



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

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

The Commission on Ethics held a public meeting on  
Wednesday, March 21, 2018, at 9:30 a.m.  
at the following locations:

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

and via video-conference to:

**Grant Sawyer State Building  
Room 4401  
555 E. Washington Avenue  
Las Vegas, NV 89101**

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

1. Call to Order and Roll Call.

Chair Cheryl A. Lau, Esq. called the meeting to order in Carson City, Nevada at 9:30 a.m. Also present in Carson City were Vice-Chair Keith A. Weaver, Esq. and Commissioners Barbara Gruenewald, Esq. and Philip K. O'Neill. Commissioner Brian Duffrin appeared telephonically. Present for Commission staff in Carson City were Executive Director Yvonne M. Nevarez-Goodson, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Judy Prutzman, Esq., and Senior Legal Researcher Darci Hayden. Commissioner Amanda Yen was excused.

The pledge of allegiance was conducted.

3. Approval of Minutes of the January 17, 2018 Commission Meeting.

This item was taken out of order. Commissioner Gruenewald moved to accept the January 17, 2018 Minutes as presented, Commissioner O'Neill seconded the motion. Vice-Chair Weaver was excused from the vote due to his absence at the January meeting. The Motion was put to a vote and carried unanimously.

4. Acceptance and possible direction on the Executive Director's report regarding the Review Panel's approval of a Deferral Agreement in Ethics Complaint No. 17-23C concerning Kurt Carson, Council Member, City of Ely, State of Nevada.

This item was taken out of order. Kurt Carson, City of Ely Council Member and Mr. Carson's counsel, Charles Odgers, Esq., Ely City Attorney, appeared before the Commission telephonically. Mr. Odgers stated that Mr. Carson had taken steps to ensure that he does not violate any provisions of NRS Chapter 281A in the future. Chair Lau explained that the purpose for this Agenda item is informational only and confirmed that the Review Panel had approved the Deferral Agreement.

Executive Director Yvonne M. Nevarez-Goodson, Esq. presented an overview of the purpose of her report on the Deferral Agreement based upon amendments enacted in Senate Bill 84 in the 2017 Legislative Session, which changed the Commission's two-member investigatory panel to a three-member review panel. The change provided the three-member review panel with the authority to approve deferral agreements entered into between the Executive Director and the subject of any complaint. However, Executive Director Nevarez-Goodson explained that the Commission did not have the authority to overturn those deferral agreements or otherwise change the terms of those deferral agreements. Nevertheless, Executive Director Nevarez-Goodson wanted to inform the Commission of all review panel decisions regarding deferral agreements currently in effect.

In Ethics Complaint Case No. 17-23C, Executive Director Nevarez-Goodson reported the deferral agreement process defers any finding of a violation through the imposition of various terms and conditions on future conduct, including education, and in this case, provided an avenue of education and clarification of the Ethics Law for Mr. Carson, who was otherwise cooperative with the investigation. Executive Director Nevarez-Goodson stated that the Review Panel required Mr. Carson to complete certain compliance items, including Ethics training, to avoid a referral to the Commission for a violation. Mr. Carson completed Ethics training by the time the Deferral Agreement became effective. Finally, the Deferral Agreement requires that Mr. Carson not be the subject of a future Ethics Complaint for which just and sufficient cause is found during a two-year compliance period which will be monitored by the Executive Director.

2. Public Comment.

This item was taken out of order. The Chair noted that no members of the public were present at the start of the meeting and the Commission forgot to ask for public comment such that she was calling for any public comment at this time. No members of the public were present in Carson City or Las Vegas.

5. Acceptance and possible direction on the Executive Director's report regarding the Review Panel's approval of a Deferral Agreement in Ethics Complaint No. 17-27C concerning Carl Lackey, Biologist, Game Division, Department of Wildlife, State of Nevada.

The Chair acknowledged Mr. Lackey and his attorney, Deputy Attorney General Joshua Woodbury, and asked if they had any comments. Mr. Woodbury responded that they were attending only to view the Executive Director's report.

