

STATE OF NEVADA
COMMISSION ON ETHICS -
ANNUAL REPORT
JULY 1, 2019

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

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ANNUAL REPORT TO THE COMMISSION ON ETHICS REGARDING FISCAL YEAR 2019

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, 2018 and June 30, 2019 (FY19) 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 meeting minutes and agendas, instructions and forms for filing Ethics Complaints, Requests for Advisory Opinions, and access other public information. The Commission also posts its meeting agendas on the Nevada Public Notice statewide website at notice.nv.gov.

Dear Commissioners:

The following Annual Report is provided to you as a summary of the Commission's accomplishments and challenges from Fiscal Year 2019 (FY19) and goals for the next fiscal year. FY19 marked the significant efforts of the Commission during the 2019 Legislative Session along with the demands of more than twice the case load the Commission experienced in the prior fiscal year. These priorities, along with the Commission's continued priorities for outreach and education, signified the Commission's focus in FY19, and represented both its accomplishments and setbacks.

To reflect on the Commission's recent journey, the passage of Senate Bill 84 during FY17 triggered the Commission's response in FY18 to reform 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 culminated in the drafting of an entirely revised Chapter 281A of the Nevada Administrative Code, the Commission's administrative/procedural regulations. As anticipated, those regulations were adopted and implemented in FY19. Notably, the efficacy of the regulations became apparent as the Commission processed more than double its prior fiscal year case load.

FY19 also introduced the Commission to Social Media! The Commission established a Twitter account to post news of its meetings, trainings and case determinations. Several other ethics commissions throughout the Country likewise share data on Twitter and it has become a welcome resource to reflect on the issues and decisions made by similar bodies. Furthermore, many state and local government agencies follow the Commission, so Twitter has created the bonus of additional outreach and education. Of course, the Commission has also continued its traditional training program throughout Nevada to provide education to public officers and employees.

The Commission's legislative efforts this fiscal year were focused on the passage of Senate Bill 129. The Commission spent more than a year and countless hours to hold multiple public meetings and engage the feedback of state and local agency stakeholders to propose a robust legislative measure to the Nevada Legislature. The legislation was intended to increase transparency and due process with regard to advisory requests and

ethics complaints, provide public agencies with additional access to the Commission for advice, streamline and clarify the procedural requirements of the Commission, clarify and expand the standards of ethical conduct attributable to public officers and employees and clean up various loopholes identified while implementing the 2017 Legislation (SB 84) during the last 2 years. Unfortunately, the tremendous efforts of the Commission to pass this worthwhile legislation were unsuccessful before the Legislature and the Commission will reassess these priorities during the next legislative session.

The Commission also experienced some setbacks with respect to its budgetary needs. The Commission pursued various enhancements to its budget during FY19, including, without limitation, additional staff, digital training resources, additional travel funds to accommodate statewide investigations and outreach, information technology support, additional training resources and increased salaries for certain staff. Despite the pursuit and justification of these enhancements, the Commission was granted only the enhanced information technology resources. The Commission will continue to assess its budgetary demands during the next fiscal year, including the fiscal impacts of its increased case load, for future enhancement requests.

The Commission's ongoing implementation of the many procedural amendments resulting from the 2017 Legislative Session (SB 84), its 2019 legislative pursuits as well as its response to the 100 percent increase in cases were undertaken under the continued leadership of Chair Cheryl Lau, Esq. and Vice-Chair Keith Weaver, Esq. The Chair and Vice-Chair collectively represent years of experience from both of their private and public legal careers as well as their respective tenures serving the Commission for more than 7 years each. They have garnered the continued support and respect of their colleagues to continue serving in these leadership roles during FY19. Together with Commissioners Brian Duffrin, Barbara Gruenewald, Esq., Teresa Lowry, Esq., P.K. O'Neill, Kim Wallin, CPA, and Amanda Yen, Esq., the Commission engaged in yet another year of developing precedent-setting opinions and responding to constitutional, legal and fiscal challenges before the Legislature and the Courts.

Commissioners Duffrin and Gruenewald are to be commended for rounding out their first terms with the Commission this fiscal year, emphasizing their former public service in administering a public agency and significant legal experience, respectively, to hold public officers and employees accountable to conduct themselves for the sole benefit of the public, and supporting the efforts of the Commission to enhance legislative and

budgetary reform. Commissioner O'Neill deserves a special nod for encouraging continued outreach and education with an emphasis on incorporating public education, as well as offering his experiences and perspectives in the investigatory field. Commissioner Yen is credited with her dedication to the goals and demands of the Commission and her expert legal analysis all while holding down a full time career as an attorney in private practice. As Commissioners Lowry and Wallin weren't appointed until the end of FY18, this fiscal year showcased their immediate contributions to the Commission. In particular, both Commissioners' prior experience as appointed and elected public officers in Nevada provided the necessary backdrop to hit the ground running on legislative, fiscal and case-related matters. Commissioner Lowry demonstrated her legal expertise by challenging and applying evidence at various stages of complaint proceedings, analyzing legal precedent in advisory and complaint matters and representing the Commission in numerous Ethics Law presentations in Southern Nevada. Commissioner Wallin's experience as a certified public accountant and former State Controller brought a renewed perspective to budget issues and the dynamics of pecuniary interests that create conflicts of interest. Commissioner Wallin is further recognized for dedicating countless volunteer hours to support the Commission's legislative and outreach efforts by engaging in numerous legislative meetings and hearings. The diversity and breadth of experience shared by the members of the Commission along with their extensive volunteer service continues to elevate the Commission.

