notice and hearings; confidentiality.**

1. The Commission shall render an opinion interpreting the
statutory ethical standards and apply the standards to a given set of
facts and circumstances within 45 days after receiving a request, on
a form prescribed by the Commission, from a public officer or
employee who is seeking guidance on questions which directly
relate to the propriety of the requester’s own past, present or future
conduct as a public officer or employee, unless the public officer or
employee waives the time limit. The public officer or employee may
also request the Commission to hold a public hearing regarding the
requested opinion. If a requested opinion relates to the propriety of
the requester’s own present or future conduct, the opinion of the
Commission is:

(a) Binding upon the requester as to the requester’s future
conduct; and

(b) Final and subject to judicial review pursuant to NRS
233B.130, except that a proceeding regarding this review must be
held in closed court without admittance of persons other than those
necessary to the proceeding, unless this right to confidential
proceedings is waived by the requester.

2. The Commission may render an opinion interpreting the
statutory ethical standards and apply the standards to a given set of
facts and circumstances:

(a) Upon request from a specialized or local ethics committee.

(b) Except as otherwise provided in this subsection, upon
request from a person, if the requester submits:

(1) The request on a form prescribed by the Commission;
and



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(2) All related evidence deemed necessary by the Executive Director and the investigatory panel to make a determination of whether there is just and sufficient cause to render an opinion in the matter.

(c) Upon the Commission's own motion regarding the propriety of conduct by a public officer or employee. The Commission shall not initiate proceedings pursuant to this paragraph based solely upon an anonymous complaint.

➔ The Commission shall not render an opinion interpreting the statutory ethical standards or apply those standards to a given set of facts and circumstances if the request is submitted by a person who is incarcerated in a correctional facility in this State.

3. Within 45 days after receiving a request for an opinion pursuant to paragraph (a) or (b) of subsection 2, the Commission shall determine whether it has jurisdiction concerning the request, unless the public officer or employee who is the subject of the request waives this time limit. Upon a determination by the Commission that it has jurisdiction concerning a request for an opinion pursuant to paragraph (a) or (b) of subsection 2, or upon the motion of the Commission initiating a request for an opinion pursuant to paragraph (c) of subsection 2, as applicable, the Executive Director shall investigate the facts and circumstances relating to the request to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter. The Executive Director shall notify the public officer or employee who is the subject of the request and provide the public officer or employee an opportunity to submit to the Executive Director a response to the allegations against the public officer or employee within 30 days after the date on which the public officer or employee received the notice of the request. The purpose of the response is to provide the Executive Director with any information relevant to the request which the public officer or employee believes may assist the Executive Director and the investigatory panel in conducting the investigation. The public officer or employee is not required in the response or in any proceeding before the investigatory panel to assert, claim or raise any objection or defense, in law or fact, to the allegations against the public officer or employee and no objection or defense, in law or fact, is waived, abandoned or barred by the failure to assert, claim or raise it in the response or in any proceeding before the investigatory panel.

4. The Executive Director shall complete the investigation and present a written recommendation relating to just and sufficient cause, including, without limitation, the specific evidence or reasons that support the recommendation, to the investigatory panel within 70 days after the determination by the Commission that it has



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jurisdiction concerning the request or after the motion of the Commission initiating the request, as applicable, unless the public officer or employee waives this time limit.

5. Within 15 days after the Executive Director has provided the written recommendation in the matter to the investigatory panel pursuant to subsection 4, the investigatory panel shall conclude the investigation and make a final determination regarding whether there is just and sufficient cause for the Commission to render an opinion in the matter, unless the public officer or employee waives this time limit. The investigatory panel shall not determine that there is just and sufficient cause for the Commission to render an opinion in the matter unless the Executive Director has provided the public officer or employee an opportunity to respond to the allegations against the public officer or employee as required by subsection 3. The investigatory panel shall cause a record of its proceedings in each matter to be kept.

6. If the investigatory panel determines that there is just and sufficient cause for the Commission to render an opinion in the matter, the Commission shall hold a hearing and render an opinion in the matter within 60 days after the determination of just and sufficient cause by the investigatory panel, unless the public officer or employee waives this time limit.

7. Each request for an opinion that a public officer or employee submits to the Commission pursuant to subsection 1, each opinion rendered by the Commission in response to such a request and any motion, determination, evidence or record of a hearing relating to such a request are confidential unless the public officer or employee who requested the opinion:

(a) Acts in contravention of the opinion, in which case the Commission may disclose the request for the opinion, the contents of the opinion and any motion, evidence or record of a hearing related thereto;

(b) Discloses the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto in any manner except to:

(1) The public body, agency or employer of the public officer or employee; or

(2) A person to whom the Commission authorizes the current or former public officer or employee to make such a disclosure; or

(c) Requests the Commission to disclose the request for the opinion, the contents of the opinion, or any motion, evidence or record of a hearing related thereto.

8. Except as otherwise provided in subsections 9 and 10, all information, communications, records, documents or other material in the possession of the Commission or its staff that is related to a



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request for an opinion regarding a public officer or employee submitted to or initiated by the Commission pursuant to subsection 2, including, without limitation, the record of the proceedings of the investigatory panel made pursuant to subsection 5, are confidential and not public records pursuant to chapter 239 of NRS until:

(a) The investigatory panel determines whether there is just and sufficient cause to render an opinion in the matter and serves written notice of such a determination on the public officer or employee who is the subject of the request for an opinion submitted or initiated pursuant to subsection 2; or

(b) The public officer or employee who is the subject of a request for an opinion submitted or initiated pursuant to subsection 2 authorizes the Commission in writing to make its information, communications, records, documents or other material which are related to the request publicly available,

→ whichever occurs first.