The Chair invited Executive Director Yvonne M. Nevarez-Goodson, Esq. to provide her report regarding the terms in Deferral Agreement No. 17-27C. Executive Director Nevarez-Goodson reported that, as in the previous matter, the purpose of this agenda item is to inform the

Commission of the decisions of its review panels with regard to approval of deferral agreements. She stated that this case represents a good example of the Legislature's intent in enacting S.B. 84 and the deferral agreement process because it allowed the Commission to provide educational guidance to Mr. Lackey regarding commitments in a private capacity and to defer any findings of a violation provided Mr. Lackey meets certain compliance requirements. Mr. Lackey was cooperative with the investigation and it became clear that Mr. Lackey had not before been informed of or understood the Ethics Law. Mr. Lackey completed Ethics training immediately and must not be the subject of another Ethics Complaint for which just and sufficient cause is found during a one-year compliance period which will be monitored by the Executive Director.

The Chair asked the Commissioners if they had any questions and Commissioner O'Neill asked whether the Director of the Nevada Department of Wildlife ("NDOW") received notification of the Review Panel's findings through a letter as indicated in the terms of the Deferral Agreement. Executive Director Nevarez-Goodson confirmed that a letter was sent to the Director of NDOW as well as the director of State Personnel according to the terms of the agreement.

6. Consideration and approval of Bill Draft Request Concepts to the Office of the Governor based upon recommendations of the Executive Director pursuant to NRS 281A.240(1)(d).

Executive Director Nevarez-Goodson reported that Commission staff participated in the Governor's Budget Kick-off at the end of February 2018 where instructions were provided by the Governor's Office regarding budget issues for the 2019 Legislative Session as well as concept proposals for bill draft requests ("BDRs"). The Governor's Office will entertain such proposals submitted by Executive Branch agencies and select which concepts to sponsor for the 2019 Legislative Session.

Executive Director Nevarez-Goodson directed the Commission to the list of BDR Concepts that she and Commission Counsel Chase prepared for the Commission's consideration and for submission to the Governor's Office on the Commission's approval. The BDR concepts are based on the amendments enacted by S.B. 84 in the last Legislative Session 2017, the effect of the amendments in processing requests for advisory opinions and complaints in the preceding biennium, and questions and concerns that have come to the attention of the Executive Director through the educational outreach to state and local government officers and employees. Executive Director Nevarez-Goodson explained the proposed concepts to the Commission (see Exhibit A). The deadline to present the concepts to the Governor is April 13. The Chair called for questions from the Commissioners and summarized the list of concepts as clarifying the following:

1. Open Meeting Law exemption
2. Developing fees for late filing Acknowledgment of Ethical Standards Form
3. Scope of the "cooling-off" period
4. Disclosure and abstention regarding confidential matters
5. Initiating a complaint on the Commission's own motion
6. Broadening the scope of advisory opinions beyond an individual request
7. Clarifying contracting provisions
8. Prohibition against the abuse of power in public positions
9. Criteria of limited use exceptions for governmental resources
10. Clarification and codification of a subordinate in a conflict of interest
11. Clarifying legislative privilege and immunity
12. Scope of Commission Counsel and Executive Director's authority in litigation actions and administrative models

Commissioner Gruenewald asked about Concept No. 7 regarding whether advisory opinions were currently available only for a public officer or employee to request an opinion and

not a third party. Nevarez-Goodson confirmed that only a public employee or public officer could request advice regarding his or her own conduct. So, a third party currently could not request advice on behalf of another person.

Commissioner O'Neill asked whether the Governor's Office required the Commission to prioritize the BDR concepts before submitting them. Executive Director Nevarez-Goodson responded that the proposed concepts provided an opportunity for the Commission to discuss its priorities which could then be sent to the Governor. However, the proposals herein were not currently in any specific priority order. Commissioner O'Neill then asked whether the action on the agenda was for the Commission to prioritize the list or ask to get feedback from the Executive Director. Executive Director Nevarez-Goodson offered an alternative to the Commission if it wanted more time to consider the concepts and meet in a teleconference before the April 13 deadline to direct the Executive Director regarding which concepts to propose to the Governor's Office.