It has been the continued 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. Also to be commended for their continued dedicated service to the Commission during the past fiscal year are the Commission's Associate Counsel, Judy Prutzman, Esq., Senior Legal Researcher, Darci Hayden, PP-SC, and Executive Assistant, Kari Pedroza. New to the staff this fiscal year was the Commission's Investigator Erron Terry, who joined the group with immediate investigatory contributions after a distinguished career as an FBI Investigator.

Upon reflection of the goals and accomplishments during FY19, I am immensely proud of the Commission's efforts and successes at maintaining its significantly increased case load and outreach and education throughout the entire State. While we had

legislative and budgetary setbacks, we are motivated to reassess these priorities and pursue them during the next fiscal year. Thank you for the opportunity to continue serving the Commission, its staff and the public for these last 10 years. I look forward to pursuing the Commission's mission in the coming 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. The Commission operated with full membership during FY19.

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 or legal determinations by the Commission.

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 under submission 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 under submission and renders its oral opinion. The Commission later issues and publishes a formal written opinion. The Commission will publish an abstract opinion in the matter if the confidentiality is retained by the public officer or employee. The Commission's advice is binding with respect to future conduct and certain advice related to present or future conduct may be subject to judicial review for errors of law or abuses of discretion.

In its proposed legislation for 2019, the Commission identified various areas where its advisory opinions could become a better tool for outreach and education. Specifically, the Commission proposed the provision of advisory opinions to agency legal counsel who are charged with representing public officers and employees regarding the Ethics Law. The Commission also sought the ability to consult with agency legal counsel regarding

issues that affect an agency in the course and scope of providing advisory opinions. While these were not enacted during the Legislative Session, the Commission will consider whether to propose similar legislation next session.

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, nearly 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 again 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.

II. Legislative Matters

During FY19, the Commission proposed a vigorous bill draft request to amend various provisions of the Nevada Ethics in Government Law set forth in NRS Chapter 281A to the 2019 Nevada Legislature. The Governor sponsored the proposal which was presented to the Legislature as Senate Bill 129 (“SB 129”). After some minor amendments, the bill received unanimous support in the State Senate. Unfortunately, the bill was pulled from the General File in the Assembly and failed to receive a final vote. Accordingly, the bill did not pass. The bill signified efforts by the Commission over several years of public meetings and stakeholder input to address amendments that would promote and clarify the Ethics in Government Law. In particular, the bill was aimed at increasing and clarifying due process, transparency in the Commission’s processes, additional outreach and education, confidentiality protections, streamlining procedural requirements, and addressing jurisdictional issues. The Executive Director intends to reassess the priorities from this failed measure and propose recommendations to the Commission throughout the next fiscal year for future legislative reforms. In summary, SB 129 proposed the following amendments to NRS Chapter 281A, the Ethics in Government Law:

1. **Requests for Advisory Opinions**

- A special or local ethics committee or agency legal counsel may now seek advisory opinions.
- Commission may seek additional information from state or local agency legal counsel regarding request for advisory opinion; must retain confidentiality of subject.
- 2-year statute of limitations for past conduct.
- Stays and dismissals upon filing of related ethics complaint.
- Clarifying scope of waivers of confidentiality to opinion, information, hearing transcript or all.
- Distinction between issuing a decision versus a written opinion; extra time to issue written opinion.
- Materials and hearing are confidential and exempt from Open Meeting Law. Commission **may** hold open hearing upon waiver of confidentiality in accordance with regulations of Commission.

2. **Ethics Complaints**

- Preliminary confidential investigations before jurisdictional determination.
- Commission is authorized to extend 45-day deadline to determine jurisdiction/investigation based upon showing of good cause.

- Commission may dismiss a complaint initiated on its own motion with a confidential letter of caution or instruction.
- Commission will serve a “Notice of Investigation” instead of a copy of the ethics complaint on the Subject.
- Clarifies that consistent with existing subpoena power, Subject of a complaint must participate in an investigation regardless of whether they file a written response to the allegations; exceptions if privileges apply.
- Review Panel may grant an extension from 70-day timeline to investigate a case for good cause shown.
- Clarifies the parties to adjudicatory proceedings after investigation include the Executive Director and Subject of the complaint who may each present/defend their cases to the Commission after the Commission issues a written notice of hearing and schedule for discovery.
- Distinction between issuing a decision versus a written opinion; extra time to issue written opinion.
- Written opinions must state findings of fact and conclusions of law and comply with Nevada’s Administrative Procedures Act (NRS 233B).
- Clarifies the protections for confidentiality of the identity of person who files an ethics complaint, including when they otherwise serve as witnesses.
- Confirms that evidence presented at an adjudicatory hearing will become public records after the final action, as hearings are exempt from OML.
- Materials and hearings are exempt from OML (except final action). Clarifies that exemption exists even for final action, but the Commission will make its final decision in an open hearing in accordance with regulations of Commission.
- Eliminates distinction between an ethics violation versus a willful violation; instead Commission will evaluate seriousness/severity of a violation to determine penalties/sanctions.
 - o “Intentional” and “Knowing” *mens rea* elements remain.
 - o Safe Harbor protections for public officers and employees who rely in good faith upon legal determination of agency counsel will now receive full safe harbor from a violation, not just from a finding of willfulness.
 - o Removal statutes which authorize or mandate the Commission to move for removal of a public officer/employee for certain number of willful violations will now require finding of a violation and imposition of an penalty of \$5,000 or more for one violation and \$10,000 or more for more than one violation.

