

# **Agenda Item 3**



State of Nevada  
COMMISSION ON ETHICS

**MEMORANDUM**

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**DATE:** June 17, 2021  
**TO:** Nevada Commission on Ethics Personnel Subcommittee  
("Subcommittee")  
**FROM:** Tracy L. Chase, Commission Counsel  
**RE:** Agenda Item 3 – June 23, 2021 Subcommittee Meeting

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Please find attached the background materials that the Nevada Commission on Ethics requested be provided to assist the Subcommittee in the considerations pertaining to Agenda Item 3 – June 23, 2021 Subcommittee Meeting.



**State of Nevada  
COMMISSION ON ETHICS**

**M E M O R A N D U M**

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**DATE:** June 9, 2021  
**TO:** Nevada Commission on Ethics  
**FROM:** Tracy L. Chase, Commission Counsel  
David R. Hall, Executive Director  
**RE:** Public Meeting for June 16, 2021 - Agenda Item 6: Discussion and establishment of a subcommittee to be known as the "Nevada Commission on Ethics Performance Review Subcommittee" to consider and make recommendations to the Commission regarding establishing annual goals, outcomes or performance objectives/ measures for the Commission's two appointed positions of Executive Director, held by David R. Hall, Esq., and Commission Counsel, held by Tracy L. Chase, Esq., including providing direction on scheduling the meetings of the subcommittee.

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This agenda item is for the creation of the Nevada Commission on Ethics Performance Review Subcommittee and to provide direction on meeting dates for the subcommittee. In furtherance of the Commission direction obtained at the May 19, 2021 Commission Meeting, this memorandum provides background information that the Commission may refer to the subcommittee to assist it in its considerations.

During the May 19, 2021, Commission meeting, the Commission considered its priorities in order to provide a platform on which to consider establishing the goals, objectives, or performance measures ("Goals") of its two appointed positions. Attachments to this memorandum include the announcements and job duties for the positions of Executive Director and Commission Counsel. In addition, the Mission of the Commission, its Guiding Principles and the statutory qualifications and duties for each position, as established in NRS 281A.230 to NRS 281A.260, are as follows:

**MISSION STATEMENT:**

The Nevada Commission on Ethics, by the authority granted under Chapter 281A of NRS, strives to enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the

public trust by committing themselves to avoid conflicts between their private interests and their public duties.

**GUIDING PRINCIPLES:**

1. Our highest priority is to protect the citizens of Nevada by interpreting and enforcing the provisions of the Ethics Law in a fair, consistent, and impartial manner.
2. We act with a high degree of integrity, honesty and respect when investigating and adjudicating public complaints alleging ethics violations by public officers and employees.
3. We are committed to providing outreach and education to our Stakeholders (the public and public officers and employees) to enhance their awareness and understanding of ethics requirements and prohibitions under the Nevada Ethics law.
4. Our objectivity, independence and impartiality are beyond reproach. We avoid all personal or professional circumstances or conflicts calling these into question.
5. Our processes ensure all actions, decisions and policies are consistently applied and do not result in advantages or disadvantages to any party to the detriment of another.
6. Our confidential advisory opinions are thoroughly researched and written with the needs of the requestor in mind and consistent with opinion precedent and applicable statutes including legislative intent.
7. We carry out our duties in a rigorous and detailed manner and utilize the resources provided to us wisely and only for the legitimate purposes of the agency.
8. We continuously challenge ourselves to improve the practices and processes of the agency to keep pace with the needs of the individuals we serve and to comply with legislative mandates.
9. We continuously improve our public communication and public access to provide guidance and assistance to those we hold accountable for compliance.
10. We value and respect the opinions and recommendations of our Stakeholders, Staff and Commission Members which guide us in our decision making.

