

Agenda Item 3



**STATE OF NEVADA
COMMISSION ON ETHICS**

<http://ethics.nv.gov>

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

The Commission on Ethics held a public meeting on
Wednesday, March 18, 2020, at 9:30 a.m.
at the following location:

**Ethics Commission Office
704 W. Nye Lane
Suite 204
Carson City, NV 89703**

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. A recording of the meeting is available for public inspection at the Commission's office.

1. Call to Order and Roll Call.

Chair Cheryl A. Lau, Esq. appeared telephonically and called the meeting to order at 9:30 a.m. Also appearing telephonically were Vice-Chair Kim Wallin, CPA, CMA, CFM and Commissioners Brian Duffrin, Barbara Gruenewald, Esq., Teresa Lowry, Esq., Philip K. (P.K.) O'Neill, Damian R. Sheets, Esq. and Amanda Yen, Esq. Present for Commission staff in Carson City were Executive Director Yvonne M. Nevarez-Goodson, Esq., Commission Counsel Tracy L. Chase, Esq. and Executive Assistant Kari Pedroza. Associate Counsel Casey Gilham, Esq. and Senior Legal Researcher Darci Hayden appeared telephonically.

The pledge of allegiance was conducted.

2. Public Comment.

There was no public comment.

3. Approval of Minutes of the February 19, 2020 Commission Meeting.

Chair Lau stated that all Commissioners were present for the February meeting except Commissioner Lowry who was excused from that meeting and would abstain from participating on this item.

Commissioner Gruenewald moved to approve the February 19, 2020 Minutes as presented. Vice-Chair Wallin seconded the motion. The Motion was put to a vote and carried as follows:

Chair Lau:	Aye.
Vice-Chair Wallin:	Aye.

Commissioner Duffrin:	Aye
Commissioner Gruenewald:	Aye.
Commissioner Lowry:	Abstain.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Aye.
Commissioner Yen:	Aye.

4. Appointment of a Subcommittee of the Nevada Commission on Ethics to Develop the 2021 Commission Bill Draft Request.

Executive Director Nevarez-Goodson informed the Commission that Executive Branch Agencies received instructions from the Governor's office regarding building the next Biennium Budget and deadlines for proposed Legislation for the 2021 Legislative Session. She noted that the deadline to submit the Bill Draft Request (BDR) proposal to the Governor's office will be May 20, 2020 and recommended that the Commission appoint a subcommittee to develop a recommendation for the Commission's next BDR proposal. She outlined that due to the time restraints, the Subcommittee would likely meet in April and early May in order to have the recommendation ready for the Commission during its May 20, 2020 Meeting. Executive Director Nevarez-Goodson shared that Vice Chair Wallin and Commissioners Duffrin and Gruenewald had expressed interest in serving on the BDR Subcommittee.

Commissioner Yen moved to appoint Vice-Chair Wallin and Commissioners Duffrin and Gruenewald to the BDR Subcommittee. Commissioner O'Neill seconded the Motion. The Motion was put to a vote and carried unanimously.

5. Report by Executive Director on agency status and operations and possible direction thereon. Items to be discussed include, without limitation:

- FY20 Budget Status
- Request for possible Interim Resources to Address Increased Caseload
- Budget and Legislative (BDR) Deadlines and Planning for 2021 Legislative Session
- Update on Coronavirus Protocols
- Education and Outreach

FY20 Budget Status: Executive Director Nevarez-Goodson acknowledged that the Commission was slated to expend the majority of current Fiscal Year expenses, however Governor Sisolak has issued a directive to halt in-state and out-of-state travel to all State Agencies and therefore travel funds will not be utilized and will revert back to the State General fund and to the Local Government agencies through future credits. She offered that she may do a work program to move some of the travel funds into court reporting to transcribe interviews given the investigatory backlog.

Request for possible Interim Resources to Address Increased Caseload: Executive Director Nevarez-Goodson informed the Commission that the Governor's Finance Office (GFO) would support the Commission's pursuit of an Interim contract attorney position to address the Commission's increased investigatory backlog and caseload. However, she opined that could the support for such resources would likely change considering the current COVID-19 pandemic and the projected budgetary issues resulting from the pandemic.