3. Ethical Standards of Conduct

- Clarifies scope of standards that apply to current and former public officers and employees.
- Clarifies standards are cumulative and supplement each other (separate statutory standards may apply as separate violation to same circumstances).
- Establishes new and amends existing standards of conduct (prohibitions):
 - o Cooling Off:
 - Confirms that prohibitions apply to current and former public officers and employees.

- Expands prohibition against a public officer/employee leaving public service to work for a vendor to which the officer or employee was involved in “awarding” a contract over \$25,000 during the preceding year to any contract in which the public officer or employee was involved in the awarding of such contract or material implementation, management or administration of such a contract.
- Authorizes public officers/employees to request information from a potential employer in a business or industry without being deemed to improperly negotiate future employment.
- Limits application of prohibition to seek/accept employment from regulated business or industry applicable to Executive Branch employees to management level employees.
- Abuse of Power/Authority:
 - Prohibits actions by public officers/employees that a reasonable person would find gross/unconscionable abuse of official position undermining integrity or impartiality of reasonable person in public officer position;
 - Does not include allegations of bias, error or abuse of discretion within normal scope of duties.
- Misuse of Government Resources:
 - Clarifies and makes consistent prohibition of public officer/employee and State Legislator from using government resources for significant personal or pecuniary interest.
 - Clarifies 2 of the 4 requirements of the limited-use exception: 1) to allow use if there is a **written** policy allowing such use **before** the conduct; and 2) defines “appearance of impropriety” as a perception by a reasonable person that the use is inappropriate, disproportionate, excessive or unreasonable.
- Disclosure/Abstention:
 - New limited exception from disclosing certain information for legally protected confidential relationships (i.e. attorney/client) – abstention mandatory in such circumstances.
 - Adds abstention requirement for matters that are materially affected by the nature of private representations of private clients within the preceding year.
- Prohibited Contracts with Government Agencies:
 - Limits scope of prohibited government contracts by public officers/employees to agencies which employ or interact with the public officer/employee.
 - Clarifies the exceptions to prohibited contracts by delineating distinction between open-competitive contracts and contracts not suited to competitive process.
- Prohibited Honoraria – exceptions:
 - Makes conforming change to capture domestic partners along with spouses where applicable.

4. Open Meeting Law Exemption/Application

- Under current law, the Commission is exempt from OML for its proceedings regarding requests for advisory opinions, review panels and for its receipt of information and deliberations regarding ethics complaints. Final actions taken in an ethics complaint must comply with OML.
- This bill requests complete exemption from OML for ethics complaints and instead provides that the Commission will take final action in an open meeting defined under its regulations, but that is not required to comply with the notice, agenda and supplemental materials requirements of OML for confidential documents and scheduling/noticing challenges for cases.
- OML also now requires that a public body take legal action regarding litigation in an open, public meeting. This bill authorizes the Commission to delegate litigation decisions to its Chair, Executive Director or both and to allow Commission Counsel to initiate, defend, participate and appeal in legal proceedings with consent or ratification of the Commission or Chair/Executive Director (if so delegated). Such delegation would be exempt from OML during confidential phase of proceedings of an advisory opinion or ethics complaint.

5. Jurisdiction of State Legislators

- Current law limits the Commission's jurisdiction of State legislators to conduct that does not constitute a core legislative function or that implicates legislative privilege and immunity. Only a Legislator's own house can discipline a legislator for this conduct.
- The Commission has litigated the scope of its jurisdiction when a state legislator asserts the privilege before the Commission has conducted an investigation to determine whether the privilege applies. The Nevada Supreme Court did not reach a decision on the merits.
- This Bill authorizes the Commission to conduct preliminary investigations and direct its Executive Director to refer a matter or file a complaint against a State Legislator in the Legislator's respective House Ethics Committee for conduct determined not to be within the jurisdiction of the Commission. Such a referral maintains the confidentiality of the matter.

6. Other

- Chair's duties may be assigned to the Vice-Chair or other members of the Commission. Chair/Presiding officer may administer oaths.
- Executive Director must be a licensed attorney in Nevada.
- Review Panel must prepare/serve written Panel Determinations; deadlines for deferral agreements; mediate settlements.
- Requires all public officers and employees to cooperate in the Commission's lawful investigations or proceedings and furnish information unless limited rights privileges, immunities or confidentiality apply.
- Published Commission opinions will be deemed administrative, persuasive precedent for future cases and not ad hoc rule-making.

