AGENDA ITEM NO. 3

AGENDA ITEM NO. 3

STATE OF NEVADA
COMMISSION ON ETHICS

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

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

Wednesday, **August 15, 2018**
9:00 A.M.

at the following locations
via video conference:

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

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

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

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

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

The proposed regulation reflects amendments to NRS Chapter 281A enacted by Senate Bill 84 of the 2017 Legislative Session (Chapter 384, 2017 Statutes of Nevada), and the provisions of NAC Chapter 281A, as amended in the Commission's expired Temporary Regulation No. T03-16, and any Commission direction thereon.

2. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

   a. Both adverse and beneficial effects

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

   b. Both immediate and long-term effects

   Please see explanation in Section 3.a above.

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

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

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

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

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

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

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

The proposed regulation is not required pursuant to federal law.

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

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

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

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

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

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

Written submissions must be received by the Nevada Commission on Ethics on or before **August 6, 2018**. If no person who is directly affected by the proposed regulation appears to request time to make an oral presentation, the Nevada Commission on Ethics may proceed immediately to act upon any written submissions.

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

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption. (NRS 233B.064(2)).

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

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

This notice has also been posted at the following locations:

CHURCHILL COUNTY LIBRARY
553 SOUTH MAINE ST
FALLON NV 89406

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

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

LINCOLN COUNTY LIBRARY
63 MAIN ST
PIOCHE NV 89043

PERSHING COUNTY LIBRARY
1125 CENTRAL AVE
LOVELOCK NV 89419

WHITE PINE COUNTY LIBRARY
950 CAMPTON ST
ELY NV 89301

DOUGLAS COUNTY LIBRARY
1625 LIBRARY LANE
MINDEN NV 89423

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

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

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

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

ELKO COUNTY LIBRARY
720 COURT ST
ELKO NV 89801

HUMBOLDT COUNTY LIBRARY
85 EAST 5TH ST
WINNEMUCCA NV 89445

LYON COUNTY LIBRARY
20 NEVIN WAY
YERINGTON NV 89447-2399

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

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

STATE OF NEVADA
COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
ethics.nv.gov

EXECUTIVE DIRECTOR'S STATEMENT REGARDING SMALL BUSINESS IMPACT (NRS 233B.0608(3))

I, Yvonne M. Nevarez-Goodson, Esq., being the duly appointed Executive Director of the Nevada Commission on Ethics ("Commission"), do hereby certify that a concerted effort was made to determine the impact of the proposed regulation on small business and the information contained in this statement is accurate to the best of my knowledge or belief:

1. The Commission intends to adopt a proposed regulation that will amend the Commission's administrative regulations set forth in NAC Chapter 281A to implement the amendments of NRS Chapter 281A enacted by Senate Bill 84 of the 2017 Legislative Session (Chapter 384, 2017 Statutes of Nevada) and the provisions of NAC Chapter 281A, as amended in the Commission's expired Temporary Regulation No. T03-16.

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

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

4. The Nevada Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law") does not directly govern or affect any small business in Nevada. Rather, the Ethics Law governs only the conduct of public officers and employees to ensure that they avoid conflicts between their public duties and private interests. Based on the foregoing, Commission staff concluded that the proposed regulation will have no effect on small business. (NRS 233B.0608(3)).

5. Because small businesses are not likely to be affected by the Ethics Law or the adoption of this proposed regulation, no assessment of the burden or economic impact can be completed. Accordingly, no comment by small business has been solicited. (NRS 233B.0608(2)(a)).

Respectfully submitted,

DATED: 3/29/18

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

AGENDA ITEM NO. 5

AGENDA ITEM NO. 5

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, June 20, 2018, at 9:30 a.m.
at the following locations:

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

and via video-conference to:

Nevada Legislative Building
Room 3138
401 S. 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 and Roll Call.

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

The pledge of allegiance was conducted.

2. Public Comment.

No public comment.

3. Approval of Minutes of the May 9, 2018 Commission Meeting.

Commissioners O'Neill and Lowry were excused from voting on this matter as Commissioner O'Neill was excused from the May 9, 2018 meeting and Commissioner Lowry was not yet a member of the Commission during that meeting.

Executive Director Nevarez-Goodson and Commissioner Duffrin noted the need for a correction to the minutes. The May 9, 2018 Commission Meeting minutes should reflect that Commissioner Duffrin abstained from voting on the approval of the April 18, 2018 meeting minutes.

Vice-Chair Weaver moved to accept the May 9, 2018 Minutes with the correction. Commissioner Gruenewald seconded the motion. The Motion was put to a vote and carried as follows:

Chair Lau:	Aye
Vice-Chair Weaver:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Duffrin:	Aye.

4. Discussion and consideration of Cross Motions for Summary Judgment ("Motions") concerning Ethics Complaint Case No. 17-21C regarding Gerald Antinoro, Sheriff, Storey County, submitted pursuant to NRS 281A.710.

- The Commission may discuss and consider the Cross Motions in a closed session pursuant to NRS 281A.750.
- The Commission will take action on the Cross Motions in an open session.

Chair Lau confirmed Commissioner Gruenewald reviewed this matter as a member of the Review Panel and would be precluded from participating in this item. Commissioner Gruenewald confirmed that she would not participate in the item.

Appearing before the Commission in this matter was subject Gerald Antinoro, Storey County Sheriff and his counsel, Katherine Parks, Esq., of Thorndal, Armstrong, Delk, Balkenbush, and Eisinger. Appearing on behalf of the Executive Director was Associate Counsel Judy A. Prutzman, Esq.

Chair Lau outlined that the Commission would be considering Cross Motions for Summary Judgment and that each party had 20 minutes to present including opening and closing remarks.

Associate Counsel Prutzman provided a brief overview of the case for the record. Associate Counsel Prutzman summarized that Request for Opinion (RFO) Case No. 17-21C alleged Sheriff Antinoro violated the Ethics Law when he authorized the personal use of a meeting room in the sheriff's office on a Saturday for him and his wife to conduct a two-hour visitation between his stepdaughter and her father, the requester of the RFO. She reported that the Review Panel determined that there was sufficient credible evidence for the Commission to render an opinion regarding the allegations pertaining to NRS 281A.400(2) and (7) and that the conduct could be appropriately addressed through corrective action under the terms of a deferral agreement. However, Sheriff Antinoro declined to enter into a deferral agreement and therefore the matter was referred to the Commission.

Associate Counsel Prutzman informed the Commission that if it was determined that Sheriff Antinoro violated the Ethics Law the Executive Director's motion must be granted and

Sheriff Antinoro's motion denied. She pointed out that this would be Sheriff Antinoro's second willful violation of the Ethics Law and the accompanying penalty was recommended to be $8,000. Associate Counsel Prutzman summarized the circumstances surrounding the Sheriff's previous ethics law violation for the Commission involving his use of official government letterhead to make a personal endorsement.

Associate Counsel Prutzman informed the Commission that she had additional confidential information for them to consider and requested a brief closed session.

The Commission went into a brief closed session to hear the confidential information and returned to an open, public session.