Executive Director Nevarez-Goodson stated her plan and the direction provided by GFO was to prepare a formal memorandum for BOE and IFC, including the justification and caseload statistics. She referenced the caseload statistics provided to the Commission in the meeting materials and welcomed feedback on the statistics from Vice-Chair Wallin, who has expertise in numerical presentations and experience with State budget in her service as State Controller.

Executive Director Nevarez-Goodson informed the Commission that the Governor's office had also issued a hiring freeze for State agencies. She commented that she expects that the Commission may not ultimately obtain the resources to hire a contract attorney next fiscal year but instead would seek to incorporate this request into the upcoming Biennial Budget.

Budget and Legislative (BDR) Deadlines and Planning for 2021 Legislative Session: Executive Director Nevarez-Goodson reiterated that the Executive Branch Agencies received instructions for building the next Biennium Budget and provided the Budget submittal deadline is September 1, 2020. She explained that she would provide draft enhancement requests to the Commission for approval prior to submittal. She also provided an overview of the previous enhancements requested last budget cycle that will be reconsidered for the next Biennium. Executive Director Nevarez-Goodson further thanked the staff with Enterprise IT Services (EITS) for their assistance in staff's ability to work remotely.

Update on Coronavirus Protocols: Executive Director Nevarez-Goodson provided that she has directed the Commission office to be closed to the public consistent with Governor Sisolak's direction to close State offices to the public which are not considered to provide essential services. In response to the demand, she issued a Press Release via electronic mail and posted it on the Commission's website. She explained that staff is already working remotely and will monitor the Commission's general electronic mailbox. For urgent issues, the public can call the Executive Director's direct line which forwards to her cell phone. Internally, staff can be reached during normal business hours of Monday through Thursday from 7:00am to 5:30pm.

Education and Outreach: Executive Director Nevarez-Goodson informed the Commission that in response to the Governor's order to cease travel, all currently scheduled trainings for next few months have been cancelled or rescheduled. She provided that we continue to research online training options to alleviate the need to travel to present Ethics training.

Commissioner Gruenewald moved to accept the Executive Director's agency status report as presented. Commission Duffrin seconded the motion. The Motion was put to a vote and carried as follows:

Chair Lau:	Aye.
Vice-Chair Wallin:	Aye.
Commissioner Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lowry:	Aye.
Commissioner O'Neill:	Aye.
Commissioner Sheets:	Aye.
Commissioner Yen:	Aye.

6. 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.

Chair Lau expressed her gratitude to Commissioners and Commission staff in working remotely during this difficult time and applauded the media communication provided by Executive Director Nevarez-Goodson regarding Commission office accessibility.

Commissioner O'Neill announced that he has filed for Assembly District 40 seat and has contacted the Governor's office for guidance on how this may affect his Commission appointment. Commission Counsel Chase confirmed that the Governor's office will provide direction on Commissioner O'Neill's appointment, and she will advise the Commission and Commissioner O'Neill regarding any necessary legal implications involving his candidacy for individual matters that may come before the Commission.

7. Public Comment.

No public comment.

8. Adjournment.

Vice-Chair Wallin made a motion to adjourn the public meeting. Commissioner Sheets seconded the motion. The Motion was put to a vote and carried unanimously.

The meeting adjourned at 9:55 a.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 April 15, 2020:

Cheryl A. Lau, Esq.
Chair

Kim Wallin, CPA
Vice-Chair

Agenda Item 4



**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Donald Smith**, Clinical Social Worker
II, Southern Nevada Adult Mental Health
Services, Nevada Division of Public and
Behavioral Health, Department of Health
and Human Services, State of Nevada,

Ethics Complaint
Consolidated Case Nos.
19-081C, 19-082C, 19-105C

Subject. /

**WAIVER OF NOTICE REQUIRED UNDER NRS 241.033(1) TO
CONSIDER CHARACTER, MISCONDUCT, OR COMPETENCE
OF SUBJECT IN ETHICS COMPLAINT PROCEEDINGS**

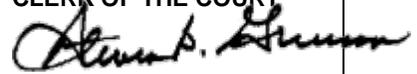
The Nevada Commission on Ethics ("Commission") may be holding various hearings, meetings, judicial review or appellate proceedings and other proceedings to consider the Subject Donald Smith's character, misconduct or competence as related to the above referenced Consolidated Ethics Complaints (collectively "Proceedings"). If the Proceedings are not exempt from Nevada's Open Meeting Law pursuant to NRS Chapters 241 or 281A, NRS 241.033(1) requires notice be personally served on Subject of the time and place of the meeting at least 5 working days before the meeting or sent by certified mail to the last known address at least 21 working days before the meeting. Subject agrees to comply with all noticed deadlines and scheduled dates for the Proceedings, including those noticed by a posted public agenda, scheduled with the parties or set forth in a Notice of Hearing and Scheduling Order and other issued Orders, including any amendments thereto.