III. Case Statistics – FY19 (7/2018 – 6/2019)

Requests for Advisory Opinions Received: 32

<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed By Commission</u>	<u>Stayed by Order</u>	<u>Written Opinions Issued</u>	<u>No Waiver of Confidentiality</u>	<u>Abstract Opinions Issued (No Waiver of Confidentiality)</u>
13	19 ¹	1 ²	14 ³	8	8 ⁴

Ethics Complaints Received: 123

<u>Dismissed, without a Letter of Caution or Instruction</u>	<u>Dismissed, with a Letter of Caution or Instruction</u>	<u>Withdrawn</u>	<u>Investigated</u>
71	10	14	28

Ethics Complaints Received in FY 19, which the NCOE Investigated: 28

<u>Panel Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Stipulations/ Opinions</u>	<u>Investigations Remain in Progress for FY20</u>
1	4	1	22 ⁵

Ethics Complaints Received in FY17 and FY18; Investigated/Resolved in FY19: 7⁶

<u>Panel Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Commission Motion Hearings/ Adjudicatory Hearings</u>	<u>Stipulations/ Opinions</u>
3	0	1 ⁷	3

¹ 5 of the 19 Requests for Advisory Opinion remain pending in FY 20 (Case Nos. 18-145A, 19-049A, 19-050A, 19-051A and 19-052A).

² 1 Request for Advisory Opinion has been stayed until FY20 – (Case No. 18-145A).

³ 13 of the 14 written Opinions were issued during FY19, 1 of the 14 written Opinions was issued in July 2019 (FY20), before the publication of this Report.

⁴ 8 of the 14 written Opinions issued in FY19 remain confidential and 8 Abstract Opinions were issued in these cases during FY19.

⁵ 22 Complaints received and investigated in FY19 remain pending in FY20; Complaint Nos. 18-049C, 18-052C, 18-060C, 18-061C, 18-064C, 18-077C, 18-114C, 18-121C, 18-130C, 18-139C, 19-004C, 19-018C, 19-021C, 19-022C, 19-026C, 19-027C, 19-028C, 19-029C, 19-031C, 19-035C, 19-039C & 19-044C.

⁶ From FY17 - Complaint No. 17-21C. From FY18 – Complaint Nos. 18-005C, 18-011C, 18-024C, 18-028C, 18-031C and 18-039C.

⁷ Complaint No. 17-21C received in FY17 included cross motions for summary judgment heard in FY18 that were both denied by the Commission and an adjudicatory hearing was held in FY19.

For Comparison – Ethics Complaints Investigated in FY18 (7/17-6/18): 13⁸

<u>Panel Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Commission Motion Hearings/ Adjudicatory Hearings</u>	<u>3rd Pty Stips/ Opinions</u>
3	2	0	2

FY19 Ethics Complaints Dismissed for Lack of Jurisdiction or Sufficient Evidence to Support the Allegation:

<u>Received</u>	<u>Cases Dismissed No Jurisdiction or Evidence to Support Investigation</u>	<u>Cases Withdrawn</u>	<u>Cases Investigated</u>
123	81	14	28

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 Commission experienced more than twice the amount of advisory and complaint cases during FY 19 from the prior fiscal year. 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 as well as the Commission’s ability to be responsive within a short turn-around time for advisory cases. In accordance with the Commission’s newly adopted regulations from FY18, Commission Counsel established a streamlined system of communication and procedures to ensure the efficient review of advisory requests by submission and approval of written opinions. These requests did not require hearings before the Commission. The majority of requests for advisory opinion received in FY19 were resolved on written submission of requests and draft opinions, rather than formal

⁸ 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.

hearings, which significantly increased the Commission's ability to produce advice in a timely manner. 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 and their responsibilities thereunder.

With regard to ethics complaints, the Commission received more than twice the amount of complaints this fiscal year than the prior year and also investigated more than twice the amount of cases. The majority of these cases received waivers of statutory deadlines by the subjects of the complaints. For those cases wherein the subject did not waive the 70-day deadline, the cases were given investigatory priority. Consequently, older cases have taken longer to investigate.

Requests for Advisory Opinions:

The Commission received approximately twice the amount of requests for its advice from the prior fiscal year. Although 10 requests were ultimately withdrawn by the subjects 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 or submission to the Commission 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 application 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 approval, and a separate abstract opinion for those matters which remain confidential.

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 of orders and letters, as applicable. Notably, despite the increased case load, the Commission satisfied its 45-day statutory deadline to issue these initial orders in every case. In years prior to FY18, 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 for reviewing each complaint case is to ensure the public 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 Associate Counsel with the subject of a complaint. 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.

The Commission held a full adjudicatory hearing this year that encompassed a full day of testimony, presentation of evidence and deliberations of the Commission, after months of hearing preparation by the Associate Counsel and Executive Director.

The Commission does not control the number of ethics complaints that may be filed in any particular year; however, the accessibility of complaint forms through the Commission's website and the statutory protection of the identity of certain requesters may be attributable to the increased number of complaints. If requested, the Commission is required to protect the identity of a requester who works for the same agency as the subject of the complaint.

Penalties/ Sanctions Imposed:

In FY19, the Commission imposed \$41,734.28 in civil penalties for willful violations of the Ethics 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. Notably, many of the resolutions which imposed these sanctions authorized the payment of these penalties over 1 or 2 years.