9. Except as otherwise provided in this subsection, if a person who submits a request for an opinion pursuant to paragraph (b) of subsection 2 asks for the person's name to be kept confidential, the Commission:

(a) Shall keep the person's name confidential if the person is a public officer or employee who works for the same public body, agency or employer as the public officer or employee who is the subject of the request.

(b) May keep the person's name confidential if the person offers sufficient facts and circumstances showing a reasonable likelihood that disclosure of the person's name will subject the person or a member of the person's household to a bona fide threat of physical force or violence.

→ If the Commission keeps the person's name confidential, the Commission shall not render an opinion in the matter unless there is sufficient evidence without the person's testimony to consider the propriety of the conduct of the public officer or employee who is the subject of the request. If the Commission intends to present the person's testimony for consideration as evidence in rendering an opinion in the matter, the Commission shall disclose the person's name within a reasonable time before the Commission's hearing on the matter.

10. Except as otherwise provided in this subsection, the investigative file related to a request for an opinion regarding a public officer or employee, as described in subsection 17, is confidential. At any time after being served with written notice of the determination of the investigatory panel regarding the existence of just and sufficient cause for the Commission to render an opinion in the matter, the public officer or employee who is the subject of



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the request for an opinion may submit a written discovery request to the Commission for a copy of any portion of the investigative file that the Commission intends to present for consideration as evidence in rendering an opinion in the matter and a list of proposed witnesses. Any portion of the investigative file which the Commission presents as evidence in rendering an opinion in the matter becomes a public record as provided in chapter 239 of NRS.

11. Whenever the Commission holds a hearing pursuant to this section, the Commission shall:

(a) Notify the person about whom the opinion was requested of the place and time of the Commission's hearing on the matter;

(b) Allow the person to be represented by counsel; and

(c) Allow the person to hear the evidence presented to the Commission and to respond and present evidence on the person's own behalf.

➤ The Commission's hearing may be held no sooner than 10 days after the notice is given unless the person agrees to a shorter time.

12. If a person who is not a party to a hearing before the Commission, including, without limitation, a person who has requested an opinion pursuant to paragraph (a) or (b) of subsection 2, wishes to ask a question of a witness at the hearing, the person must submit the question to the Executive Director in writing. The Executive Director may submit the question to the Commission if the Executive Director deems the question relevant and appropriate. This subsection does not require the Commission to ask any question submitted by a person who is not a party to the proceeding.

13. If a person who requests an opinion pursuant to subsection 1 or 2 does not:

(a) Submit all necessary information to the Commission; and

(b) Declare by oath or affirmation that the person will testify truthfully,

➤ the Commission may decline to render an opinion.

14. For good cause shown, the Commission may take testimony from a person by telephone or video conference.

15. For the purposes of NRS 41.032, the members of the Commission and its employees shall be deemed to be exercising or performing a discretionary function or duty when taking an action related to the rendering of an opinion pursuant to this section.

16. A meeting or hearing that the Commission or the investigatory panel holds to receive information or evidence concerning the propriety of the conduct of a public officer or employee pursuant to this section and the deliberations of the Commission and the investigatory panel on such information or evidence are not subject to the provisions of chapter 241 of NRS.



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17. For the purposes of this section, the investigative file which relates to a request for an opinion regarding a public officer or employee includes, without limitation, any information provided to or obtained by the Commission, its staff or an investigatory panel through any form of communication during the course of an investigation and any records, documents or other material created or maintained during the course of an investigation which relate to the public officer or employee who is the subject of the request for an opinion, including, without limitation, a transcript, regardless of whether such information, records, documents or other material are obtained by a subpoena.

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SENATE CONCURRENT RESOLUTION NO. 6—
COMMITTEE ON FINANCE

MARCH 27, 2017

Referred to Committee on Legislative Operations and Elections

SUMMARY—Directs the Legislative Commission to conduct an interim study concerning salaries for certain positions in the unclassified and nonclassified service of the State. (BDR R-998)

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted

SENATE CONCURRENT RESOLUTION—Directing the Legislative Commission to appoint a committee to conduct an interim study concerning salaries for certain positions in the unclassified and nonclassified service of the State.

1 WHEREAS, The Commission to Review the Compensation of
2 Constitutional Officers, Legislators, Supreme Court Justices, Judges
3 of the Court of Appeals, District Judges and Elected County
4 Officers created by NRS 281.1571 makes its recommendations
5 concerning the appropriate salaries to be paid to elected officers
6 after comparing the current salaries of persons with similar
7 qualifications who are employed by the State of Nevada and in the
8 public sector and determining the minimum salary required to attract
9 and retain experienced and competent persons; and

10 WHEREAS, The Administrator of the Division of Human
11 Resource Management of the Department of Administration is
12 authorized pursuant to NRS 284.175 to make recommendations to
13 the Legislature concerning the appropriate salaries to be paid to
14 employees in the classified service of the State after considering
15 factors such as surveys of salaries of comparable jobs in government
16 and private industry within the State of Nevada and western states,
17 where appropriate, changes in the cost of living, the rate of turnover
18 and difficulty of recruitment for particular positions and maintaining
19 an equitable relationship among classifications; and