Counsel Parks, legal representative for Sheriff Antinoro, presented her client's motion to the Commission and argued that there is no evidence in the case that the Sheriff's wife received preferential treatment and that the Sheriff's office is available to the public after the posted hours of operation, including weekends. She requested that the Commission grant her client's motion and order summary judgment in favor of Sheriff Antinoro.

Vice-Chair Weaver and Commissioners Duffrin and O'Neill asked clarification questions of Counsel Parks and she provided answers to their questions.

Associate Counsel Prutzman presented closing remarks to the Commission and answered questions posed by Vice-Chair Weaver and Commissioner O'Neill.

Counsel Parks presented closing remarks to the Commission and answered a question posed by Vice-Chair Weaver.

The Commission then went into a closed session to deliberate on the motions. The Commission then went back into an open, public session.

Vice-Chair Weaver moved to deny both motions for summary judgment and for the Commission to hold a hearing to determine credibility of the facts presented, specifically request testimony on the applicable policy, dispatch training and deputy timing of events and assignments as they relate to the issues in the matter including similar after-hours requests from the public. Vice-Chair Weaver's motion also included direction to Commission Counsel to prepare an order and issue a notice of adjudicatory hearing. Commissioner O'Neill seconded the motion. The Motion was put to a vote and carried unanimously.

5. Consideration and approval of proposed additional Bill Draft Request Concepts for consideration during the 2019 Legislative Session based on recommendations of the Executive Director pursuant to NRS 281A.240(1)(e).

Executive Director Nevarez-Goodson reminded the Commission of the original BDR concepts previously approved by the Commission and provided an overview of her recommendation for additional proposed BDR concepts, explaining that the majority of the additional concepts were housekeeping measures and only a few proposed substantive changes. The following is a summary of the concepts proposed by Executive Director Nevarez-Goodson:

1. Eliminate Designation of "Willful" Violations from the Ethics Law.
2. Authorize Commission/Staff to issue a "Notice of Formal Charges" to the Subject of a Complaint instead of turning over the Ethics Complaint filed by the Requestor.

3. Authorize an Investigation (or Preliminary Investigation) Before Notice of Formal Charges – No opportunity to respond at this juncture.
4. Exempt stipulated agreements and other negotiations for deferral agreements from public records and OML.
5. Authorize the Commission to decline to investigate and issue a letter in an ethics complaint that it initiates on its own.
6. Clarify the 45-day timeline to "render an advisory opinion."
7. Confirm written opinions as precedential value – not ad hoc rulemaking.
8. Protect confidential requestors who are public officers or employees from producing records relating to ethics complaints they file pursuant to a public records request.
9. Allow Panel members to serve as settlement judges for proposed stipulated agreements or other settlement negotiations.
10. Confirm Exemption from OML even if Subject waives confidentiality.
11. Clarify jurisdiction in advisory context.
12. Abstention on matters that materially affect private client representations.
13. Cooling-Off regarding Contracts with Agency.
14. Clarify advisory confidentiality – to entire public agency.
15. Legal Representation of subject in complaint case.
16. Clarify that failure to file written response to allegations should not be basis to refuse to participate in investigation.
17. Deadlines for Deferral Agreements - by order of the Panel.
18. Authorize Review Panel to dismiss a complaint and issue a Letter of Caution or Instruction even if it determines that just and sufficient cause exists.
19. Define "render an opinion" or "make a determination."
20. Clarify confidentiality of requestor in discovery.
21. Clarify timing of discovery – NRS 281A.755.
22. Clarify Executive Director role in adjudicatory hearing as a party.
23. Require the Executive Director to be an attorney.
24. Provide process for adjudicating when a person has interfered with an investigation.
25. Eliminate requirement for the Commission to treat stipulated agreements in a comparable manner.

Executive Director Nevarez- Goodson directed the Commissioners to the report she provided them in regards to this item and provided additional justification for each proposal listed above. She answered the Commissioner's questions in regards to her proposed concepts and provided clarifying information as requested.

Chair Lau made a motion to approve the BDR concepts to be coordinated with the Governor's Office based upon the Executive Director's recommendation. Commissioner Gruenewald seconded the motion. The motion was put to a vote and carried unanimously.

The Commission briefly went into a closed session to deliberate on a confidential advisory matter.

6. Report by the Executive Director on agency status and operations and possible direction thereon. Items to be discussed include:

- Codification of S.B. 84 (New NRS provisions)
- Update regarding Proposed Regulations
- Interim Salary Study (S.C.R. 6) Update
- Quarterly Case Status Update

- Education and Outreach by the Commission
- Commission Appointments
- Meeting Schedule
- FY18 Budget Update
- Upcoming Biennial Budget

Executive Director Nevarez-Goodson commenced her report by welcoming newly appointed Commissioner Teresa Lowry, Esq.

Codification of S.B. 84 (New NRS provisions): Executive Director Nevarez-Goodson directed the Commissioners to newly codified NRS 281A as provided in their meeting book. She noted that there was a significant repeal and replacement of the provisions of NRS 281A.440 through 281A.480, which are now located under provisions set forth in NRS 281A.670 through 281A.790.

Update regarding Proposed Regulations: The Executive Director shared that staff has been working diligently on reviewing and revising the language of the proposed regulations and that the language has been submitted to the Legislative Council Bureau (LCB). She further explained that LCB has worked with her to essentially rewrite the entire chapter for the Commission and expressed her view that the new language will benefit both the Commission and anyone who requests direction from the Commission. She informed the Commission that the August 15 Commission meeting will also be the regulation adoption hearing.

Interim Salary Study (S.C.R. 6) Update: Executive Director Nevarez-Goodson referred to the materials provided to the Commission in regard to this item. She noted that for purposes of the study, the committee determined it would review the Commission's Executive Director position, the Commission Counsel position and the Associate Counsel position. She offered that preliminary results showed that each of the positions is underpaid from an average based on a national scale and the next step in the process for salary parity would be through the Governor's recommended budget.

Quarterly Case States Update: Executive Director Nevarez-Goodson summarized the Case Status Log which identifies all pending cases before the Commission.

Education and Outreach by the Commission: Executive Director Nevarez-Goodson provided an update of the ongoing efforts to increase the outreach and education to public employees throughout the State. She included a list of the jurisdictions throughout Nevada that she has provided training for this fiscal year. Commissioner O'Neill requested Commissioner support to encourage more outreach to the general public.

Commission Appointments: Executive Director Nevarez-Goodson commented that there is still one vacant position on the Commission to be appointed by the Legislative Commission.

Meeting Schedule: Executive Director Nevarez-Goodson requested that Commissioners reserve the third Wednesday of every month and she will let Commissioners know in advance if a meeting will be canceled. She also informed the Commission that there would not be a formal meeting in July but most likely a teleconference to address certain case deadlines.

FY18 Budget Status: Executive Director briefly summarized the current status of the FY18 Budget. Specifically, the Commission spent down the majority of the travel funds and will be requesting additional funds in the next budget to accommodate travel for staff for educational purposes.

Upcoming Biennial Budget: Executive Director Nevarez-Goodson informed the Commission that she will be requesting training funds in the new budget to allow for further

outreach. She also disclosed that the Commission office lease is due to expire and that staff will be looking into a new location.