I, Donald Smith, understand the statutory notice requirements of NRS 241.033 and hereby knowingly and voluntarily waive my rights thereto associated with any Proceedings. In doing so, I expressly consent to any discussion of my qualifications, competence and character in the Proceedings. Prior to signing this waiver, I either had the opportunity to discuss this matter with my attorney or have voluntarily determined to proceed on my own accord, thereby waiving the right to consult with an attorney.

Dated this 6 day of March, 2020.

By: _____

Donald Smith



CASE NO: A-20-812778-J
Department 6

1 **PTJR**
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Alexander M. P. Perry, Esq.
3 Nevada Bar No. 14749
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7 *Attorneys for Donald Smith, LCSW*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9
10 **COUNTY OF CLARK, STATE OF NEVADA**

11 DONALD SMITH, an individual,
12 Petitioner
13 v.
14 REVIEW PANEL OF THE NEVADA
COMMISSION ON ETHICS, a subdivision of
15 the State of Nevada,
16 Respondent

Case No.

Dept.

PETITION FOR JUDICIAL REVIEW

17 The Petitioner, Donald Smith, LCSW, petitions the Court to review the decision of the State
18 of Nevada Review Panel of the Nevada Commission on Ethics, dated February 24, 2020, finding just
19 and sufficient determination to refer consolidated cases 19-081C, 19-082C, and 19-105C to the
20 Commission to render an opinion regarding alleged statutory violations.

21 Jurisdiction is proper pursuant to NRS 233B.130(2)(b) because this matter concerns an
22 agency action against Petitioner, an employee of the State of Nevada, who resides in the County of
23 Clark, State of Nevada.

24 The filing of this Petition for review of an agency decision is proper because it is a petition for
25 review of a preliminary, procedural, or intermediate act or ruling by an agency in a contested case for
26 which review of the final agency decision would not provide adequate remedy. Specifically, this
27 matter concerns a Review Panel Determination and Referral Order to the Nevada Ethics Commission
28 for public hearing regarding allegations that detrimentally affect the Petitioner's professional

PETITION FOR JUDICIAL REVIEW

1 reputation. Currently, this information is confidential and maintained as part of the Executive
2 Director's investigative file. Should this matter proceed to hearing, this information, regardless of its
3 truth, will be made public and will have a significant negative impact on Petitioner's professional
4 reputation. See, NRS 281A.750(1)(a) and NRS 281A.755(3). Therefore, any mandate that Petitioner
5 wait for a final agency decision would not provide him with an adequate remedy because the
6 significant harm to professional reputation will have already accrued if this matter is allowed to go to
7 a hearing.

8 NRS 281A.730 prohibits the Review Panel of the Nevada Commission on Ethics to
9 recommend a matter to the Commission to render an opinion unless it first determines 1) that there is
10 just and sufficient cause for the Commission to render an opinion, and 2) that the conduct at issue
11 cannot be more appropriately addressed through additional training or other corrective action. A
12 finding of just and sufficient cause for the Review Panel to recommend the matter to the Commission
13 to render an opinion requires the Commission to, at a minimum, establish a factual and legal basis for
14 the recommendation. Considering the standards set forth above, in this case, the decision to
15 recommend was:

- 16 1. In violation of constitutional or statutory provisions;
- 17 2. In excess of the statutory authority of the agency;
- 18 3. Made upon an unlawful procedure;
- 19 4. Affected by other error of law;
- 20 5. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole
21 record; or
- 22 6. Arbitrary or capricious or characterized by an abuse of discretion.