1 WHEREAS, There is no comparable mechanism for considering
2 the appropriate salaries to be paid to state officers and employees
3 who occupy positions in the unclassified and nonclassified service
4 of the State; now, therefore, be it

5 RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE
6 ASSEMBLY CONCURRING, That the Legislative Commission is
7 hereby directed to appoint a committee to conduct an interim study,
8 as described herein, which is composed of:

9 1. Three members of the Senate, two of whom are appointed
10 by the Majority Leader of the Senate and one of whom is appointed
11 by the Minority Leader of the Senate;

12 2. Three members of the Assembly, two of whom are
13 appointed by the Speaker of the Assembly and one of whom is
14 appointed by the Minority Leader of the Assembly; and

15 3. The Administrator of the Division of Human Resource
16 Management of the Department of Administration, who shall serve
17 as a nonvoting member of the committee; and be it further

18 RESOLVED, That the Legislative Commission shall designate
19 one of the members appointed to the committee to serve as the Chair
20 of the committee; and be it further

21 RESOLVED, That, the committee shall conduct an interim study
22 concerning the appropriate salaries for certain positions in the
23 unclassified and nonclassified service of the State, which must,
24 without limitation:

25 1. Include a review of any position within the Judicial
26 Department of the State Government, the Commission on Ethics, the
27 Nevada Gaming Control Board, the Public Utilities Commission of
28 Nevada and any other department, commission or agency of the
29 State of Nevada as determined by the committee;

30 2. Include selection of the positions in the unclassified and
31 nonclassified service of the State in each department, commission or
32 agency of the State of Nevada which are to be included in the
33 interim study;

34 3. Include a review of the salary paid to the state officer or
35 employee in each position selected for review by the committee; and

36 4. Provide for a market salary analysis for each position
37 selected for review by the committee to be performed in a manner
38 determined by the committee; and be it further,

39 RESOLVED, That, in conducting the interim study, the committee
40 may consider whether any position that is currently designated as
41 within the classified, unclassified or nonclassified service of the
42 State should be redesignated; and be it further

43 RESOLVED, That any recommended legislation proposed by the
44 committee must be approved by a majority of the members of the



1 Senate and a majority of the members of the Assembly appointed to
2 the committee; and be it further

3 RESOLVED, That the Legislative Commission shall submit a
4 report of the results of the study and any recommendations for
5 legislation to the Director of the Legislative Counsel Bureau for
6 transmittal to the 80th Session of the Nevada Legislature; and be it
7 further

8 RESOLVED, That the Secretary of the Senate prepare and
9 transmit a copy of this resolution to the Governor, the Administrator
10 of the Division of Human Resource Management of the Department
11 of Administration and the Director of the Administrative Office of
12 the Courts.



Cheryl A. Lau, Esq.
Chair

Keith A. Weaver, Esq.
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May 8, 2017

Senate Committee on Legislative Operations and Elections
Nevada Legislature
79th Legislative Session (2017)

RE: **Senate Concurrent Resolution 6 (Salary Study)**

Dear Chair Cannizzaro and Members of the Committee:

The Nevada Commission on Ethics is responsible for advising and educating State and local government public officers and employees regarding the provisions of the Nevada Ethics in Government Law (NRS 281A). The Commission also serves as a quasi-judicial body responsible for interpreting and enforcing the Ethics Law, adjudicating complaints and defending its administrative decisions in various judicial forums.

The Commission's mission is accomplished through its staff, consisting of six (6) unclassified employees. The salaries and titles of the Commission's staff are currently set by the Unclassified Pay Bill during each Legislative Session. Pursuant to NRS 281A.270, the Commission's overall budget is funded through a proportionate split between the State General Fund and Counties and Cities with certain threshold populations, currently 21% State, 79% Local Government – and if the current budget is approved as proposed, the State's portion will become 28% and the Local Government's share will be 72%. Accordingly, the requested compensation and title adjustments will have a limited direct impact on the State General Fund.

The Commission has unwaveringly supported efforts during the last two Legislative Sessions and now the current Session to increase the salaries and correct the titles of certain staff to establish parity with its sister agency in the Judicial Branch, the Judicial Discipline Commission, as well as many other comparable agencies in the State. Specifically, the Commission seeks compensation and title adjustments for the Commission's Executive Director, Commission Counsel, Associate Counsel, Executive Assistant and Senior Legal Researcher, all of which currently fall far short of the salaries and titles of their respective counterparts in other agencies with similar duties and responsibilities. (See Exhibit A)

Despite the Commission's efforts for more than 6 years, the Commission has felt powerless to effect any meaningful change to ensure and support its statutory mandate. The Commission is wholly reliant upon a qualified staff to achieve its mission, and respectfully requests your support of its efforts.

The salary disparities and title/position discrepancies of Commission staff should not continue. During the last 6 years, these pay and title disparities have resulted in increased turnover, extended vacancies and significant shortage of qualified candidates for an already limited number of staff. Notably, the Commission has suffered multiple vacancies at the hands of the Judicial Discipline Commission, which has already recruited two Commission employees at significantly enhanced titles and higher salaries for similar positions, duties and responsibilities. The Commission requests consideration of its reasonable and responsible requests for parity in staff salaries in connection with the State's goals to ensure the public's trust in government, promote efficient and responsive State Government, secure the retention of top-performing employees and stimulate professional development.