Chair Lau made a motion to approve the Executive Director's report. Commissioner O'Neill seconded the motion. The motion was put to a vote and carried unanimously.

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.

There were no comments from the Commissioners.

8. Open Session for Public Comment.

No public comment.

9. Adjournment.

Vice-Chair Weaver moved to adjourn the meeting. Commissioner Gruenewald seconded the Motion. The Motion was put to a vote and carried unanimously. The meeting adjourned at 3:40 p.m.

Minutes prepared by:

/s/ Kari Pedroza
Kari Pedroza
Executive Assistant

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

Minutes approved August 15, 2018:

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

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

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
Thursday, June 28, 2018, at 3:30 p.m.
at the following location:

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

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. appeared telephonically and called the meeting to order at 3:30 p.m. Also appearing telephonically were Vice-Chair Keith A. Weaver, Esq and Commissioners Brian Duffrin, Barbara Gruenewald, Esq., Teresa Lowry, Esq., Philip "P.K." O'Neill, and Amanda Yen, Esq. Present for Commission staff in Carson City were Commission Counsel Tracy L. Chase, Esq. and Executive Assistant Kari Pedroza. Executive Director Yvonne M. Nevarez-Goodson, Esq. appeared telephonically.

The pledge of allegiance was conducted.

2. Public Comment.

The Chair asked for public comment. No members of the public were present.

3. Approval of proposed stipulation and order dismissing without prejudice two cases filed by Ira Hansen and Jim Wheeler, as plaintiffs, in the First Judicial District Court against the Commission on Ethics of the State of Nevada, as defendant, specifically referenced as Case No. 15 OC 00261 1B and Case No. 16 OC 00029 1B and authorization for Commission Counsel to finalize form, execute and file all documents in furtherance of the dismissal of the identified cases and/or providing other direction relating thereto.

Assemblymen Hansen and Wheeler each provided an executed waiver of any personal notice requirements of NRS Chapter 241 in order for the Commission to consider character, competence or health of a person, which waivers are included in the agenda packet. Commission Counsel Chase presented to the Commission the proposed stipulation and order that would lift

the stay of proceedings and dismiss the two identified Open Meeting Law cases filed in the district court. She informed the Commission that an ancillary appeal had recently been dismissed by the Nevada Supreme Court. Consequently, the parties to the two Open Meeting Law cases agreed to submit the proposed stipulation and order for dismissal, with each party to bear own costs and fees, to the district court for entry of an order resolving the Open Meeting Law cases, without prejudice. Commission Counsel Chase further explained that Commission staff received the Remittitur on June 26, 2018 from the Nevada Supreme Court and will reference that date in the stipulation.

Vice-Chair Weaver made a motion to approve the proposed stipulation and order dismissing without prejudice the two Open Meeting Law cases and authorize Commission Counsel to finalize the form, execute and file documents. Commissioner Yen seconded the motion. The motion was put to a vote and carried unanimously.

4. Public Comment.

No public comment.

5. Adjournment.

Commissioner Yen made a motion to adjourn the public meeting. Chair Lau seconded the motion. The motion was put to a vote and carried unanimously.

The meeting adjourned at 3:37 p.m.

Minutes prepared by:

/s/ Kari Pedroza
Kari Pedroza
Executive Assistant

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

Minutes approved August 15, 2018:

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

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

AGENDA ITEM NO. 6

AGENDA ITEM NO. 6

STATE OF NEVADA

COMMISSION ON ETHICS - ANNUAL REPORT

JULY 1, 2018

A public office is a public trust, to be held for the sole benefit of the people.

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
Tel. 775-687-5469
Fax 775-687-1279
ethics.nv.gov
ncoe@ethics.nv.gov

ANNUAL REPORT TO THE COMMISSION ON ETHICS REGARDING FISCAL YEAR 2018

Pursuant to Nevada Administrative Code 281A.180(2), the Executive Director provides this Annual Report to the Commission on Ethics ("Commission") regarding the fiscal, legislative, regulatory and other business undertaken by and on behalf of the Commission in the past fiscal year and the goals for new fiscal year. This Report recognizes the Commission's activities and accomplishments between July 1, 2017 and June 30, 2018 (FY18) and its objectives for the coming year.

The information presented is based upon public records of the Commission. Additionally, the Commission maintains a public website at ethics.nv.gov at which the public may search the Commission's database of opinions, review minutes and agendas, instructions and forms for filing requests for the Commission's opinion and access other public information. The Commission also posts its agendas on the Nevada Public Notice statewide website at notice.nv.gov.

Commissioners:

The following Annual Report is provided to you as a summary of the Commission's accomplishments and challenges from Fiscal Year 2018 (FY18) and goals for the next fiscal year. FY18 signified a tremendous transition year for the Commission after the 2017 Legislative Session. With the passage of Senate Bill 84 during FY17, the Commission spent this fiscal year completely reforming all of its systems and documents related to advisory and complaint cases, including the development of new forms, templates and documents, staff recommendations, orders, pre-hearing requirements and hearing procedures. The laborious task of converting, testing and reviewing all internal documents and systems further culminated in the drafting of an entirely revised chapter of the Nevada Administrative Code, Chapter 281A, the Commission's administrative/procedural regulations which are expected to be formally adopted in FY19. The Commission achieved its goals outlined for FY18 by implementing its progressive legislative endeavors, technological advancements, litigation and overall case management.

In FY17, the Commission spent significant funds and staff resources to develop new technologies to ensure secure communications with staff and commissioners, and open transparency with the public. The Commission launched its new Website, procured a contract to develop a customized case and document management system and online opinion database, transitioned to secured communications via State-issued email accounts, and increased its in-house technologies to include enhanced Internet and email delivery and communications with new State systems. After the development of these resources last fiscal year, FY 18 targeted the implementation of these new technologies.

The Commission's successful implementation of the many changes resulting from the 2017 Legislative Session as well as its achievements in litigation pursuits, fiscal priorities and redevelopment of all processes is owed to the leadership of Chair Cheryl Lau, Esq., and Vice-Chair Keith Weaver, Esq. Together with Commissioners Brian Duffrin, Barbara Gruenewald, Esq., P.K. O'Neill and Amanda Yen, Esq., the Commission engaged in yet another year of precedent-setting opinions, constitutional and legal challenges and case management. It has been the pleasure and honor of Executive Director Yvonne M. Nevarez-Goodson, Esq., in partnership with Commission Counsel Tracy L. Chase, Esq., to lead the Commission's mission and governance before the

various State and local agencies and judicial forums. Continuing to serve the Commission during the past fiscal year and providing outstanding public service were the Commission's Associate Counsel, Judy Prutzman, Esq., Senior Legal Researcher, Darci Hayden, PP, Investigator, Anthony Freiberg, and Executive Assistant, Kari Pedroza, who transferred to the Commission from the Nevada Public Employees' Benefits Program in November 2017. The end of FY18 marked the retirement of the Commission's Investigator and it is expected that the position will be filled at the beginning of the next fiscal year.