23 NRS 281A.770 through NRS 281A.775 places the burden on the Review Panel to apply a
24 common-sense standard regarding whether to recommend matters to the Commission for hearing by
25 considering the seriousness of the violation, including whether the expense to the State of the alleged
26 violation exceeds the expense to the State of investigating and prosecuting the violation. Where the
27 Ethics Commission is entrusted with the task of maintaining the ethical integrity of the employees of
28 the State of Nevada, it is imperative that the Commission itself ensure the integrity of the process by

1 refusing to expend significantly more sums investigating and prosecuting alleged violations where
2 such sums are not justified by the supposed harm caused by the alleged violations. Here, considering
3 the standards set forth above, the decision of the Review Panel to recommend in this case was:

- 4 1. In violation of constitutional or statutory provisions;
- 5 2. In excess of the statutory authority of the agency;
- 6 3. Made upon an unlawful procedure;
- 7 4. Affected by other error of law;
- 8 5. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole
9 record; or
- 10 6. Arbitrary or capricious or characterized by an abuse of discretion.

11 NRS 281A.770 through NRS 281A.775 places a further burden on the Review Panel to apply
12 a common-sense standard regarding the treating of comparable situations in a like manner and
13 ensuring the disposition of a matter bears a reasonable relationship to the severity of the alleged
14 violation. Where the Review Panel and the Ethics Commission propose settlement terms not in
15 substantial compliance with this mandate, they act in violation of the ethical rules they are tasked
16 with enforcing and undermine the integrity of the State's process whereby it ensures integrity in
17 government. Here, considering the standards set forth above, the decision of the Review Panel to
18 recommend in this case was:

- 19 1. In violation of constitutional or statutory provisions;
- 20 2. In excess of the statutory authority of the agency;
- 21 3. Made upon an unlawful procedure;
- 22 4. Affected by other error of law;
- 23 5. Clearly erroneous in view of the reliable, probative and substantial evidence on the whole
24 record; or
- 25 6. Arbitrary or capricious or characterized by an abuse of discretion.

26 Wherefore, the Petitioner, Donald Smith, LCSW, asks for the following relief:

- 27 1. That Petitioner's Petition for Judicial Review be Granted;
- 28 2. That the decision of the Review Panel of the Nevada Commission on Ethics be reversed,

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and that the consolidated complaints be dismissed;

3. Alternatively, that the decision of the Review Panel of the Nevada Commission on Ethics be reversed, and that consolidated complaints be remanded to the Panel for proposal of a deferral agreement;
4. That Petitioner be reasonable fees and costs associated with this matter; and
5. That the Court grant such other and further relief as may be just, equitable, and proper.

Dated: March 24, 2020

HUTCHINGS LAW GROUP, LLC

/s/ Mark H. Hutchings

By: _____
Mark H. Hutchings, Esq.
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Attorneys for Donald Smith, LCSW

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CERTIFICATE OF SERVICE

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is 552 E. Charleston Blvd., Las Vegas, NV 89104.

On the date set forth below, I served the document(s) described as:

PETITION FOR JUDICIAL REVIEW

on the person(s) listed below:

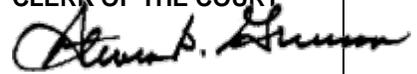
The State of Nevada Commission on Ethics
c/o Yvonne M. Nevarez-Goodson, Esq., and Casey Gillham, Esq.
704 West Nye Lane, Suite 204
Carson City, NV 89703
cgillham@ethics.nv.gov
ynevarez@ethics.nv.gov

(BY EMAIL) I caused the above-described documents to be transmitted by email to the addressees as set forth above.

(STATE) I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Dated: March 15, 2020

/s/ Helen Buenrostro
An employee of HUTCHINGS LAW GROUP



CASE NO: A-20-812778-J
Department 6

1 **APPL**
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8
9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **COUNTY OF CLARK, STATE OF NEVADA**

11 DONALD SMITH, LCSW, an individual,
12 Petitioner
13 v.
14 REVIEW PANEL OF THE NEVADA
15 COMMISSION ON ETHICS, a subdivision of
the State of Nevada,
16 Respondent

Case No.
Dept.
**PETITIONER DONALD SMITH, LCSW'S
APPLICATION FOR STAY PURSUANT TO
NRS 233B.140**

17 The Petitioner, Donald Smith, LCSW, submits this Application for Stay of all proceedings
18 currently active in the State of Nevada Commission on Ethics, consolidated case numbers 19-081C,
19 19-082C, and 19-105C, pursuant to NRS 233B.140, and according to the following Memorandum of
20 Point and Authorities.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. Introduction**