<u>FY 2019 Sanctions Imposed or Received</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Rec'd in FY19</u>
<u>Jeffrey Witthun, Director, Family Support Division, Clark Co</u>	<u>5/9/2018</u>	<u>NRS 281A.400(2), (7) and (9), and NRS 281A.420(1)</u>	<u>\$1,000</u>	<u>\$714</u>
<u>Gerald Antinoro, Sheriff, Storey Co.</u>	<u>10/17/2018</u>	<u>NRS 281A.400(2) and (7)</u>	<u>\$2,500</u>	<u>\$0</u>
<u>Lawrence Weekly, Chair, Las Vegas Convention & Visitors Authority</u>	<u>1/16/2019</u>	<u>NRS 281A.400(1), (2), (7) and (9)</u>	<u>\$2,398.64</u>	<u>\$400</u>
<u>Judie Allan, Commissioner, Lander Co.</u>	<u>5/22/2019</u>	<u>NRS 281A.400(1), (2) and (9)</u>	<u>\$500</u>	<u>\$0</u>
<u>Lisa Cooper, Former Executive Director, Board of Massage Therapy</u>	<u>5/22/2019</u>	<u>NRS 281A.400(1) and (2)</u>	<u>\$25,023</u>	<u>\$50</u>
<u>Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority</u>	<u>6/17/2019</u>	<u>NRS 281A.400(1), (2), (7) and (9)</u>	<u>\$8,700</u>	<u>\$0</u>

Documents Filed:

Pursuant to NRS 281A.500, public officers filed 695 Acknowledgment of Ethical Standards Forms (“Acknowledgment Forms”) with the Commission for calendar year 2018. This is a significant decrease from the prior calendar year of over 1,000 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. The Commission acknowledged its challenges to enforce the filing of the Acknowledgment Forms in its

legislation (SB 129) by seeking to impose a requirement for all State and local agencies to provide a master list of public officers throughout the state and impose administrative penalties for failure to file. This will likely be pursued again in the future.

The Commission's website allows for submission of these forms directly through the website and the Commission anticipates it will make the filed Acknowledgment Forms publicly available in searchable format on the Commission's website during the next fiscal year.

IV. Litigation & Appellate Review:

During FY19, the Commission defended several of its decisions that were the subject of petitions for judicial review and other litigation initiated in State courts.

Commission Case No.15-74A (Confidential Subject) – Nevada Supreme Court Case No. 73105 and Second Judicial District Court of the State of Nevada Case No. CV16-02118

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 the County of Washoe, Case No. CV16-02118, asserting that the Commission committed various errors of law, including 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 had committed error in its reversal of the Commission's abstention analysis. The Confidential Subject filed a cross-appeal asserting the District Court committed error in its affirmance of the Commission's opinion related to disclosure and its dismissal of the constitutional claims. All pleadings 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. Thereafter, the Commission proceeded to publish an abstract of its original opinion.

Commission Case No. 16-54C (Antinoro) – Nevada Supreme Court Case No. 74206 and First Judicial District Court Case No. 17 OC 00138

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 of the State of Nevada in and for Carson City, Case No. 17 OC 00138, asserting that the Commission committed legal error and asserting a constitutional challenge to NRS 281A.400(7). The Commission filed a motion to dismiss asserting the Court lacked jurisdiction to consider the petition due to noncompliance with the mandatory requirements of Nevada’s Administrative Procedures Act set forth in NRS Chapter 233B, including failing to name all parties of record in the administrative proceedings and failing to exhaust administrative remedies. 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 issues presented on appeal were briefed by the parties and the appeal was directed by the Nevada Supreme Court to the Nevada Court of Appeals for consideration.

On May 24, 2019, the Nevada Court of Appeals issued an Order of Reversal and Remand indicating, in part, that at the time the District Court dismissed the petition, it did not have the benefit of the Nevada Supreme Court’s opinion in *Prevost v. State, Dep’t of Admin.*, 134 Nev Adv. Op. No. 42, ___, 418 P. 3d 675, 676 (2018), which clarified prior case precedent and determined that the failure to identify a party in the caption of the petition for judicial review is not a fatal jurisdictional defect when the petitioner attached a copy of the underlying administrative decision that identified the parties. The Court of Appeals also determined that exhaustion of remedies was not required by application of NRS 281A and NAC 281A. Upon remand, the District Court issued an Order for Briefing Schedule and the parties are in the process of preparing their respective briefs.

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Commission Case No. 17-21C (Antinoro) – First Judicial District Court Case No. 19 OC 00073 1B

The Commission issued a final opinion finding that Subject Antinoro committed a willful violation of the Ethics Law by using government property in furtherance of his significant personal interest in supervising a child visitation matter for members of his family at the Sheriff's office, and the Commission imposed a \$2,500 sanction. Subject Antinoro filed a Petition for Judicial Review of the Commission's decision in the First Judicial District Court of the State of Nevada in and for Carson City, Case No. 19 OC 00073 1B, asserting that the Commission committed an abuse of discretion because its opinion was not supported by substantial evidence and not in compliance with the requirements of NRS 281A.400 (7). On May 13, 2019, Subject Antinoro concluded the litigation by voluntarily dismissing the case with prejudice. The Commission's final opinion stands as issued.