In the midst of these tremendous in-house changes, the Commission carried out its mission with one to two vacancies during the entirety of the fiscal year. However, at the end of FY18, the Commission welcomed its two newest Commissioners to advance the Commission's work and outreach. The Legislative Commission appointed Teresa Lowry, Esq., former Assistant District Attorney of Clark County, and Kim Wallin, former Nevada State Controller to serve the Commission. With their collective legal, fiscal, legislative, administrative and management experience as former public officers and employees, both Commissioners are expected to contribute relevant and insightful perspective to case resolution, complaint investigations, agency operations and legislative priorities. The Commission looks forward to their contributions in the coming fiscal year.

The Commission should be commended for maintaining a current case load and doubling its outreach and education in FY18, all while defending the Commission's legal interests on judicial review in various legal forums, including various district courts and the Nevada Supreme Court and implementing an expansive legislative agenda.

Upon reflection of the goals and achievements for FY18, I am immensely proud of the staff contribution to the Commission's mission and dedication to ensuring the Commission has thorough legal representation and administrative support to carry out its critical State mission. Thank you for the opportunity to serve the Commission, its staff and the public for these last 9 years. I am honored to continue serving in this prestigious role to implement the Commission's goals for the next fiscal year.

Sincerely,

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

I. About the Nevada Commission on Ethics

Nevada Commission on Ethics - Ethics in Government Law:

The Nevada Commission on Ethics is an independent public body appointed equally by the Governor and Legislative Commission to interpret and enforce the provisions of Nevada's Ethics in Government Law, NRS Chapter 281A ("Ethics Law"). The Ethics Law preserves the public's trust in government and ensures that public officers and employees avoid conflicts between their private interests and the interests of the public in carrying out their public duties. The Ethics Law sets forth various standards of conduct to guide public officers and employees to avoid such conflicts and maintain integrity in public service.

The Commission's primary mission includes providing outreach and education to Nevada's public officers, employees and attorneys regarding conflicts of interest and the provisions of the Ethics Law. Encompassed in its educational efforts, the Commission provides advisory opinions to public officers and employees regarding their own circumstances ("Requests for an Advisory Opinion"). The Commission also enforces the provisions of the Ethics Law by investigating and adjudicating alleged conduct of public officers and employees in violation of the Ethics Law ("Ethics Complaints").

Membership:

The Commission consists of 8 members, appointed equally by the Governor and the Nevada Legislative Commission. The Governor and Legislative Commission must each appoint at least two former public officers or employees and one attorney licensed in the State of Nevada, and no members may be actively involved in any political activity or campaign or conduct lobbying activities for compensation on behalf of private parties. Not more than half of the total commissioners may be members of the same political party or residents of the same county in the State. The appointment criteria establishes independence and objectivity in addressing Requests for Advisory Opinions and Ethics Complaints as applicable to all State and local government elected and appointed public officers and employees. During the majority of FY18, the Commission operated with only 6-7 members, with vacancies in the positions after the 2017 Legislative Session. Those vacancies were filled at the conclusion of FY18.

Requests for Advisory Opinions and Ethics Complaints:

The Commission holds the exclusive statutory authority to interpret and enforce the provisions of the Ethics Law and renders its opinion regarding the applicability of the Ethics Law to public officers and employees via Requests for Advisory Opinions and Ethics Complaints. The Commission's primary mission to provide outreach and education to public officers and employees is consistent with its responsiveness to requests for advisory opinions and efforts to prevent ethics complaints. The Commission staff is responsible for reviewing and preparing all requests for the Commission's opinion, including jurisdictional and other legal analysis and preparation and presentation of evidence for hearings.

Requests for Advisory Opinions:

Any public officer or employee may request a confidential advisory opinion from the Commission regarding the applicability of the Ethics Law to his/her own past, present or future circumstances. If the request relates to a conflict of interest between a public duty and private interest, the Commission will conduct a closed hearing or consider written requests and render a confidential opinion in the matter advising the public officer or employee whether he/she has a conflict of interest and whether or how the ethical standards of conduct apply to his/her circumstances. With the assistance of its staff, the Commission collects all relevant facts and circumstances related to the request, prepares proposed findings of fact, and holds an evidentiary hearing or reviews the documentary evidence and renders its oral opinion. The Commission later issues and publishes a formal written opinion and/or abstract opinion in the matter if the confidentiality is retained. The Commission's advice is binding with respect to future conduct and any advice related to present or future conduct may be subject to judicial review for errors of law or abuses of discretion.

Ethics Complaints:

Any person may file and the Commission may initiate an ethics complaint against a public officer or employee alleging a violation of the Ethics Law for which the Commission may investigate the allegations, conduct hearings and impose penalties or sanctions. If the Commission has jurisdiction regarding an ethics complaint and it is

properly filed with sufficient information to support the allegations, the Executive Director will investigate the matter and make a recommendation to a three-member review panel of the Commission regarding whether the evidence is sufficient to warrant a hearing and formal opinion in the matter. If the Panel determines that the matter supports just and sufficient cause for the Commission to render an opinion, the matter may be resolved through the Panel's approval of a deferral agreement between the Executive Director and the subject of the ethics complaint, or it may be referred to the Commission for further proceedings, including a formal adjudicatory hearing or informal disposition of the matter through stipulations or legal motions. Since 2013, all ethics complaints that have been forwarded to the Commission from a Panel have been resolved through informal dispositions, including stipulated findings and agreements and dispositive legal motions. This fiscal year marks the dismissal of certain cases with letters of caution or instruction and approval of deferral agreements to the list of possible resolutions of cases. One case from FY17 remains pending for an adjudicatory hearing in the next fiscal year.

II. Legislative Matters

During the last fiscal year (FY17), the Commission proposed a significant bill draft request to amend various provisions of the Nevada Ethics in Government Law set forth in NRS Chapter 281A to the 2017 Nevada Legislature to streamline and formalize staff and Commission processes related to ethics complaints. The Governor sponsored the proposal which was presented to the Legislature as Senate Bill 84 ("SB 84"). After various amendments, the Nevada Legislature enacted SB 84 during the 79th Legislative Session (2017). The majority of the amendatory provisions became effective on July 1, 2017, the first day of FY18, and have been implemented by the Commission during this fiscal year.

The measure encompassed vast amendments to NRS Chapter 281A, including:

1) Reorganizing and restructuring various statutes and sections within NRS Chapter 281A to clarify the distinctions between ethics complaints and advisory requests;

2) Revising statutory terminology and procedures to clarify distinctions between ethics complaints and advisory requests, including confirming the designation and duties of the Executive Director as a party to an ethics complaint;

3) Clarifying the scope of the Commission's jurisdiction to include certain persons who contract with public agencies to fill positions that would ordinarily be held or filled by a public officer or employee under certain circumstances and to exclude allegations solely related to employment-based discrimination and harassment claims;

4) Streamlining the Commission's jurisdictional, investigatory and case management processes of ethics complaints, including jurisdictional review procedures, issuance of confidential letters of caution or instruction, investigatory direction, new review panels and approval of deferral agreements;

5) Expanding the remedies and penalties available to review panels for terms and conditions of deferral agreements and to the Commission for findings of violations;

6) Adopting consistent criteria regarding conflicts of interest throughout the statutory standards of conduct to include pecuniary interests and relationship-based conflicts;

7) Clarifying that the cooling-off provisions which prohibit former public officers or employees from seeking, negotiating or entering into employment in the private sector

includes services contemplated or provided through oral or written agreements and that any relief from application does not relieve the public officer or employee from the prohibitions against representing or counseling private persons on issues that were under consideration by the former public agency; and

8) Revising the filing and disclosure requirements for public officers, including clarification of the Acknowledgment of Statutory Ethical Standards form and elimination of the Agency Representation Form in lieu of appropriate disclosures on certain matters.