This request is not presented in a vacuum. The Commission stands dedicated to produce actual and meaningful reforms in the processing of matters before the Commission and production of quality and consistent opinions. The Commission has recently revamped its performance measures, streamlined its internal processes and case management and has submitted a bill with the Governor's sponsorship to further achieve these reforms. The Commission has achieved success in overcoming its backlogs of Commission opinions and maintains a current caseload. With the Legislature's approval of the Commission's pending BDR concepts, certain statutory amendments are expected to eliminate or streamline cumbersome processes and reduce operational costs in the Commission's budget. With these amendments, the Commission staff will be expected to meet additional challenges and achieve the revised performance measures.

The functions and staff duties and responsibilities of Nevada's Judicial Discipline Commission mirror those of the Commission, yet the salaries and titles for equivalent positions are excessively disparate. In fact, the Commission has jurisdiction of approximately 135,000 public officers and employees to warrant a more considered view of its staff responsibilities.

The Commission has routinely faced the consequences of these salary and title inequalities, including its loss of 2 employees to the Judicial Discipline Commission for similar duties and responsibilities at significantly increased pay and more respectable titles. Though the Commission is presently staffed with qualified, dedicated employees, the tenure of these employees is at risk. The Commission will be unable to recruit and compete for the same quality staff needed to achieve its mission at current salary levels, especially given its small 6-member staff. Further, retention of quality staff is critical to produce consistent work product in an efficient and professional manner, including qualified responses to important legal and judicial matters. Institutional knowledge in a unique agency such as the Commission on Ethics is invaluable. Appropriate salaries will limit excessive turnover, low quality of applicants for vacant positions, and comparison of private sector and local government pay.

The Commission requests salary increases for the Executive Director, Commission Counsel and Senior Legal Researcher, and title and salary changes for the Associate Counsel and Executive Assistant. Each request is detailed below.

Executive Director and Commission Counsel:

The Commission's Executive Director and Commission Counsel are currently paid at the lowest end of the unclassified pay scale for agency directors and attorneys in the State. The Executive Director is statutorily appointed by the Commission and charged with administering the agency; appointing and supervising the staff; preparing, directing and approving all budgetary matters; training and educating public officers and employees; investigating complaints, presenting evidentiary and legal hearings, proposing and presenting regulations and legislation; serving as the agency's public information officer; and serving as back-up legal support for the Commission Counsel. The Commission Counsel is also statutorily appointed by the Commission and is responsible for serving as the Commission's legal advisor in all matters. Commission Counsel is responsible for providing legal advice and interpretation in all matters before the Commission, including hearings, both advisory and adjudicatory, writing all final orders and opinions of the Commission and defending the Commission in any litigation.

Both positions operate with significant autonomy to a part-time Commission, and each offers the Commission licensed, legal professionals who also provide continuing legal education to the State and local Bars. However, both positions are paid at the level of a deputy attorney general in the State, which is typically a supervised attorney without independent authority. Indeed, in the recent past, the Executive Director and Commission Counsel successfully spearheaded a case through the Supreme Court of the United States, at entry level salaries.

For comparison, the Commission relies heavily on the salaries and titles of the Judicial Discipline Commission, as it is the only agency of government that operates in the same fashion as the Commission and imposes the same duties and responsibilities on staff. The salaries in that agency far exceed the salaries of the Commission's Executive Director and Commission Counsel. In addition to its higher salaries, the Judicial Branch also funds separate outside investigators and attorneys to handle much of the process that is handled in house by the Commission's Executive Director and Commission Counsel.

Associate Counsel:

In 2013, the Commission acquired its Associate Counsel Position, under the direction of the Executive Director and indirect report to Commission Counsel, and is subordinate to both positions. This position was a critical addition to the staff to ensure proper due process of third-party complaints between the roles of the Executive Director related to investigations and the Commission Counsel in its advisory capacity, and also to ensure that the Commission expedited and finalized its cases and resolved its backlog of written opinions.

Unfortunately, the Legislature included this position within the 2013 Unclassified Pay Bill as a second "Commission Counsel," instead of "Associate Counsel," as presented and approved in the Governor's Recommended Budget. Statutorily, the Commission may appoint only one Commission Counsel as the legal advisor to the agency (NRS 281A.250), and it is not appropriate that the Associate Counsel earns the same salary as the Executive Director and Commission Counsel.

The original request for the Associate Counsel position sought the entry attorney level salary, and the Commission expected the compensation of the Executive Director and

Commission Counsel would be adjusted upward accordingly. Unfortunately, during both the 2013 and 2015 Legislative Sessions, these salaries were not adjusted in the respective Unclassified Pay Bills. The Commission has endeavored to overcome these salary disparities and title discrepancies for two legislative sessions. Accordingly, the Commission requests a title change from a second "Commission Counsel" to "Associate Counsel." Given the demands of the position since 2013 and to again draw parity to the Judicial Discipline Commission, the Commission further seeks a salary enhancement for this position.

As further evidence of the disparity, in 2015, the Judicial Discipline Commission sought and received approval for an Associate Counsel position at nearly \$12,000 more per year than the Commission's Executive Director, Commission Counsel and Associate Counsel.