23 Petitioner respectfully asks the Court to Grant this Application for Stay of the proceedings in
24 Nevada Ethics Commission case numbers 19-081C, 19-082C, and 19-105C pending judicial review
25 of those matters set forth in the Petition for Judicial Review filed contemporaneously with this
26 motion before the above-entitled Court. NRS 233B.140 provides the standard for granting stay in
27 this circumstance and requires a review of the factors considered when deciding whether to grant a
28 motion for a preliminary injunction under NRCP 65. Here, Petitioner's Application for Stay should

1 be granted because Petitioner will suffer irreparable harm if the Application is not granted. The file
2 materials in the Commission on Ethics proceedings will be made public if this stay is not granted, and
3 those file materials contain slanderous and untrue statements made by co-workers of Petitioner who
4 have demonstrated an intent to do significant harm to his personal and professional reputation, as
5 well as his potential prospects for future employment. Further, there is no harm to the Commission,
6 Petitioner's employer, nor any of the complainants in this underlying matter if the Application for
7 Stay is granted. Moreover, petitioner has a reasonable likelihood of success on the merits because it
8 appears that the matter before the Commission was initiated for a retaliatory purpose and to advance
9 the political and economic objectives of Petitioner's co-workers, who have a stated interest in
10 harming his prospects.

11 II. Facts

12 This matter stems from a series of coordinated complaints to the Nevada Ethics Commission,
13 filed by three (3) persons within the Southern Nevada Adult Mental Health System ("SNAMHS"),
14 for improper purposes.

15 Petitioner has been employed as a licensed clinical social worker with SNAMHS for over
16 fifteen (15) years. Petitioner is assigned to the Mobile Assessment Unit, and is tasked with
17 performing L2k assessments, which are assessments designed to determine whether a patient who is
18 exhibiting symptoms of mental instability is a danger to themselves or others and therefore must be
19 committed for a temporary period of time for health and safety reasons. Petitioner developed the
20 intake form used by SNAMHS, which is a form designed to assess whether the patient is a danger to
21 themselves or others. The current form is a five (5) page form.

22 There is an ongoing dispute within SNAMHS, stemming primarily from Petitioner's
23 immediate supervisor, who is not a physician, regarding the current L2k assessment form. The
24 current form safely follows medical protocol and statutory requirements related to acquisition of
25 patient history, current mental state, danger to others, and diagnostic impression. This form was
26 developed by Petitioner over a decade ago and has been used successfully by not only SNAMHS, but
27 by other mental health providers as well. There are times when assessors, like Petitioner, are
28 overwhelmed by the volume of assessments that need to be done. When that occurs, there is a

1 process, approved of by the Ph.D. in charge, for prioritizing certain cases over others to ensure the
2 health and safety of all involved.

3 Last summer, Petitioner’s supervisor presented an alternate one (1) page form for use as the
4 Mobile Crisis Assessment Identifying Information Intake Form. Petitioner’s supervisor stated that
5 assessors were spending too much time filling out forms and that reducing the intake to one (1) page
6 would make it more efficient. Petitioner and other LCSWs opposed the adoption of the new form
7 because it is and was a threat to patient safety and public health and did not more effectively address
8 overflow needs when they arise. When Petitioner’s supervisor tried to implement his one (1) page
9 form, Petitioner went over his head to the Ph.D. in charge who sided with Petitioner and refused to
10 allow implementation of the new form.

11 It appears that coordinated efforts were then made to use the Nevada Ethics Commission
12 complaint process to retaliate against those that opposed Petitioner’s supervisor. Spurious ethics
13 complaints were lodged against the Ph.D. in charge, Petitioner, and at least one other LCSW, all of
14 whom had sided against Petitioner’s supervisor in the dispute.

15 Petitioner was later given a voicemail recording that showed Petitioner’s supervisor’s intent
16 was to remove the people in his path that obstructed his ability to run his department the way he
17 wanted. During this accidentally left voicemail, Petitioner’s supervisor stated to one of the
18 complainants his intent to remove Petitioner from the Mobile Assessment Unit. This recording was
19 passed to the Review Panel of the Nevada Commission on Ethics, but it was ignored. It appears also
20 that witnesses that could attest to the veracity of Petitioner’s claims were also ignored. These include
21 many of Petitioner’s co-workers, the department secretary, and those Petitioner has worked with at
22 the hospitals for many years, all of whom are prepared to testify that Petitioner has never acted
23 outside the scope of his ethical obligations to the state. At least two of the complainants to the
24 Nevada Ethics Commission are directly aligned with Petitioner’s supervisor in the dispute. The other
25 complainant stands to receive significant additional monetary compensation if the Petitioner is found
26 liable for the charges levied against him, and it is believed that this person has also coordinated with
27 both Petitioner’s supervisor, and his associates.