Most notably, SB 84 contemplated a new structure by which the Commission would process, investigate and consider ethics complaints. Specifically, the Ethics Law now requires the Commission to make jurisdictional determinations for every filed ethics complaint upon a review of the evidence to support the allegations. The Executive Director and Commission Counsel will make a recommendation to the Commission regarding the jurisdiction and evidentiary sufficiency to warrant an investigation. The Commission will have the authority to dismiss the complaint with or without a confidential letter of caution or instruction, or direct the Executive Director to investigate the matter and make a recommendation to a 3-member Review Panel regarding whether there is credible evidence to support just and sufficient cause for the Commission to render an opinion in the matter.

Upon direction from the Commission, the Executive Director will conduct an investigation. SB 84 replaced the 2-member investigatory panel with a 3-member review panel that will have final authority to dismiss the complaint with or without a confidential letter of caution or instruction, forward the matter to the Commission for an opinion or approve a deferral agreement between the Executive Director and the subject of the complaint for minor violations by imposing various terms and conditions rather than the imposition of an ethics violation with related penalties or sanctions. SB 84 further expanded the types of remedies available to review panels via deferral agreements and the Commission upon findings of violations beyond monetary sanctions to impose various forms of discipline and provide for certain administrative decisions and less formal resolutions of minor violations, including letters of instruction or caution, deferred discipline with education, corrective action, public apologies and public admonitions, censures and reprimands.

During FY18, Commission staff overhauled all of the Commission's forms, documents, website and internal templates, recommendation procedures and administrative regulations to achieve the various changes implemented through SB 84. The Commission has also implemented the new laws related to its receipt of requests for advisory opinions, ethics complaints, and acknowledgment forms. Finally, the Commission has issued and/or approved jurisdictional/investigatory orders in every case, confidential letters of caution or instruction, deferral agreements and/or revised forms of discipline via educational requirements, corrective action and public admonitions, censures and reprimands. The statistics for these cases during FY18 are provided in this Annual Report.

While this Annual Report reflects implementation of SB 84 during FY18, the Commission also engaged in future planning during the fiscal year to propose a new legislative package during FY19 aimed at further implementation and clarification of the goals from SB 84 as well as numerous substantive and housekeeping measures to clarify the meaning of various ethics statutes as interpreted by the Commission. The results of these efforts will be reported in FY19 at the conclusion of the 2019 Legislative Session.

III. Case Statistics – FY18 (7/17 – 6/18)

Requests for Advisory Opinions Received:

Total Advisory Requests Rec'd	Opinions Issued	Abstract Opinions Issued (No Waiver of Confidentiality)	Withdrawn or Dismissed
19[1]	12	8	6

Ethics Complaints Received:

Total Ethics Complaints Rec'd	Dismissed, without a Letter of Caution or Instruction	Dismissed, with a Letter of Caution or Instruction	Investigations	Withdrawn
54	22	16	13	3

Ethics Complaints which the NCOE Investigated:

Investigations	Panel Dismissed, with or without a Letter of Caution or Instruction	Panel Deferral Agreements	Commission Motion Hearings/ Adjudicatory Hearings	3rd Pty Stips/ Opinions
13[2]	3	2	1[3]	2

For Comparison purposes – FY17 (7/16-6/17):

FY17 (7/16-6/17) Investigated (See Prior Annual Report)	Panel Dismissed, with or without a Letter of Caution or Instruction	Panel Deferral Agreements	Commission Motion Hearings/ Adjudicatory Hearings	3rd Pty Stips/ Opinions
12[4]	1	N/A		5
5 FY17 Cases Resolved in FY18	3	1		1

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[1] One Request for Advisory Opinion is currently pending a Hearing and Opinion and has been stayed (18-035A).
[2] 6 of the 13 complaints investigated for FY18 remain pending (Complaint Nos. 18-005C, 18-011C, 18-024C, 18-028C, 18-031C, 18-039C
[3] Complaint case No. 17-21C included cross motions for summary judgment that were both denied by the Commission and referred to an adjudicatory hearing to be held in FY19.
[4] At the end of FY 17, 6 of the 12 complaints investigated remained pending in FY18. 5 of the 6 were resolved in FY 18 and 1 of the 6 remains pending in FY19. Complaint Nos: 16-80C – panel dismissal; 16-81C – stipulation; 17-22C – panel dismissal; 17-23C – panel deferral agreement; and 17-24C – panel dismissal with letter of caution, were resolved in FY18 and Complaint No. 17-21C remains pending.

Ethics Complaints Resolved by Letters of Caution/Instruction or Deferral Agreements:

	Letters of Caution	Letters of Instruction	Deferral Agreements
Pre-Panel	6	10	0
By Panel	1	1	2
2 FY17 Cases resolved in FY18 Post Panel	1		1

Ethics Complaints Dismissed for Lack of Jurisdiction or Sufficient Evidence to Support the Allegation:

Received	No Jurisdiction	Lack of Evidence	No Jurisdiction & Lack of Evidence
54	26	14	14

The Commission's case statistics are calculated based on the number of cases received during the fiscal year; however, many cases are not resolved during the same fiscal year they are received, in particular those cases that are received toward the end of the fiscal year. Accordingly, the statistics outlined above are intended to denote not only the cases received and processed during the current fiscal year, but also those that were received in prior years and resolved during the current fiscal year.

Notably, the beginning of FY18 marks the effective date of the changes in the law set forth in SB 84. Although there were no substantive or procedural changes to the law in SB 84 regarding requests for advisory opinion, the Commission saw a sizeable increase in the number of requests this fiscal year, which are believed to be attributable to the Commission's increased outreach efforts during the year. It is anticipated that the Commission will continue to receive more requests for advisory opinion as the State's public officers and employees are better educated regarding the applicability of the Ethics Law their responsibilities thereunder. With regard to ethics complaints, the law was procedurally and materially amended, and this Annual Report provides statistics for the number of ethics complaints that were dismissed with letters of caution or instruction by the Commission at the jurisdictional phase or by the panel after an investigation; the number of approved deferral agreements; and any other

dispositions of the case.

Requests for Advisory Opinions:

The Commission received approximately twice the amount of requests for its advice from the prior fiscal year. Although 6 requests were ultimately withdrawn or dismissed for lack of jurisdiction, the withdrawal/dismissal does not reflect the significant staff resources committed to evaluating the requests, conducting research and legal analysis, and preparing proposed findings of fact with the requesters and recommendations to the Commission to streamline the deliberations and/or hearings. The subject of a request for an advisory opinion may withdraw the request at any time before a hearing and/or deliberations in the matter.