Vice-Chair Weaver stated that he was in support of anything that would clarify the "cooling-off" statutes. In particular, fixing the dilemma the Commission faces in catch-22 scenarios that are created when it addresses requests for advice on specific jobs in a regulated industry where, on one hand, the Commission may decline to advise the requester for lack of facts regarding specific employment that the public officer or employee is seeking, and on the other hand, prohibiting a public officer or employee from seeking such employment prior to the one year cooling-off period.

Commissioner Duffrin asked Executive Director Nevarez-Goodson whether there is potential fiscal impact on the BDR concept concerning creating a fee program for late filings of the acknowledgment form. Executive Director Nevarez-Goodson confirmed there could be a fiscal impact to set up an administrative process with staff time to process the fees and monitor compliance. However, the Executive Director noted that the electronic case management system that has been implemented will offset some of the fiscal impact with its automated filing abilities and the Commission would model the process after that of the Nevada Secretary of State for Financial Disclosure Statements. Commissioner Duffrin added that another fiscal impact might include how the Commission would pursue non or late payment of the fees.

Vice-Chair Weaver stated that he is in favor of considering amendments regarding anonymous tips or information gathered from multiple sources, including accredited news media, that allows the Executive Director to bring a complaint on behalf of the Commission to address serious patterns of conduct that are getting a lot of attention. He was concerned about circumstances in which the Commission must wait for someone to bring a third-party complaint before it could/should otherwise act.

The Chair asked the Commissioners if they would like to go through the list of BDR concepts and accept or reject them one at a time, or whether they would like further information and time to study the proposals.

Commissioner O'Neill requested that staff prioritize the list and bring it back to the Commission. The Chair called for a 5 minute recess to allow for staff to prioritize the list. Executive Director Nevarez-Goodson presented a list of priorities as follows:

1. Top priorities: BDR concepts 1, 4, 6, 7, 10 and part of 5 regarding Vice-Chair Weaver's request to clarify the "cooling-off" provision for seeking or soliciting employment.
2. Middle priorities: BDR concepts 2, 3, 5, 8 and 11.
3. Bottom priorities: BDR concepts 9, 12 and 13.

Commissioner O'Neill asked for another recess to look at the list as they have been prioritized.

Executive Director Nevarez-Goodson clarified for the record that these concepts are still early stages of the BDR process and there is no requirement by the Governor's Office for final bill drafts at this time. This list will be presented to the Governor's Office on April 14 where the Governor's staff will evaluate the concepts and determine which ones will proceed to the Governor's Executive Branch Agency list of sponsored BDRs for the 2019 Legislative Session. The Commission will then have another opportunity to look at the Governor's preferences and the Executive Director's corresponding proposed bill draft language rather than this conceptual language and make a final decision about which Governor-approved bills in their final draft form the Commission would like to pursue in the 2019 Session.

The Chair called for a motion to approve the BDR concepts. Commissioner Duffrin made the Motion and Commissioner O'Neill seconded the Motion. The Motion passed.

7. Report by Executive Director on agency status and operations and possible direction thereon.

Staff Appreciation

Executive Director Nevarez-Goodson opened her report by commending Commission Counsel's work on recent litigation at the Nevada Supreme Court and all of staff's efforts to support that work and to support the Executive Director in her goal to help reduce the amount of time imposed on the Commissioners at Commission meetings.

BDR Concepts and Budget Instructions

The Executive Director summarized the 2019 Legislative Session activities that are already in motion and upcoming due dates as follows:

1. The Commission's non-budget BDR concepts are due to the Governor's Office on April 14 and the Governor's Office will approve or deny those concepts by May 11, 2018, which will allow Executive Director Nevarez-Goodson to bring back to the Commission any approved concepts for a decision about which ones to file for the 2019 Legislative Session, which filing is due June 8, 2018; and
2. The final agency requested budget is due on or before August 31, 2018. Instructions from the Governor's Office allow for twice the amount of the fiscal year 2019 budget to be requested for the next session. Other instructions provided for any requested enhancements to go into a separate decision unit, which will allow an evaluation by the new governor. In summary, other than the enhancements which will follow a separate path, the main budget should be relatively similar to the budget currently in place.