28 ///

1 In response to the three (3) simultaneously filed ethics complaints, the Executive Director
2 initiated an investigation into the matters alleged. Upon receiving notice of the Complaints,
3 Petitioner showed a willingness to cooperate with the Executive Director to clear his name.
4 Petitioner provided information that was requested, at his own expense, and participated in an
5 interview with investigators. Investigators were not always appropriate in the manner they handled
6 the matter. For example, the investigators issued subpoenas to Petitioner for the production of
7 documents they already had, simply to impose the cost of response upon him, and to later claim that
8 he was being less than truthful because he was unable to locate more than seven hundred fifty (750)
9 work emails sent over the course of several years. It appears they also ignored key witnesses, whose
10 names were provided to them, and key evidence that was provided to them. Instead, the Executive
11 Director focused on the testimony of Petitioner’s immediate supervisor and has taken a parsimonious
12 approach to finding fault with Petitioner’s work habits.

13 On February 24, 2020, the Review Panel made a determination that there was sufficient
14 evidence to move forward with a Commission hearing on three (3) of the charges brought against
15 Petitioner. This was all based on evidence presented by the Executive Director, which it is believed
16 was prosecutorial in intent. Again, per statute, Petitioner is entitled to this information, and has
17 requested it, but it has never been provided. The utter lack of veracity of the facts contained within
18 the ethics complaints should have been sufficient to prompt the Review Panel to entirely disregard
19 the defamatory allegations made against Petitioner. The information contained in these documents,
20 by and large, was factually confused, emotionally inflammatory, and not credible. The simultaneous
21 timing of the three complaints is highly suspicious. Had the Executive Director simply followed up
22 on important leads that were provided, there would have been a more balanced understanding of the
23 situation. Instead, it appears that the Executive Director’s office made a one-sided presentation to the
24 Review Panel to get them to recommend the matter for further proceedings. Again, none of this is
25 known for sure because the Executive Director has refused to date to turn over the files, which
26 Petitioner is entitled to.

27 The issue with the Review Panel’s determination is that pursuant to NRS 281A.750, upon
28 determination that the matter should be heard by the Commission, “all information, communications,

1 records, documents or other materials in the possession of the Commission, the review panel, of their
2 staff” become public. The hearing itself is public, as is the evidence presented at that hearing.
3 Critically, it is believed that the information contained in the Commission’s file is false, defamatory,
4 and if made public, will significantly harm the professional reputation of the Petitioner.

5 Despite what appears to be an abuse of process and a campaign of defamation on the part of
6 Petitioner’s supervisor and his associates, the Executive Director is instead focused on whether
7 Petitioner technically violated provisions of the Nevada Ethics Code that are, at best, a *de minimus*
8 expense to the State. The acts leading to the alleged violations are all things that the Ph.D. in charge,
9 the department secretary, and every other LCSW at SNAMHS knows about, does as a matter of
10 course, and approves of, and that, Petitioner was never even warned about as being improper during
11 the fifteen (15) years of Petitioner’s prior employment with the state. It is believed that only hyper-
12 technical information was presented to the Review Panel, and that a full presentation of facts was not
13 made. It appears, the expense and cost of the Executive Director’s investigation is significantly
14 higher than any harm caused by Petitioner’s alleged misconduct. Further, this is a matter that can
15 easily and more appropriately be resolved through a deferral agreement as opposed to a public
16 hearing. The Executive Director has been made aware of this. Yet, instead of taking a temperate
17 approach, as the statute requires the Executive Director, Review Panel and Commission to do, the
18 Executive Director has sought to impose onerous sanctions and public humiliation on Petitioner
19 based on false allegations of people who have a retaliatory motive.