Executive Assistant:

The Executive Assistant's duties are, and should be, more in line with those of a Management Analyst. The Executive Assistant's duties certainly include administrative responsibilities, but more importantly, they include substantive analysis and research and overall office management responsibilities. The Executive Assistant partners with the Executive Director to prepare, monitor and maintain the Commission's biennial budget, including projecting future costs and needs of the agency, researching options and preparing feasibility reports to accommodate the Commission's needs. The Executive Assistant is also responsible for personnel-related and human resource issues, tracking and collecting data related to the agency's Performance Measures and compiling the statistical data for reports to the Executive Director/Commission, Governor's Office of Finance and the Legislature, and utilizing that data to suggest improved work flow, budget demands and service to the Commission's customers.

The Executive Assistant also maintains the agency's forms and filings, suggesting edits and revisions as appropriate, and assists the Executive Director in updating internal policies in conformance with the State's policies.

A requirement for the Management Analyst series includes a Bachelor's degree and management experience, which will ultimately improve the level of qualifications in future applicants for this position. If the Commission were to lose the current staff member holding the position, a certified public manager, it is unlikely that the current title as an Executive Assistant and related pay scale will produce candidates capable of the skills, duties and responsibilities described above. The position warrants a change in title to a Management Analyst III.

Again, the equivalent position in the Judicial Discipline Commission operates as a Management Analyst IV, with the same educational requirements and duties assigned. The distinction between the Management Analyst III and IV relates to supervisory roles. The Commission currently does not have sufficient staff to present supervisory responsibilities in our agency and therefore the level III with related salary is requested for this agency.

Senior Legal Researcher:

The Commission's Senior Legal Researcher provides a unique position within the Unclassified Pay Bill. The Senior Legal Researcher serves as the Commission's para-professional legal support staff, including substantive legal research, paralegal

responsibilities, legal secretarial duties and case management of all legal matters for the Commission's three attorneys.

The salary for this position has an unfortunate history. The position was originally created as the only *classified* position in the agency to accommodate a particular person. When that person left in 2010, the Commission moved this position to the unclassified service in 2011, and an unfortunate discrepancies occurred in the approved salary in the Unclassified Pay Bill. A senior level position was transferred to the lowest paid position within the agency, at a salary less than the Commission's Executive Assistant and less than a non-senior level legal researcher in other agencies represented in the Unclassified Pay Bill. The Commission has attempted to correct this issue in each Session since 2011.

Notably, in 2015, the Nevada Legislature approved a compensation adjustment throughout the Unclassified Pay Bill for "Legal Researchers," but the salary of the Commission's Senior Legal Researcher was not likewise adjusted. The consequence was higher salaries for *non-senior* legal researchers than the Commission's *Senior* Legal Researcher. At a very minimum this salary should be adjusted appropriately to reflect a proper salary for a senior level researcher distinct from the legal researchers in other agencies.

Moreover, the responsibilities of this single position within the agency warrant a closer look at comparable positions in State Government. The Commission's Senior Legal Researcher is responsible for supporting 3 lawyers within the agency, substantive research and coordination, and case management. The equivalent position in the Judicial Discipline Commission is a Management Analyst.

The Executive Assistant and Senior Legal Researcher provide unique and distinct duties, but are equally tasked with substantive and significant responsibilities and should be equivalent in salary. Due to our small staff, both positions are also cross-trained to fill in for one another in the event of absences and vacancies. Accordingly, the Commission seeks a salary adjustment commensurate with that of the Executive Assistant. See attached chart.

Total Cost Summary:

The Commission seeks the following salary and title adjustments:

<u>Position (New Title)</u>	<u>Current Salary (Maximum)</u>	<u>Requested Salary (Maximum)</u>
Executive Director	\$97,901	\$125,340
Commission Counsel	\$95,650	\$125,340
Commission Counsel (2): (Associate Counsel)	\$95,650	\$108,179
Executive Assistant: (Management Analyst III)	\$56,265	\$74,813
Senior Legal Researcher	\$54,332	\$74,813

If the Salaries are funded as requested, the State's total share per fiscal year would be \$30,432 (28%) and the local government share would be \$78,255 (72%), split proportionately between the local governments according to respective populations. (See Exhibit B) The Commission has provided back-up materials to evidence the discrepancies

in staff salaries and titles and encourages a frank discussion with the Legislature to address these issues during this Legislative Session. (See Exhibit A)

Please feel free to contact the Commission with any questions. Thank you for your time and consideration regarding this matter.

[/s/ Cheryl A. Lau](#)
Cheryl A. Lau, Esq.
Chair

[/s/ Keith A. Weaver](#)
Keith A. Weaver, Esq.
Vice-Chair

Commission on Ethics – Salary/Title Parity Request

<u>Department</u>	<u>Peers of Ethics</u> <u>Executive Director</u>	<u>2015 Unclassified</u> <u>Pay Bill</u>
Ethics Commission	Executive Director	97,901
Comm. on Judicial Discipline	Executive Dir. & General Counsel	140,662
High Level Nuclear Waste	Executive Director	115,285
Department of Admin.	Deputy Director	117,030
Silver State Health Exchange	Executive Director	117,030
Public Utilities Commission	Executive Director	117,030
Department of Admin.	Senior Appeals Officer	118,156
Business and Industry	Division Administrator, Attorney for Injured Workers	118,156
Colorado River Commission	Administrative Services Officer	119,445
PEBP	Executive Officer	123,783
Colorado River Commission	Deputy Director	125,340
Attorney General	Bureau Chief	127,721
Colorado River Commission	Director	131,826

Recommend: \$125,340
(+ \$27,439)