Notably, the Commission Counsel conducts research and prepares, in coordination with the subject of each request for an advisory opinion, proposed findings of fact relevant to the Commission's interpretation of the Ethics Law to assist the Commission to streamline its deliberations and/or hearings in a matter. The Commission Counsel also prepares legal memoranda in each case and drafts proposed recommendations based on the Commission's opinion precedent. Finally, the Commission Counsel prepares a written opinion of the Commission's decision for the Commission's review, approval and publication, and a separate abstract opinion for those matters in which the subject does not waive confidentiality.

Ethics Complaints:

Although it may appear that a significant number of ethics complaint cases received were not formally investigated, the Commission and its staff reviewed and vetted every case that was filed which included formal written staff recommendations and legal analysis, Commission deliberations and determinations, and the issuance or orders and letters, as applicable. In prior years, the review and determination for jurisdiction and investigation of an ethics complaint was undertaken solely by staff unless there was an appeal to the Commission. The purpose of Commission review of each complaint case is to ensure the public's trust that each complaint has been reviewed and considered by the Commission and to otherwise streamline the processing of cases and eliminate the need for appeals. Even when a case is

dismissed by the Commission before an investigation, the Commission issues a formal order in the case explaining its decision. In those cases that did not warrant a formal investigation, but nevertheless supported additional outreach by the Commission, a letter of caution or instruction was issued.

Deferral agreements and stipulations or final dispositions of an ethics complaint reflect significant negotiation and legal process between the Executive Director and the subject of a complaint as parties to the matter. These negotiations often occur after a matter has been fully investigated, argued through legal motions or prepared for formal hearings. The staff time taken to review each ethics complaint, conduct investigations, prepare legal motions or negotiations and compile and present evidence for hearing or settlement is not adequately reflected in the final statistics.

In the first 2 months of the new fiscal year, the Commission has already received 14 new complaints to be processed, which suggests that the Commission may receive an increase in the number of ethics complaints filed during the next fiscal year. The Commission does not control the number of ethics complaints that may be filed in any particular year, however, the enhanced technology of the Commission during FY18 has made filing more accessible to the public through electronic filing via the Commission's website. Most, if not all, ethics complaints the Commission has considered since 2013 have resulted in stipulated resolutions. This denotes the nature of alleged violations of the Ethics Law as being appropriately resolved through deferral agreements and settlements, and the role of the Executive Director along with the Subjects' counsel to resolve matters in a timely fashion and mitigate the strain on Commission resources. Given this trend, the Commission sought legislative approval during the 2017 Legislature to streamline its investigatory and hearing processes and diversify the scope of sanctions for violations to include various corrective action, letters of caution or instruction and public admonitions, censures and reprimands. The Legislature approved these amendments and the new processes and discipline will be implemented in the next fiscal year.

Penalties/ Sanctions Imposed:

In FY18, the Commission imposed $4,159.40 in civil penalties for willful violations of the Ethics in Government Law. Pursuant to State law, the Commission collects and deposits all funds received from the imposition of sanctions into the State General Fund. Subjects who do not pay the civil sanction are reported to the State Controller for collection.

FY 2018 Sanctions Imposed or Received	Statute(s) violated	Civil Penalty
Terrence Taylor, Captain/ Inspector, East Fork Fire Protection District, Douglas Co.	NRS 281A.400(2)	$2,159.40
Bryce B. Boldt, Administrative Officer, Boulder City	NRS 281A.400(2) and NRS 281A.400(7)	$1,000
Jeffrey Witthun, Director, Family Support Division, Clark Co	NRS 281A.400(2), (7) and (9), and NRS 281A.420(1)	$1,000

Documents Filed:

Pursuant to NRS 281A.500, public officers filed 1,015 Acknowledgment of Ethical Standards forms ("Acknowledgment Forms") with the Commission for calendar year 2017. This is a significant increase from the prior calendar year of only 658 Acknowledgment Forms that were filed. Public officers are required to file an Acknowledgment Form within 30 days of any appointment and reappointment to a public office or special election, and on or after January 15 following a general election for each term of office. The number of filings of Acknowledgment Forms generally increases following educational outreach by the Commission as the awareness of this requirement is implemented throughout the State and local jurisdictions. Furthermore, SB 84 amended the Acknowledgment Form requirements to clarify that public officer need only file one form if the public officer holds another concurrent office. Following in the footsteps of its outreach in FY17, the Commission continued its direct correspondence to Nevada's state and local government clerks and agency managers to increase awareness and compliance. Finally, the Commission's website allows for submission of these forms directly from the website which may account for the increased filings. The Commission will make the filed Acknowledgment Forms publicly available in searchable format on the Commission's website during the next fiscal year.

Prior to July 1, 2017, NRS 281A.410 required certain public officers to disclose their paid representation or counseling of private persons before a state agency of the Executive branch. However, through the passage of Senate Bill 84, public officers are no longer required to file an agency representation form. Instead, public officers will be required to make appropriate disclosures of such representations if the public officer has a conflict of interest between a specific public duty and the nature of the representation.

IV. Litigation & Appellate Review:

During FY18, the Commission defended several of its decisions that were the subject of petitions for judicial review and/or petitions for writs of mandamus.

RFOs 14-21C and 14-22C (Hansen and Wheeler) - Nevada Supreme Court Case No. 69100 - 134 Nev. Adv. Op. No. 40 (May 31, 2018) ("Opinion")

As reported in prior Annual Reports, the Commission received separate ethics complaints in 2014 regarding Assemblymen Hansen and Wheeler allegedly misusing government resources via official government legal counsel of the Legislative Counsel Bureau to assist in Assemblyman Hansen's defense of a private criminal prosecution alleging illegal animal trapping. The Commission accepted jurisdiction to investigate whether the acts alleged were protected by legislative privilege and immunity, and Subjects Hansen and Wheeler filed a joint Petition for Judicial Review and/or Petition and Application for Writ of Certiorari, Review or Prohibition entitled "*Hansen and Wheeler v. Nevada Commission on Ethics"* in the First Judicial District Court challenging the Commission's jurisdiction based upon certain principles of legislative privilege and immunity. In effect, Subjects asserted the defense of legislative privilege to prohibit the Commission's review of an Assemblymen's request for a legal opinion from the LCB on any matter of law. The Commission objected to the Subjects assertions on the basis that they were premature and the Commission must have an opportunity to investigate the facts and determine whether the alleged conduct constitutes legislative acts subject to the privileged immunity.

The District Court granted the petition for judicial review in favor of the Subjects, holding that the Commission did not abuse its discretion or act unreasonably or arbitrarily, but the Commission nevertheless did not have jurisdiction to investigate the matters (Assembly Bill 496) on the last day(s) of the 2015 Legislative Session while the petition was pending. The Commission filed a Notice of Appeal of the District Court decision in the Nevada Supreme Court, Case No. 69100 to determine, in part, the merits of the Commission's jurisdiction to investigate claims of legislative privilege and immunity and the scope of such privilege based on the new law.