Current Fiscal Year Budget

Commissioner O'Neill asked Executive Director Nevarez-Goodson how the Commission is doing under the current budget. Executive Director Nevarez-Goodson reported that the Commission is on track to spend the fiscal year 2018 base budget this year. The remaining travel funds are expected to be utilized and ways to spend the remaining training category funds are being considered. Executive Director Nevarez-Goodson noted that despite the Commission vacancies, procedural efficiencies and fewer travel requirements for Commission meetings, other travel needs are filling the gap keeping everything on track.

## Regulations

Executive Director Nevarez-Goodson reported that a Workshop for proposed regulations is being scheduled for April 18, 2018, which will require a public meeting of the Commission at the Commission's office by the public and Commissioners may attend telephonically. The public hearing on the regulations should follow at the May or June Commission meeting, depending on when draft language comes back from the Legislative Counsel Bureau, as that draft is required for posting the 30-day notice of the public hearing.

## Interim Salary Study

Executive Director Nevarez-Goodson provided a brief update regarding the interim salary study, which was required by Senate Concurrent Resolution from the last Legislative Session. The purpose of the study is to compare salaries between unclassified service, non-classified service and classified service of the State. Executive Director Nevarez-Goodson has testified at the committee meetings and was able to get the Executive Director, Commission Counsel and Associate Counsel positions entered into the Salary Study Committee's survey that will be conducted to determine enhancements for certain State positions. The committee felt that the Investigator and Executive Assistant positions were on target with other similar positions in the unclassified service and the Senior Legal Researcher position may need some adjustments to compare with other similar positions, which can be accomplished through the normal budget process in the next legislative session. Executive Director Nevarez-Goodson reported that participation in the salary committee has been very informational regarding proceeding with any salary enhancements for the three executive positions in the next legislative session. The recommendations resulting from the survey will be reported to the Commission in a future meeting.

## Outreach/ Education/ Commission Meetings & Vacancies

Executive Director Nevarez-Goodson reported on recent education and outreach efforts and possible adjustments during the budget process for outreach via online or digital platforms to assist with freeing up some of that time for the Executive Director to focus on other priorities and workload. The Executive Director further addressed the status of the electronic case management system and opinion database including the amended contract with our vendor to continue services through the next biennium. Executive Director Nevarez-Goodson informed the Commission of the upcoming meeting schedules for May and June and acknowledged commissioner vacancies. Executive Director Nevarez-Goodson thanked Commissioner Lynn Stewart, who recently resigned from the Commission, for his valuable service over the past year. Executive Director Nevarez-Goodson acknowledged the two vacant positions as even more important now due to the three-member review panel requirement that was enacted by S.B. 84, and that she would inform the Legislative Commission of that need.

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

No commissioner comments.

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9. Open Session for Public Comment.

No public comment.

10. Adjournment.

The meeting adjourned at 11:11 a.m.

Minutes prepared by:

/s/ Darci Hayden

Darci Hayden  
Senior Legal Researcher

/s/ Yvonne M. Nevarez-Goodson

Yvonne M. Nevarez-Goodson, Esq.  
Executive Director

Minutes approved **May 9, 2018:**

/s/ Cheryl A. Lau

Cheryl A. Lau, Esq.  
Chair

/s/ Keith A. Weaver

Keith A. Weaver, Esq.  
Vice-Chair

# Exhibit A





## STATE OF NEVADA COMMISSION ON ETHICS

### MEMORANDUM

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DATE: March 21, 2018  
TO: Commissioners  
FROM: Yvonne M. Nevarez-Goodson, Esq., Executive Director  
SUBJECT: Proposed BDR Concepts (2019 Legislative Session)

Commissioners:

Under NRS 281A.240, the Commission's Executive Director must "recommend to the Commission any 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." In response to this statutory mandate, please consider the following recommendations of proposed bill draft request ("BDR") concepts for the 2019 Legislative Session. According to the current Executive Branch budget instructions, on or before April 13, 2018, the Commission must submit any non-budgetary BDR concepts for the Governor's review. The Governor will approve or deny the proposed concepts on or before May 11, 2018. If approved, on or before June 8, 2018, the Commission must submit the formal BDR proposal (detailed request) to the Governor's Office for referral to LCB.