<u>Department</u>	<u>Peers of Ethics</u> <u>Commission Counsel</u>	<u>2015 Biennial</u> <u>Unclassified</u> <u>Pay Bill</u>
Ethics Commission	Commission Counsel	95,650
Commission on Judicial Discipline	Executive Director/General Counsel	140,662
Attorney General	Chief Deputy Attorney General	118,156
Supreme Court	Reporter of Judicial Decisions	118,156
Public Utilities Commission	Chief Attorney	118,156
Department of Taxation	Chief Administrative Law Judge (attorney)	118,156
Attorney General	General Counsel	132,600

Recommend \$125,340
(+ \$29,690)

<u>Department</u>	<u>Peers of Ethics</u> <u>Associate Counsel</u>	<u>2015 Biennial</u> <u>Unclassified</u> <u>Pay Bill</u>
Ethics Commission	Commission Counsel	95,650
Commission on Judicial Discipline	Associate General Counsel	108,179
DETR	Senior Attorney	106,904
Attorney General	Senior Dep. Attorney General	106,904
Business & Industry	Senior Attorney	106,904
DMV	Senior Attorney	106,904
Public Utilities Commission	Senior Attorney	106,904
Attorney General	Counsel for Prosecuting Attorneys	107,465
Attorney General	Special Assistant Attorney General	107,465

Recommend \$108,179
(+ \$12,529)

<u>Department</u>	<u>Peers Of Ethics</u> <u>Management Analyst III</u>	<u>2015 Biennial</u> <u>Unclassified</u> <u>Pay Bill</u>
Ethics Commission	Executive Assistant	56,265
Commission on Judicial Discipline	Management Analyst IV	81,954
Attorney General	Admin. Services Officer	74,091
Attorney General – Bureau of Consumer Protection	Administrative Services Officer	74,091
Classified Service	Management Analyst III	74,813
Gaming Control Board	Senior Program Analyst	79,220
Attorney General	Financial Analyst	81,584
Gaming Control Board	Administrative Coordinator	84,089
Public Utilities Commission	Assistant Commission Secretary	87,773

Recommend \$74,813
(\$18,548)

<u>Department</u>	<u>Peers of Ethics</u> <u>Senior Legal Researcher</u>	<u>2015 Biennial</u> <u>Unclassified</u> <u>Pay Bill</u>
Ethics Commission	Senior Legal Researcher	54,332
Commission on Judicial Discipline	Paralegal (Management Analyst II)	68,361
Attorney General	Legal Researcher	56,265
Public Utilities Commission	Legal Case Manager	57,124
Attorney General	Supervising Legal Researcher	59,078
Dept. of Tourism and Cultural Affairs	Project Analyst II	65,172
Supreme Court	Chief Deputy Clerk	72,581
Public Utilities Commission	Senior Analyst	73,194
Gaming Control Board	Senior Program Analyst	79,220

Recommend: \$74,813
(+ \$20,481)

Total Enhancement: \$108,687 + Associated costs (PERS etc.)

**1343 - Ethics Commission
FY18 (72%) Governmental Cost Share Assessment
SALARY ENHANCMENTS**

COMMISSION ON ETHICS COST-SHARE CALCULATIONS - 2014 Nevada Population = 2,843,301		2,813,616	RED=PARTI CIPANT IN LOCAL GOV'T COST SHARE	GREEN = % OF LOCAL GOV'T COST SHARE	\$ 61,389	
	<u>TOTAL</u> <u>Counties &</u> <u>Cities NRS</u> <u>281A.270</u>	<u>Cities</u> <u>>15,000</u> <u>Total</u>	<u>Counties ></u> <u>10,000,</u> <u>less Cities</u> <u>> 15,000</u>	<u>% of TOTAL</u> <u>2014 EST</u> <u>POPULATION</u>	<u>Annual Commission</u> <u>Budget allocated to</u> <u>Local Governments</u> <u>2012-13</u>	FY17 Billing Percentage
<u>County</u>						
Boulder City		15,627		0.5554%	\$ 343.78	0.56%
Carson City	53,969		53,969	1.9181%	\$ 1,178.66	1.92%
Churchill County	25,103		25,103	0.8922%	\$ 546.36	0.89%
City of Elko		20,865		0.7416%	\$ 454.28	0.74%
Clark County	2,069,450	1,155,945	913,505	32.4673%	\$ 19,932.89	32.47%
Douglas County	48,553		48,553	1.7256%	\$ 1,062.02	1.73%
Elko County	53,358	20,865	32,493	1.1548%	\$ 705.97	1.15%
Fernley		19,077		0.6780%	\$ 417.44	0.68%
Henderson		280,928		9.9846%	\$ 6,126.59	9.98%
Humboldt County	17,388		17,388	0.6180%	\$ 380.61	0.62%
Las Vegas		610,637		21.7029%	\$ 13,321.33	21.70%
Lyon County	53,344	19,077	34,267	1.2179%	\$ 748.94	1.22%
Mesquite		18,262		0.6491%	\$ 399.03	0.65%
N. Las Vegas		230,491		8.1920%	\$ 5,027.73	8.19%
Nye County	45,456		45,456	1.6156%	\$ 994.50	1.62%
Reno		235,371		8.3654%	\$ 5,138.23	8.37%
Sparks		92,396		3.2839%	\$ 2,013.55	3.28%
Washoe County	436,797	327,767	109,030	3.8751%	\$ 2,375.74	3.87%
White Pine County	10,218		10,218	0.3632%	\$ 221.00	0.36%
TOTALS	2,813,636	1,523,654	1,289,982	1.0000	\$ 61,388.64	100.00%