20 III. Legal Standard

21 NRS 233B.140 authorizes this Court to stay further proceedings in an administrative matter
22 where the standard for granting preliminary injunction under NRCP 65 are met. The decision
23 regarding whether to grant an injunction is in the sound discretion of the court and will only be
24 overturned by the appellate court upon a showing of an abuse of discretion. University Sys. v.
25 Nevadans for Sound Gov’t, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). In exercising this
26 discretion, the court should be guided by applicable legal principles that provide a basis for the
27 court’s decision. Franklin v. Bartsas Realty, Inc., 95 Nev. 559, 562-63, 598 P.2d 1147, 1149 (1979).
28 Where the court fails to provide a sound legal basis for its decision, this can rise to the level of an

1 abuse of discretion. Id. When issuing an Order for an injunction, the Court must include 1) the
2 reason why it issued, 2) state the specific terms, 3) describe in reasonable detail the act or acts
3 restrained, and 4) identify the parties it applies to. NRC 65(d).

4 IV. Argument

5 An injunction to preserve the status quo is normally available upon a showing that the
6 petitioner has a reasonable likelihood of success on the merits, and that the agency conduct, if
7 allowed to continue, will result in irreparable harm for which compensatory damages are an
8 insufficient remedy. Dep't of Conservation & Natural Resources, Div. of Water Resources v. Foley,
9 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). Generally, courts review four (4) factors when deciding
10 whether to grant injunctive relief, 1) the threat of irreparable harm, 2) the relative interests of the
11 parties, 3) the moving party's likelihood of success on the merits, and 4) the public interest. See,
12 Sobol v. Capital Mgmt. Consultants, Inc., 102 Nev. 444, 446, 726 P.2d 335, 337 (1986). The first
13 and third factors are generally given the most weight. Id.

14 1. The Threat of Irreparable Harm

15 If the Court does not grant Petitioner's Application for Stay, Petitioner will suffer immediate
16 and irreparable harm.

17 If the petitioner has an adequate remedy at law, the harm is not irreparable. Number One
18 Rent-A-Car v. Ramada Inns, Inc., 94 Nev. 779, 780-81, 587 P.2d 1329, 1330-1331 (1978). Threat of
19 the loss of employment is regarded as an irreparable injury. Ottenheimer v. Real Estate Div., 91 Nev.
20 338, 342, 535 P.2d 1284, 1285 (1975). The publication of false and defamatory statements that affect
21 the ability to earn a living are also regarded as an irreparable injury. Guion v. Terra Marketing of
22 Nevada, Inc., 90 Nev. 237, 240, 523 P.2d 847, 848 (1974).

23 Here, Petitioner will suffer irreparable harm if the Commission proceedings are not stayed.
24 Certain file materials of the Nevada Commission on Ethics will be made public if this matter is
25 allowed to proceed. These file materials contain false statements about Petitioner regarding his
26 ethical fitness as a state employee. These materials were generated by persons that have a retaliatory
27 and improper motive for initiating the ethics complaints against petitioner, and to advance their own
28 professional and political objectives. This must not be allowed because Petitioner is a long time

1 licensed clinical social worker that has loyally and faithfully served the State of Nevada for over
2 fifteen (15) years, and his reputation is key to his effectiveness as a professional.

3 Accordingly, a failure to grant Petitioner's Application for Stay will create immediate,
4 significant, and irreparable injury. Therefore, the first factor of the analysis weighs in favor of
5 granting the Petitioner's Application for Stay.

6 2. The Relative Interests of the Parties

7 The relative interests of all of the parties weighs in favor of granting Petitioner's Application
8 for Stay.

9 When making a decision on whether to grant an injunction, courts should generally weigh and
10 compare the harm to the plaintiff in refusing to grant the injunction versus the harm to the defendant
11 if the injunction is granted. Home Financial Co. v. Blacom, 61 Nev. 301, 127 P.2d 389 (1942).

12 The Nevada Commission on Ethics will suffer no harm if this matter is stayed. The
13 investigation of the Executive Director is complete. The Commission can simply reschedule its
14 hearing, if and when this matter is remanded for further proceedings. SNAMHS will suffer no harm
15 as the result of a stay. Petitioner has already been reassigned to a different unit than the one he
16 helped develop, and maintaining the *status quo* does not affect the working situation at SNAMHS.
17 Complainants will suffer no harm as a result of the stay. Each of the Complainants, whose identities
18 are known to Petitioner's counsel, were not directly affected in any way by the things complained of
19 within their complaints.