The Commission presented an extensive bill during the 2017 Session (SB 84) and the Legislature enacted various amendments to NRS Chapter 281A providing the Commission with broader discretion to resolve complaint cases, including through letters of caution and instruction, deferral agreements, and additional penalties other than monetary sanctions, such as public admonishments, reprimands, censures, and other corrective or remedial action. The bill further streamlined the Commission's processing of complaint cases to reflect fair due process and promote significant efficiencies in Commission processes and staff work flow while establishing certainty, predictability and stability for Nevada's public officers and employees. Finally, SB 84 addressed inconsistencies among the Ethics Law's standards of conduct to ensure equal application to conflicts that involve financial interests and relationship-based interests. Commission staff has been working hard during the Interim to implement these changes and the Commission still must adopt new and revised regulations to reflect many of these changes.

For the 2019 Legislative Session, I recommend consideration of a less robust legislative proposal. Instead, the Commission may wish to focus its 2019 legislative efforts on a few budget-related reforms that will be presented to the budget process. Nevertheless, the following BDR Concepts are included for your review and consideration as issues that have arisen by virtue of the Commission's outreach and education program and its implementation of SB 84. These statutory changes may be beneficial to clarify the legislative intent and/or the Commission's interpretation of certain provisions of NRS Chapter 281A, as amended by SB 84.

**BDR Concepts:**

- 1) Clarify Scope of Open Meeting Law Exemption to Commission proceedings – Including action taken in Complaint Cases – in particular during confidential phases of a case.
- 2) Impose fees for late filings of Acknowledgment Forms.
  - Secretary of State imposes fines for late Financial Disclosure Statements;
  - In discussions with the Governor's Office of Finance and the Department of Administration, such a fee could operate as revenue to off-set certain expenses in our budget and/or serve as an efficiency measure as required by the current budget instructions after a pilot period of one to two years to determine the amount of projected revenue.
- 3) Impose additional "cooling-off" measure: Prohibit public officers or employees from securing or granting privileges, preferences, exemptions, advantages, or economic opportunities, including, without limitation, any gift, service, favor, employment, engagement, or emolument for himself/herself or a person to whom he/she has a commitment in a private capacity within 1 year after the public officer has taken an official action related to the matter.
  - Example: Planning Commissioner/Board Member votes to approve a zoning amendment. The Commissioner/Board Member is a realtor in his/her private capacity. The additional "cooling-off" measure would restrict the Commissioner/ Board member from listing the same property for a client on the same matter that he/she acted in his/her official capacity to ensure the zoning within 1 year.
  - Possible Exceptions:
    - o Introduction of legislative matter exempt from disclosure/abstention; could exempt benefits resulting from an action taken as initiation of a legislative measure.
    - o Consider ability for Commission to grant relief from strict application in appropriate circumstances.
      - Example: The official action does not create a benefit or opportunity greater than that for any other person similarly situated.
- 4) Clarify disclosure/abstention obligations related to conflicts that arise out of confidential relationships which are established through a legally protected or confidential relationship.

- Example: Attorney/client Relationships – Must disclose that the matter affects a private client relationship, but the full nature and extent of the conflict (name of client/nature of representation) need not be disclosed if it is accompanied by an abstention.
- Example: Realtors - Various nondisclosure agreements by law require absolute confidentiality in listing agreements.
- If disclosure without explaining full nature of conflict, must abstain to protect public trust.
- Exclusions: Confirm that the public officer may not contract out of the application of the Ethics Law and/or the definition of a “commitment in a private capacity to the interests of another person”.

5) Clarify scope of Cooling-Off Prohibitions.