FY18 Summary

Total Salary Enhancement: \$85,262
Local Governments (72%): \$61,389
State (28%): \$23,873

Population Reconciliation: 2014
Total Population 2,843,301
Assessed Population 2,813,636
Unassessed Population 29,665

Counties Not Meeting Assessment Criteria
Esmerelda 926
Eureka 1,903
Lander 6,560
Lincoln 5,004
Mineral 4,584
Pershing 6,714
Storey 3,974
29,665

Check Figure 0

1343 - Ethics Commission
FY19 (72%) Governmental Cost Share Assessment
SALARY ENHANCEMENTS

COMMISSION ON
 ETHICS COST-SHARE
 CALCULATIONS -
 2014 Nevada 2,813,616
 Population =
 2,843,301

RED=PARTI
 CIPANT IN
 LOCAL
 GOV'T
 COST
 SHARE

GREEN = % OF
 LOCAL GOV'T
 COST SHARE

\$ 61,349

County	<u>TOTAL</u> <u>Counties &</u> <u>Cities NRS</u> <u>281A.270</u>	<u>Cities</u> <u>>15,000</u> <u>Total</u>	<u>Counties ></u> <u>10,000,</u> <u>less Cities</u> <u>> 15,000</u>	<u>% of TOTAL</u> <u>2014 EST</u> <u>POPULATION</u>	<u>Annual Commission</u> <u>Budget allocated to</u> <u>Local Governments</u> <u>2012-13</u>	FY17 Billing Percentage
<i>Boulder City</i>		15,627		0.5554%	\$ 343.55	0.56%
<i>Carson City</i>	53,969		53,969	1.9181%	\$ 1,177.90	1.92%
<i>Churchill County</i>	25,103		25,103	0.8922%	\$ 546.01	0.89%
<i>City of Elko</i>		20,865		0.7416%	\$ 453.98	0.74%
<i>Clark County</i>	2,069,450	1,155,945	913,505	32.4673%	\$ 19,920.03	32.47%
<i>Douglas County</i>	48,553		48,553	1.7256%	\$ 1,061.34	1.73%
<i>Elko County</i>	53,358	20,865	32,493	1.1548%	\$ 705.51	1.15%
<i>Fernley</i>		19,077		0.6780%	\$ 417.17	0.68%
<i>Henderson</i>		280,928		9.9846%	\$ 6,122.63	9.98%
<i>Humboldt County</i>	17,388		17,388	0.6180%	\$ 380.36	0.62%
<i>Las Vegas</i>		610,637		21.7029%	\$ 13,312.74	21.70%
<i>Lyon County</i>	53,344	19,077	34,267	1.2179%	\$ 748.46	1.22%
<i>Mesquite</i>		18,262		0.6491%	\$ 398.77	0.65%
<i>N. Las Vegas</i>		230,491		8.1920%	\$ 5,024.49	8.19%
<i>Nye County</i>	45,456		45,456	1.6156%	\$ 993.85	1.62%
<i>Reno</i>		235,371		8.3654%	\$ 5,134.91	8.37%
<i>Sparks</i>		92,396		3.2839%	\$ 2,012.25	3.28%
<i>Washoe County</i>	436,797	327,767	109,030	3.8751%	\$ 2,374.21	3.87%
<i>White Pine County</i>	10,218		10,218	0.3632%	\$ 220.86	0.36%
TOTALS	2,813,636	1,523,654	1,289,982	1.0000	\$ 61,349.04	100.00%

FY19 Summary

Total Salary Enhancement: \$85,207
 Local Governments (72%): \$61,349
 State (28%): \$23,858

Population Reconciliation: 2014
 Total Population 2,843,301
 Assessed Population 2,813,636
 Unassessed Population 29,665

Counties Not Meeting Assessment Criteria
 Esmerelda 926
 Eureka 1,903
 Lander 6,560
 Lincoln 5,004
 Mineral 4,584
 Pershing 6,714
 Storey 3,974
 29,665

Check Figure 0

AGENDA ITEM NO. 6

AGENDA ITEM NO. 6

AGENDA ITEM NO. 6

AGENDA ITEM NO. 6

BA 1343 ETHICS COMMISSION FY 2017
Financial Status Report
Printed Tuesday, April 25, 2017 11:33 AM

Revenue Source / Cat	L01	WP	Act	Bud Bal	Proj	Act + Proj	Proj Bud Bal
0042 Appropriation	173,701	173,701	173,701	0	0	173,701	0
4103 COUNTY REIMBURSEMENTS	600,605	600,605	489,676	110,929	0	489,676	110,929
Total Revenue	774,306	774,306	663,377	110,929	0	663,377	110,929
01 PERS SERVICE	615,273	615,273	469,409	145,864	138,182	607,591	7,682
03 IN ST TRAV	23,712	20,712	4,443	16,270	13,926	18,368	2,344
04 OPERATING	53,157	53,157	44,390	8,767	4,129	48,519	4,638
11 CRT REP SVCS	31,255	16,405	3,690	12,715	5,700	9,390	7,015
15 INV/PARALEGL	2,947	2,947	2,208	739	738	2,946	1
26 INFO SERV	11,497	29,347	7,893	21,454	20,441	28,334	1,013
30 TRAINING	7,724	7,724	7,651	73	321	7,972	(248)
82 DPT CST ALLO	28,258	28,258	20,817	7,441	6,939	27,757	501
87 PURCH ASMNT	483	483	362	121	121	483	0
Total Expense	774,306	774,306	560,863	213,443	190,497	751,360	22,946
Operating Income	0	0	102,514	(102,514)	(190,497)	(87,983)	87,983
Beg Net Assets	52,840	67,625	67,625	0	0	67,625	0
End Net Assets	52,840	67,625	170,139	(102,514)	(190,497)	(20,358)	87,983
Days Exp in Ending Rsv	0	31	0	0	0	(10)	0