In response to the Commission's Notice of Appeal of the District Court decision, the Subjects filed complaints against the Commission in the First Judicial District Court alleging that the Commission violated various provisions of Nevada's Open Meeting Law, along with a related motion to dismiss the pending appeal before the Nevada Supreme Court. The complaints and motion challenged the Commission's process for appealing the decision and assert that the Commission did not provide appropriate notice to the Subjects that the Commission would evaluate their character or competence by appealing the District Court's decision on the petition for judicial review. The Commission opposed all allegations and defended these claims before the First Judicial District Court of the State of Nevada in and for Carson City, Case Nos. 15OC002611B and 16OC000291B, and the Nevada Supreme Court Case No: 69100. The two open meeting law cases were consolidated and stayed pending resolution of the motion in the Nevada Supreme Court.

On June 29, 2017, a 3-member panel of the Nevada Supreme Court granted the motion to dismiss the appeal. In response, at the beginning of FY18, the Commission sought rehearing by the panel which was denied. Thereafter, the Commission sought and received *en banc* reconsideration of the Panel Opinion. On May 31, 2018, the Nevada Supreme Court dismissed Case No: 69100. The final opinion was a 4-3 split decision of the court. The majority determined that the appeal was void because the notice of appeal was filed without proper authorization from the client. The dissent concluded otherwise because the Commission provided specific authorization to the Commission's Executive Director and Chair to file the notice of appeal. The dismissal disposed of the appeal on a procedural matter rather than the jurisdictional merits of the case.

After entry of the decision granting the motion to dismiss the appeal in Case No. 69100, the parties stipulated to a mutual dismissal of the two Open Meeting Law complaints in Commission in the First Judicial District Court of the State of Nevada in and for Carson City, Case Nos. 15OC002611B and 16OC000291B . The dismissal was issued without prejudice with each party to bear its own costs and fees.

Notably, the Open Meeting Law allegations and issues regarding legal authorization to file the notice of appeal prompted concern by multiple State and local government jurisdictions regarding the extent and scope of the law to existing practices

and practical implications of legal representation, many of which filed amicus briefs with the Court to express the potential impacts of such a decision on their operations. With regard to the Commission's interests, extensive statutory confidentiality provisions affect all requests for advisory opinions and various phases of an ethics complaint, including a prohibition from confirming the existence of the request for advisory opinion or complaint. Where authority is granted to staff and legal counsel to pursue litigation during the confidential phase of a case, as was granted during the Hansen/Wheeler case, the law is left uncertain as to how the Commission should protect its legal interests: violate statutory confidentiality provisions by holding a public meeting to acquire Commission direction, or forego representing its rights in litigation. These issues along with those impacting other agencies are expected to be vetted during the upcoming legislative session in 2019.

With regard to the jurisdictional limitations of the Ethics Commission to evaluate the alleged conduct of State Legislators as presented in the Hansen/Wheeler case, the Governor introduced a measure (Senate Bill 36) during the 2017 Legislative Session to remove State Legislators from the jurisdiction of the Commission in its entirety. However, the Legislature did not move that bill through Committee, with Committee concerns noting the potential issues associated with the Legislature regulating its own conduct on certain matters. The bill was originally aimed and providing statutory clarity with regard to separation of powers and legislative privilege and immunity, but the Legislature maintained the existing policy of the State that legislators would continue to have some oversight by the Nevada Commission on Ethics.

RFO 15-74A (Confidential Subject) – Nevada Supreme Court Case No. 73105

In response to this confidential request for an advisory opinion filed by Confidential Subject, the Commission issued an opinion regarding the application of the disclosure and abstention provisions of the Ethics Law to the Confidential Subject's private circumstances. Confidential Subject filed a Petition for Judicial Review in the Second Judicial District Court of the State of Nevada in and for Washoe County, Case No. CV16-02118, asserting that the Commission committed various errors of law, including various constitutional errors. The District Court upheld the Commission's determination regarding disclosure and concluded that the Commission's opinion did not violate any constitutional

protections. However, the Court overturned the Commission's determination regarding abstention.

The Commission filed a Notice of Appeal with the Nevada Supreme Court asserting that the District Court lacked jurisdiction to consider Subject's Petition for Judicial Review and committed error in its reversal of the Commission's abstention analysis. The Confidential Subject filed a cross-appeal asserting the Court committed error in its affirmance of the Commission's opinion related to disclosure and its dismissal of the constitutional claims. These matters were filed under seal with the Nevada Supreme Court, Case No. 73105, to maintain the statutory confidentiality of the Commission's opinion. The Nevada Supreme Court considered the briefs of the parties and issued a unanimous *en banc* order in favor of the Commission on July 18, 2018. The order vacated the district court's judgment and remanded the case to the district court to enter an order dismissing the petition for lack of jurisdiction. Dismissal was duly entered by the district court on July 26, 2018. Consequently, the Commission will proceed to publish an abstract of its original opinion in the next fiscal year pursuant to NAC 281A.550.

RFO 16-54C (Antinoro) – Nevada Supreme Court Case No. 74206

The Commission issued a final opinion finding that Subject Antinoro committed a willful violation of the Ethics Law by using government letterhead as a mechanism to endorse a political candidate and the Commission imposed a $1,000 sanction. Subject Antinoro filed a Petition for Judicial Review of the Commission's decision in the First Judicial District Court in Carson City, Case No. 170C00138, asserting that the Commission committed legal error and that the statute is unconstitutional. The Commission filed a motion to dismiss asserting the court lacked jurisdiction to consider the petition due to noncompliance with the mandatory requirements of the Administrative Procedures Act set forth in NRS Chapter 233B. The district court granted the motion to dismiss in favor of the Commission. Subject Antinoro filed a Notice of Appeal with the Nevada Supreme Court, Case No. 74206. The jurisdictional issues presented on appeal are being briefed by the parties. Once briefing is complete, the court will assign the case for decision and issue related orders or a decision pursuant to the Nevada Rules of Appellate Procedure.

V. Fiscal Matters

Commission Budget:

The Commission derives its funding based upon a proportionate split between the State General Fund and certain of Nevada's local governments (cities and counties). The portion attributable to the local governments is based on a proportionate split relative to the respective populations of the cities and counties. Historically, the number of requests for opinion (advisory and complaint) that the Commission received regarding public officers or public employees from the various jurisdictions in the prior two fiscal years has formed the basis for each entity's proportional contribution. During the last three biennia, the State/Local split has experienced wide-ranging and variable cost allocations.

In 2017, the Commission sought and the Legislature approved an amendment to the Commission's budget to stabilize the funding split between the State General Fund and local governments from biennium to biennium. The Commission believed the basis of the funding split on the number of requests for opinion alone did not accurately reflect the Commission's overall expenditures attributable to the State versus local governments. Specifically, the Commission conducts significant outreach and training to State and local governments and responds to litigation from various jurisdictions. Furthermore, there is a significant jurisdictional split between the number of public officers and employees who serve the State versus local governments.