20 Accordingly, the second factor also weighs in favor of granting Petitioner's Application for
21 Stay.

22 3. The Likelihood of Success on the Merits

23 Petitioner enjoys a likelihood of success on the merits.

24 All other factors being equal, courts should generally grant the moving party's motion for an
25 injunction where that party has a reasonable probability of success on the merits. Dixon v. Thatcher,
26 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). Courts are empowered to reverse or modify an
27 agency decision if the petitioner has been prejudiced by administrative findings, inferences, or errors
28 of law in light of the reliable, probative, and substantial evidence of record. Dredge v. State, 105

1 Nev. 39, 43, 769 P.2d 56 (1989).

2 As set forth within Petitioner’s Petitioner for Judicial Review, there are serious questions
3 regarding whether:

- 4 1. The Review Panel determined whether there was just and sufficient cause for the
5 Commission to render an opinion,
- 6 2. Whether the alleged conduct cannot be more appropriately addressed through additional
7 training or other corrective action,
- 8 3. Whether the expense of the recommendation is justified by the expense to the state of
9 prosecuting the violation,
- 10 4. Whether the investigation was conducted in a thorough, objective, and ethical manner,
- 11 5. Whether the information presented to the review panel was thorough and objective,
- 12 6. Whether Nevada’s scheme of allowing a single agency to be the investigator, review
13 panel, and determiner of ethical code violations by state employees is constitutionally
14 sound,
- 15 7. Whether the punishment sought by the Executive Director bears a reasonable relationship
16 to the severity of the alleged violation, and
- 17 8. Whether the Executive Director and Review Panel are treating comparable situations in a
18 like manner.

19 Critically, Petitioner has not been provided with materials he is statutorily entitled to, despite requests
20 for the information. The Nevada Ethics Commission Executive Director has had more than seven (7)
21 months to investigate this matter, has passed this matter to a Nevada Ethics Commission Review
22 Panel for determination, and has set a hearing on the matter with the Nevada Ethics Commission.
23 None of the information underlying these actions has been shared with Petitioner. Petitioner has
24 received notices of the decisions that have been made but has never been provided adequate
25 explanations of the basis for those decisions, nor has proof been provided that supports the decisions.
26 Petitioner expects that once discovery is received in the matter that serious issues will be discovered
27 with respect to at least some of the questions set forth above.

28 Accordingly, the third factor weighs in favor of granting the Petitioner’s Application for Stay.

1 4. The Public Interest

2 There is no risk to the public in granting the Application for Stay.

3 Where there is a public interest in granting a motion for an injunction, court's may consider
4 that as a factor when making their decisions. Ellis v. McDaniel, 95 Nev. 455, 459, 596 P.2d 222, 225
5 (1979). NRS 233B.140(b) requires the Court to consider the risk to the public, if any, of staying the
6 administrative decision.

7 Here, there is no risk to the public in staying the administrative proceedings. Petitioner has
8 been re-assigned to a different department than the one he was working in, so there is no risk that the
9 alleged conduct will continue. The Executive Director has had unfettered ability to conduct its
10 investigation for approximately seven (7) months, and that investigation is complete.

11 Accordingly, the fourth factor also weighs in favor of granting the Petitioner's Application for
12 Stay.

13 5. Bond

14 Petitioner is prepared to provide security in the form of a costs bond prior to any issue of stay.
15 Petitioner submits that a costs bond of \$500.00 is sufficient to assure security for costs incurred as a
16 result of the stay.

17 **V. Conclusion**

18 In sum, Petitioner respectfully asks this Court to Grant this Application for Stay of
19 Proceedings pending judicial review of the Review Panel determination to recommend this matter to
20 the Commission for a hearing.

21
22 Dated: March 24, 2020

HUTCHINGS LAW GROUP, LLC

/s/ Mark H. Hutchings

By: _____

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CERTIFICATE OF SERVICE

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is 552 E. Charleston Blvd., Las Vegas, NV 89104.

On the date set forth below, I served the document(s) described as:

PETITIONER DONALD SMITH, LCSW'S APPLICATION FOR STAY PURSUANT TO NRS 233B.140

on the person(s) listed below:

**The State of Nevada Commission on Ethics
c/o Yvonne M. Nevarez-Goodson, Esq., and Casey Gillham, Esq.
704 West Nye Lane, Suite 204
Carson City, NV 89703
cgillham@ethics.nv.gov
ynevarez@ethics.nv.gov**

(BY EMAIL) I caused the above-described documents to be transmitted by email to the addressees as set forth above.

(STATE) I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Dated: March 24, 2020

/s/ Helen Buenrostro
An employee of HUTCHINGS LAW GROUP