Shull v. Roseman University, Desert Springs Hospital, Nevada Commission on Ethics, et al. - Eighth Judicial District Court Case No. A-18-783874-C

On November 2, 2018, Frederick H. Shull, Jr. pro se, filed a complaint naming a number of defendants, including the Commission. The complaint sought declaratory relief under the Nevada Uniform Judgment Act against all defendants. The claims applicable to the Commission were associated with Plaintiff's request for the District Court to declare that co-defendants Accreditation Counsel for Pharmacy Education ("ACPE"), a nonprofit organization located in Chicago, Illinois, and its Executive Director, Peter Vlasses had violated Nevada's Ethics in Government Law and breached their duty of reasonable care associated with ACPE's compliance standards pertaining to pharmacy educational curriculums. While the Commission was waiting service of process on the complaint, two other defendants pursued a motion to dismiss and other filings. Plaintiff Shull responded to the motion to dismiss, which response included the filing of a First-Amended Complaint. The First-Amended Complaint removed claims and defendants from the case, including the Commission. The litigation is proceeding against the remaining named defendants and is concluded with respect to the Commission.

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.

The Commission's funding split between the State General Fund and local governments for each biennium is based upon the jurisdictional split between the number of public officers and employees who serve the State versus local governments. Accordingly, the Commission relied upon and the Legislature-approved 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.

FY19 wrapped up the second year of the Commission's biennial budget. The Commission expended nearly the entirety of 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 FY19 was \$892,661 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 legislative priorities and demands on Commissioners and staff during FY19 to respond to its increased case load and ongoing outreach efforts, the Commission held fewer in person meetings, which enabled Commission staff to utilize the Commission's travel budget for investigations and outreach efforts throughout the state.

The Commission's budget objectives in FY19 included direction to the Executive Director to seek numerous enhancements from the Legislature, including additional staff, digital training resources, information technology resources, additional travel to accommodate investigations and outreach/education, and 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 approved the Commission's request for information technology resources but declined all other requests.

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 issued a report to the 2019 Legislature and the Governor, but the Legislature did not adjust any agency salaries in accordance therewith. It is anticipated that the Executive Director will make future recommendations for salary enhancements in the proposed budget for the next biennium.

VI. Outreach & Education Program

In FY19, the Commission continued its program of outreach and education to Nevada's public officers and employees and public attorneys. This fiscal year included the period encompassing the 2019 Legislative Session, which typically leads to a decrease in the number of presentations by the Executive Director. However, given the demands of the Session, the Executive Director was able to continue outreach at nearly the same pace as 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. This year, the Commission offered increased representation in the northern rural communities by both the Executive Director and Commission Counsel. The outreach included an emphasis on conflicts of interest and understanding the prohibitions under the Ethical Standards of Conduct.

The Commission has expressed its intention to increase the number and type of outreach in the future to promote its primary mission of education, including better public and media outreach. Given the staffing limitations, the Commission will continue to 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 - FY19

Trainings Provided to:	Number of Ethics in Government Law Trainings Presented:
State Government Entities	15
Local Government Entities	17
Other	1
Total	33

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

FY19 can be best summarized as a growth year. Not only did the Commission experience political growth in navigating various legislative and budgetary reforms, but it also experienced a significant increase of its overall case load. Whether it is a symptom of the types of cases and nature of alleged conduct, or the pursuit by the Commission for more accountability in government service, FY19 demonstrated a number of cases involving some incredible examples of abuse of power and/or mismanagement of government resources resulting in the imposition of significantly higher sanctions than the Commission has imposed in prior years. The Commission and its staff have been remarkably responsive to the increased case load during FY19, and complied with all statutory deadlines for preliminary and final resolutions of its cases. These successes are to be celebrated all while the Commission embraces future efforts to revisit issues left unresolved in FY19 and proposals that may be more prudent going into the next fiscal year.

Although the Commission experienced some disappointing legislative and budgetary setbacks and challenges to maintain an increased case load, the members of the Commission and its staff remain dedicated to the mission of the agency to ensure the public's trust in those holding public office, which is held for the sole benefit of the people.

Commission and Commissioner Information

Nevada Commission on Ethics
as of 06/30/19

Commissioners

***=Appointed by Governor**

****=Appointed by Legislative Commission**

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

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

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

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

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

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

Philip “P.K.” O’Neill (R)*
(01/30/17 – 6/30/19)

Kim Wallin, CPA (D)**
(6/26/18 – 6/25/22)

Staff

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Tracy L. Chase, Esq.
Commission Counsel