- Various agency attorneys continuously ask for clarification regarding the scope of cooling-off applicable to certain positions within the agency.
- Some agencies have offered that the effects of cooling-off are having the opposite impact than originally intended by the Legislature which was, in part, to prevent government from losing its qualified staff to the private sector. Instead, agencies are having difficulty with recruitment for positions in regulatory agencies for positions which are later prohibited from returning to the private sector for one year.
- Apply similar criteria to cooling-off interpretation that may be consistent with private sector non-compete clauses; i.e. whether an interpretation causes an undue hardship or unreasonable restraint than is generally necessary on the public officer or employee.
- Agency counsel contemplates that concerns about actual impropriety, *quid pro quo*, misuse of positions can be captured under other statutes.
- Repeal language in NRS 281A.550(3) prohibiting “seeking” of employment.

6) Clarify criteria regarding the Commission’s ability to initiate a complaint on its own motion.

- Example – Current law states that the Commission may not initiate a complaint on its own motion based solely on an anonymous source. Could we indicate that we may accept information from an anonymous source if the information includes otherwise publicly available information that would not otherwise be readily knowable to the Commission staff?

7) Advisory Opinions.

- Without disclosing the name or position of the requester of an advisory opinion, unless confidentiality is waived, authorize Commission to seek information from agency legal counsel in context of a request for advisory opinion to ensure Commission has accurate information regarding the role of agency and duties of a position in rendering advice.
- Authorize governmental agencies to bring requests for advisory opinions seeking clarification of Ethics Laws as applicable to certain positions within the agency given a specific set of circumstances.

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- 8) Clarify contracting provisions.
- Under current law, any public officer or employee is prohibited from entering into a contract with ANY state or local governmental entity, unless the contract is subject to open competitive bidding or otherwise receives relief from the Commission.
  - This proposal mirrors the suggestion of SB 391 from 2011 which clarifies that the ethical concerns relate to contracts in which the public officer or employee has some influence or other conflict of interest as a result of his public position.
  - Example: Is it an ethical conflict for a public employee who works for a State agency to enter into a contract with a county to provide plumbing services unrelated to his/her work for the State?
- 9) Expand Ethics Law to include prohibition against abuse of position or power.
- The Commission's current jurisdiction to investigate and render an opinion in a matter must include evidence of a pecuniary interest or commitment in a private capacity to the interests of another person that is in conflict with public duties.
  - The Commission is criticized for not having the ability to evaluate inappropriate conduct of public officers and employees that does not implicate these specific private interests but nevertheless implicates conduct that does not comport with the public trust and is otherwise an abuse of official power. As a concept, this may be a valuable idea, but it will require the Commission to develop specific guidelines for public officers to understand the boundaries of conduct deemed as abusive.
  - We may develop factors to consider in evaluating whether conduct amounts to an abuse of authority or power.
  - Commission should evaluate scope of similar provisions in other jurisdictions.
- 10) Clarify and/or revise the criteria for the Limited Use Exception to statute which otherwise prohibits use of governmental resources for a significant personal purpose.
- 11) Extend or clarify definition of a Commitment in a Private Capacity for a public officer or employee to the following relationships:
- Fiduciary or other volunteer service to a "Nonprofit entity"
    - o We have significant requests for clarification and/or application about the nature of conflicts for disclosure and abstention purposes for public officers who are affiliated with nonprofit entities. Concerns have been raised by agency legal counsel that this type of relationship is not captured specifically in statute and has many variations.
  - Subordinate employees
    - o Current law states that a public officer or employee has a commitment to his/her employ~~er~~ – not to his/her employ~~ee~~ (subordinate). Various cases have prompted questions about whether a public officer or employee acts inappropriately to benefit or affect the interests of a subordinate.

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12) Clarify scope of Legislative Privilege and Immunity

- Confirm that the Commission has jurisdiction to investigate allegations of legislative misconduct to determine whether the conduct is protected by legislative privilege and immunity.

13) Confirm scope of Commission Counsel's or other designated counsel's authority regarding litigation.