Cheryl A. Lau, Esq.
Chair

Keith A. Weaver, Esq.
Vice-Chair

Yvonne Nevarez-Goodson, Esq.
Executive Director
(D) 775-687-4312
ynevarez@ethics.nv.gov



State of Nevada
COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
www.ethics.nv.gov

March 2, 2017



Re: Nevada Acknowledgement of Ethical Standards for Public Officers

Dear [REDACTED],

Pursuant to NRS 281A.500(1)(b)(1), you are required, as the County Clerk, to inform all elected public officers¹ within the county and its political subdivisions, not including city officials, of the statutory ethical standards applicable to public officers as set forth in the Nevada Ethics in Government Law (NRS Chapter 281A). You must also inform these elected public officers of the duty to file a *Nevada Acknowledgement of Ethical Standards for Public Officers* ("*Acknowledgement Form*") for each term of office.

The Legislature has mandated that county clerks provide this information to each elected public officer of the county and its political subdivisions on or before the date on which the public officer swears or affirms the oath of office. For a public officer who is elected to office at the general election, the *Acknowledgement Form* must be filed on or before January 15th of the year following the election. For a public officer who is elected to office at an election other than the general election, the *Acknowledgement Form* must be filed on or before the 30th day following the date on which the public officer swears or affirms the oath of office.

Please Note:

Public Officers subject to these requirements under NRS Chapter 281 **DO NOT** include, as applicable:

1. Any justice, judge or other officer of the court system.
2. Any member of a public body whose function is advisory

¹ Public Officers are those persons serving in a position designated by NRS 281A.160 or NRS 281A.182.

March 2, 2017

Page 2

3. A member of a special district whose official duties do not include the formulation of a budget for the district or the authorization of the expenditure of the district's money.

Enclosed herein, I have provided a copy of the *Acknowledgement Form*, which was updated on January 19, 2017. The *Acknowledgement Form*, as well as a link to NRS Chapter 281A and other relevant informational guides for public officers, are available on the Commission's website, www.ethics.nv.gov.

If you have any questions or concerns, please do not hesitate to contact me. I am also available to provide training on the requirements of the Ethics Law to all public officers and employees upon request.

Sincerely,

/s/ Yvonne M. Nevarez-Goodson

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

NEVADA ACKNOWLEDGMENT OF ETHICAL STANDARDS FOR PUBLIC OFFICERS

Pursuant to NRS 281A.500(3), each public officer* shall file an Acknowledgement of Statutory Ethical Standards as prescribed by this form.

NAME:	TITLE OF PUBLIC OFFICE:
PUBLIC ENTITY:	
DATE APPOINTED (if applicable):	DATE ELECTED (if applicable):
TERM OF OFFICE (if applicable):	
ADDRESS:	CITY, STATE, ZIP:
TELEPHONE	E-MAIL:

I HEREBY ACKNOWLEDGE:



I have received, read and understand the statutory ethical standards for public officers and public employees provided in NRS Chapter 281A (NRS 281A.500(3)(a)); and



I have a responsibility to inform myself of any amendments to the statutory ethical standards as soon as reasonably practicable after each session of the Legislature (NRS 281A.500(3)(b)).

I understand that my refusal to execute and file this acknowledgement constitutes a willful violation of Chapter 281A of NRS and non-feasance in office pursuant to NRS 283.440, which may subject me to civil penalties. Further, if I am subject to removal from office pursuant to NRS 283.440, the Commission may file a complaint in the appropriate court for my removal for nonfeasance in office (NRS 281A.500(10)).

Date: _____ Signature: _____

WHO IS REQUIRED TO FILE:	WHEN (Due Date):
Appointed public officer.	Within 30 days of taking office, for each term of office.
Elected public officer who is elected at general election.	Jan. 15 th of the year following the general election, for each term of office.
Elected public officer who is elected at an election other than the general election.	Within 30 days of taking office, for each term of office.
Appointed public officer who serves at the pleasure of the appointing authority and does not have a definite term of office.	Within 30 days of taking office and then Jan. 15 th every even-numbered year while holding that office.

* Public Officers are those persons serving in a position designated by NRS 281A.160 or 281A.182.

Statutory Ethical Standards set forth in NRS Chapter 281A are available on the Commission's website or may be requested from the Nevada Commission on Ethics.

File completed form with (mail, fax or email accepted):

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
(Phone) 775-687-5469 (Fax) 775-687-1279
Email: ncoe@ethics.nv.gov
Website: www.ethics.nv.gov

Proposed Meeting Dates

June – Brief Telephonic Meeting

- June 6, 2017 OR June 21, 2017

Next Commission Meeting – In person

- July 26, 2017 OR August 9, 2017