Accordingly, the Commission relied upon objective labor data reported by the Nevada Department of Employment, Training and Rehabilitation showing a split of Nevada's public officers and employees between State and local governments at approximately 28 percent State and 72 percent local governments. Notably, the average split of the requests for opinions between the State and local governments over the prior three biennia and the average number of trainings provided to State versus local government agencies had also been approximately 30 percent State and 70 percent local governments. Consequently, the 2017 Legislature approved a methodology change whereby the State and Local Government split will be determined based on the number of public officers and employees in Nevada between State and local governments as reported in the labor statistics. As these numbers remain relatively consistent, it is

anticipated that the split will also remain consistent in future biennia. This new methodology accurately reflects the full scope of the Commission's work attributable between State and local governments and the current biennial budget operates at a 28/72 split between the State and local governments.

FY18 wrapped up the first year of the Commission's current biennial budget. The Commission expended its legislatively approved budget for the fiscal year which reflects the projected operating costs requested and approved for the fiscal year. The Commission's legislatively approved budget for FY18 was $881,251 including personnel (salaries/benefits), travel, operating expenses, court reporting, information technology equipment and services and other State-related cost allocations and assessments. Other than personnel and operating costs, the Commission's primary efforts to provide outreach and education regarding the Ethics in Government Law and respond to advisory requests and ethics complaints establish the largest fiscal impacts on the Commission's budget.

Given the Commissioner vacancies, legislative priorities and demands of Commissioners and staff during FY18 to respond to legislative amendments, significant litigation and outreach efforts, the Commission held fewer in person meetings which resulted in cost savings to the Commission's travel budget. However, the Commission utilized these cost-savings for the Executive Director to double the amount of outreach and education from the prior fiscal year and expand the Commission's contract for additional services in its online customized document management system and on-line searchable opinion database. The customized system and opinion database was launched in FY18 and is compatible with and accessible through the Commission's Website wherein all forms and documents may be filed electronically with the Commission. Furthermore, the public attorneys and public now have access to an on-line searchable database of the Commission's published opinions. This is particularly important given the safe harbor provisions of the Ethics Law which provide protection from a finding of a willful violation where the public officer or employee reasonably relies upon the advice of counsel and such advice is not contrary to the Commission's published opinions. Notably, SB 84 also clarified the safe harbor provisions to ensure that public officers and employees were protected through an attorney's legal advice which was not reasonably contrary to prior published opinions of the Commission.

The Commission's budget objectives in FY18 have included direction to the Executive Director to continue seeking appropriate salary enhancements for certain staff positions within the agency to establish parity with similar positions in other State agencies, in particular, the Commission's counterpart in the Judicial Branch, the Nevada Judicial Discipline Commission. The Nevada Legislature addressed many, but not all, of the Commission's requested enhancements during the 2017 Legislative Session. In particular, the Legislature provided a small enhancement to the salaries of the Executive Director and Commission Counsel and clarified the title of the Commission's Associate Counsel in the Unclassified Pay Bill. However, the Commission has again directed the Executive Director to request additional salary enhancements to these three positions and other positions as appropriate to achieve total parity in title and salary for equivalent positions during the next biennium. The Commission will also pursue an additional position in the next biennium to assist the Commission staff with its increasing responsibilities relative to the Commission's case load as well as its administrative, educational outreach, training and legal endeavors.

Recognizing the Commission's continuous requests for salary parity, the 2017 Legislature adopted Senate Concurrent Resolution ("SCR") 6, which required an Interim Salary Study of the Unclassified and Nonclassified positions in State Government to better inform the Legislature how salaries are analyzed and whether the salaries are competitive with private sector positions and similar positions within State Government. SCR 6 specifically named the Ethics Commission as one of the entities to be studied. The Commission participated in this Interim Study during FY18, which consisted of a report regarding how positions and salaries are tiered within the Unclassified Pay system and a salary survey of similar agencies in the private sector and other State and Local Governments.

The Executive Director submitted job descriptions and analysis to the Committee as well as suggested entities to survey for salary comparisons, including a request for information from the Nevada Commission on Judicial Discipline and similarly instituted Ethics Commissions in the country. The results of the salary survey confirmed a significant disparity in pay for the Commission's Executive Director, Commission Counsel and Associate Counsel from similarly situated positions within the private sector and the related governmental entities. The Salary Study Committee is expected to issue a report

to the 2019 Legislature and the Governor, and the Executive Director will put requests for salary enhancements in the proposed budget for the next biennium.

VI. Outreach & Education Program

In FY18, the Commission continued its programs of outreach and education to Nevada's public officers and employees and public attorneys. This fiscal year included the Interim period between legislative sessions in which the Executive Director undertook efforts to increase the outreach, which nearly doubled from the prior fiscal year. The Executive Director travelled to a significant number of rural communities in the State as well as maintained the outreach to the jurisdictions that request training on an annual basis. The outreach has included an emphasis on the Commission's new processes and substantive amendments, technological advancements, revised forms and electronic submissions of documents.

The Commission has expressed its intention to increase the number and type of outreach in the future to promote its primary mission of education. Given the staffing limitations, the Commission will seek a budget enhancement during the next biennium to acquire resources for digital outreach and training as well as a plan to increase general outreach to the public at large.

Ethics Trainings - FY18

Trainings Provided to:	Number of Ethics in Government Law Trainings Presented:
State Government Entities	15
Local Government Entities	23
Other	3
Total	**41**

In addition to the Commission's training program, the Commission engages in other outreach efforts via staff communications and correspondence with the public. The Commission staff provides regular, often daily, feedback for the public, public officers and employees and attorneys regarding the applicability of NRS Chapter 281A and Commission's opinion precedent.

VI. Closing Remarks

The Commission's achievement of the passage of SB 84 during the 2017 Legislative Session resulted in significant streamlining of the Commission's investigatory and case management processes. The emphasis on training and outreach during the

past fiscal year and diversifying the format of such outreach has demonstrated success in educating public officers and employees to identify conflicts of interest and maintain proper separations of private conflicts from public duties under the Ethics in Government Law.

The document management system and technological upgrades are essential to promote and maintain timely and efficient processing of matters before the Commission. The launch of online forms and resources in FY18 reduced internal staff processes and assisted those served by the Commission by providing easier access to laws, regulations, opinions and forms.

The Commission will maintain its mission to advise public officers and employees regarding the applicability of the Ethics Law and confront conduct in violation of the Ethics Law to maintain the public trust associated with holding public office, which is held for the sole benefit of the people.

Commission and Commissioner Information

Nevada Commission on Ethics
as of 07/30/18

Commissioners

*=Appointed by Governor **=Appointed by Legislative Commission

Chair - Cheryl Lau, Esq. (R)*
(07/01/16 – 06/30/20)

Vice Chair - Keith Weaver, Esq. (D)*
(04/06/16 – 09/30/20)

Brian Duffrin (NP)*
(10/01/16 – 10/31/19)

Philip "P.K." O'Neill (R)*
(01/30/17 – 6/30/19)

Barbara Gruenewald, Esq. (D)**
(11/01/15 - 10/31/19)

Amanda Yen, Esq. (R)**
(12/21/16 – 06/30/20)

Teresa Lowry, Esq. (D)**
(05/16/18 - 05/15/22)

Kim Wallin (D)**
(6/26/18 – 6/25/22)

Staff

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