Judy A. Prutzman, Esq.
Associate Counsel

Darci L. Hayden, PP-SC
Senior Legal Researcher

Kari Pedroza
Executive Assistant

Erron Terry
Investigator



Nevada Commission on Ethics

Nevada Commission on Ethics

704 W. Nye Lane, Suite 204

Carson City, NV 89703

Tel: 775-687-5469

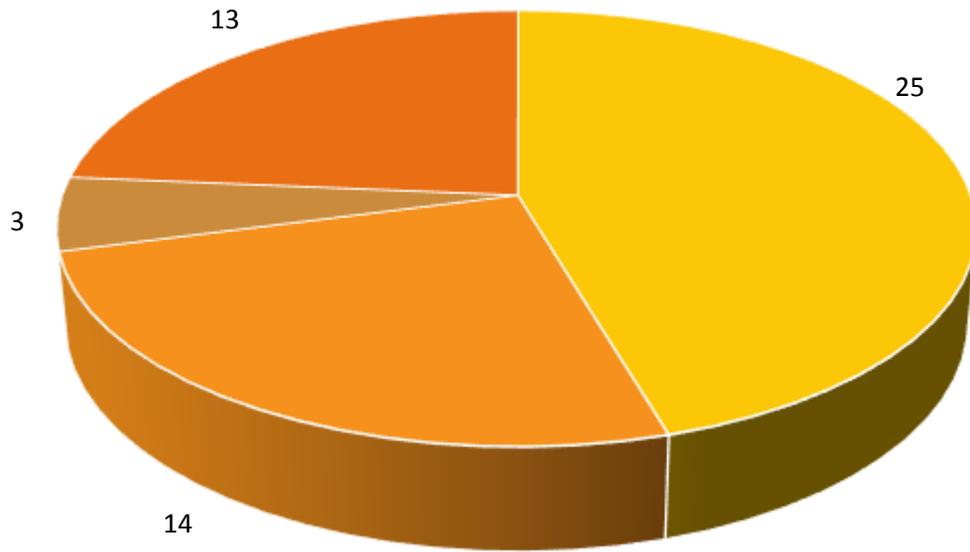
Fax: 775-687-1279

ethics.nv.gov

Email: ncoe@ethics.nv.gov

FY18 Ethics Complaints Cases

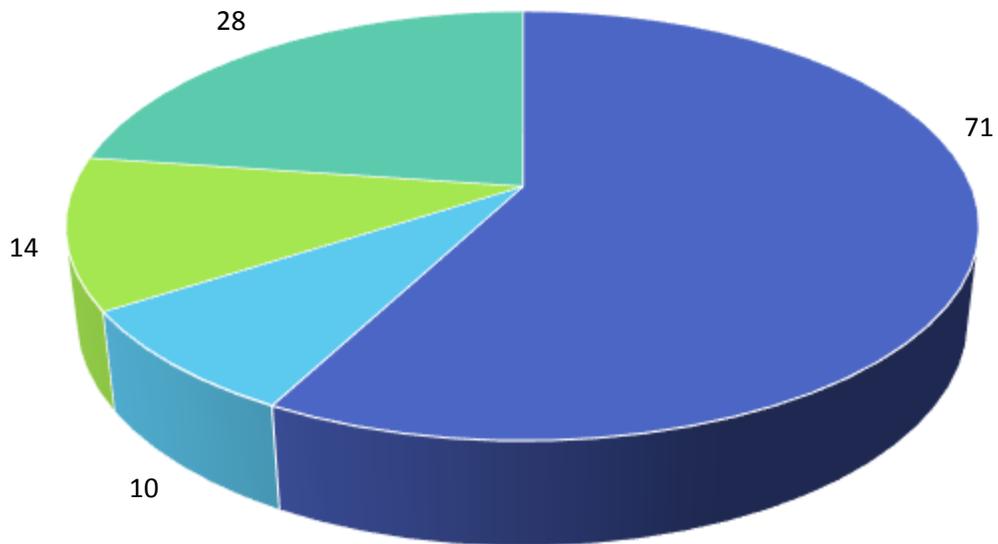
55 Total Complaints Received



- Dismissed with or without a Letter of Caution or Instruction
- Dismissed with a Letter of Caution or Instruction
- Withdrawn
- Investigated

FY19 Ethics Complaint Cases

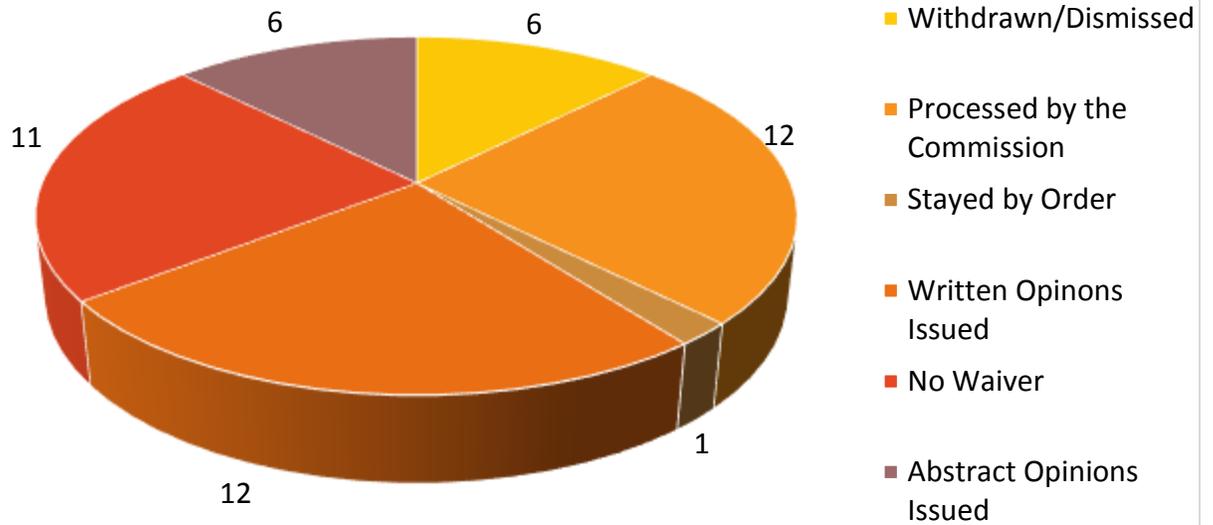
123 Total Complaints Received



- Dismissed with or without a Letter of Caution or Instruction
- Dismissed with a Letter of Caution or Instruction
- Withdrawn
- Investigated

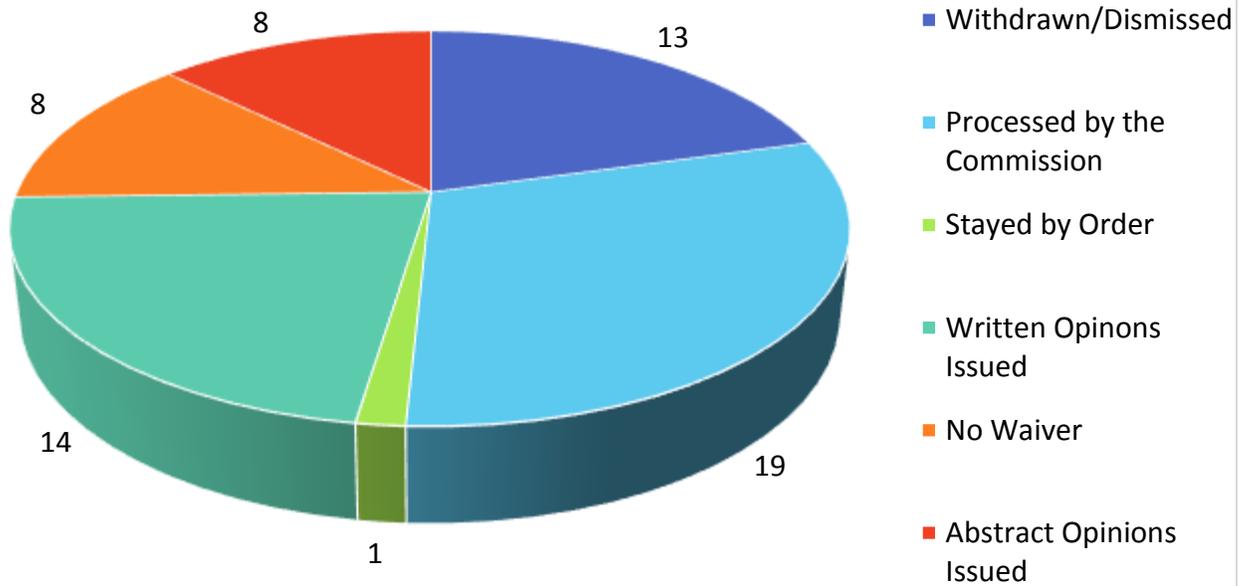
FY18 Requests for Advisory Opinions

19 Total Advisory Requests Received



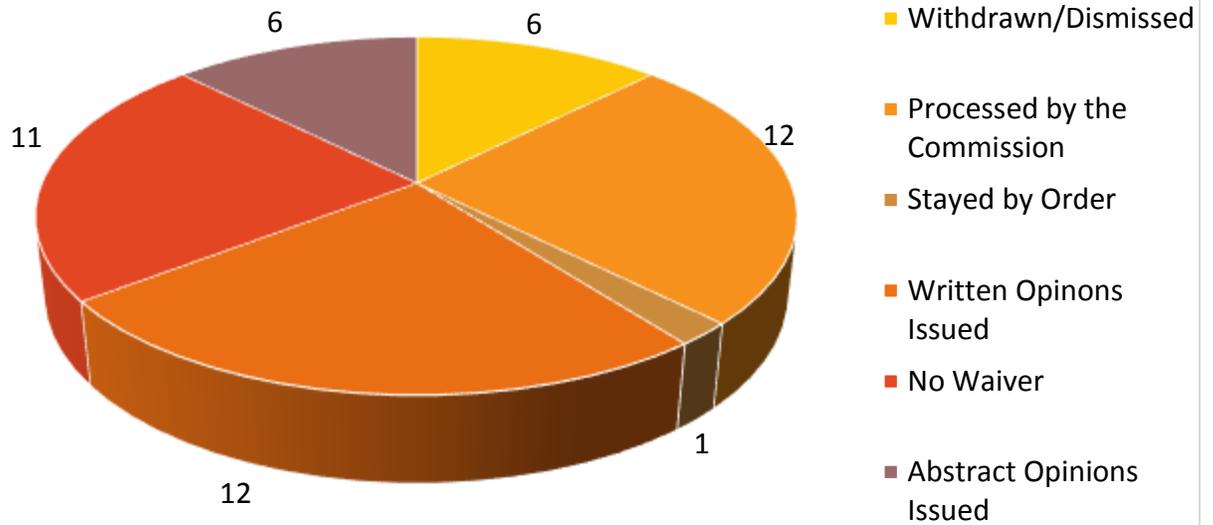
FY19 Requests for Advisory Opinions

32 Total Advisory Requests Received



FY18 Requests for Advisory Opinions

19 Total Advisory Requests Received



FY19 Requests for Advisory Opinions

32 Total Advisory Requests Received