## **NRS 281A.230 to NRS 281A.260**

### **NRS 281A.230 Executive Director: Appointment; qualifications; classification; prohibited activities and other employment.**

1. The Commission shall appoint, within the limits of legislative appropriation, an Executive Director who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the Commission.
2. The Executive Director must have experience in administration, investigations and law.
3. The Executive Director is in the unclassified service of the State.
4. The Executive Director shall devote the Executive Director's entire time and attention to the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of the Executive Director's duties
5. The Executive Director may not:
  - (a) Be actively involved in the work of any political party or political campaign; or
  - (b) Except in pursuit of the business of the Commission, communicate directly or indirectly with a State Legislator or a member of a local legislative body on behalf of someone other than the Executive Director to influence:
    - (1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or
    - (2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:
      - (I) The appropriation of public money;
      - (II) The issuance of a license or permit; or
      - (III) Any proposed subdivision of land or special exception or variance from zoning regulations.

### **NRS 281A.240 Executive Director: Duties; employment of staff; designation of qualified person to perform duties when Executive Director unable to act on matter.**

1. In addition to any other duties imposed upon the Executive Director, the Executive Director shall:
  - (a) Maintain complete and accurate records of all transactions and proceedings of the Commission.
  - (b) Receive ethics complaints and requests for advisory opinions pursuant to this chapter.
  - (c) Gather information and conduct investigations regarding ethics complaints and requests for advisory opinions pursuant to this chapter.
  - (d) Submit recommendations to the review panel regarding whether there is just and sufficient cause for the Commission to render an opinion in a matter.
  - (e) Recommend to the Commission any regulations or legislation that the Executive Director considers desirable or necessary to improve the operation of the Commission and maintain high standards of ethical conduct in government.
  - (f) Upon the request of any public officer or the employer of a public employee, conduct training on the requirements of this chapter, the rules and regulations

adopted by the Commission and previous opinions of the Commission. In any such training, the Executive Director shall emphasize that the Executive Director is not a member of the Commission and that only the Commission may issue opinions concerning the application of the statutory ethical standards to any given set of facts and circumstances. The Commission may charge a reasonable fee to cover the costs of training provided by the Executive Director pursuant to this subsection.

(g) Perform such other duties, not inconsistent with law, as may be required by the Commission.

2. The Executive Director shall, within the limits of legislative appropriation, employ such persons as are necessary to carry out any of the Executive Director's duties relating to:

(a) The administration of the affairs of the Commission; and

(b) The investigation of matters under the jurisdiction of the Commission.

3. If the Executive Director is prohibited from acting on a particular matter or is otherwise unable to act on a particular matter, the Chair of the Commission shall designate a qualified person to perform the duties of the Executive Director with regard to that particular matter.

**NRS 281A.250 Commission Counsel: Appointment; qualifications; classification; prohibited activities and other employment.**

1. The Commission shall appoint, within the limits of legislative appropriation, a Commission Counsel who shall perform the duties set forth in this chapter and such other duties as may be prescribed by the Commission.

2. The Commission Counsel must be an attorney who is licensed to practice law in this State.

3. The Commission Counsel is in the unclassified service of the State.

4. The Commission Counsel shall devote the Commission Counsel's entire time and attention to the business of the Commission and shall not pursue any other business or occupation or hold any other office of profit that detracts from the full and timely performance of the Commission Counsel's duties.

5. The Commission Counsel may not:

(a) Be actively involved in the work of any political party or political campaign; or

(b) Except in pursuit of the business of the Commission, communicate directly or indirectly with a State Legislator or a member of a local legislative body on behalf of someone other than the Commission Counsel to influence:

(1) The State Legislator with regard to introducing or voting upon any matter or taking other legislative action; or

(2) The member of the local legislative body with regard to introducing or voting upon any ordinance or resolution, taking other legislative action or voting upon:

(I) The appropriation of public money;

(II) The issuance of a license or permit; or

(III) Any proposed subdivision of land or special exception or variance from zoning regulations.

**NRS 281A.260 Commission Counsel: Duties; legal advice; appointment or employment of other counsel by Commission under certain circumstances.**

1. The Commission Counsel is the legal adviser to the Commission. For each opinion of the Commission, the Commission Counsel shall prepare, at the direction of the Commission, the appropriate findings of fact and conclusions as to relevant standards and the propriety of particular conduct. The Commission Counsel shall not issue written opinions concerning the applicability of the statutory ethical standards to a given set of facts and circumstances except as directed by the Commission.
2. The Commission may rely upon the legal advice of the Commission Counsel in conducting its daily operations.
3. If the Commission Counsel is prohibited from acting on a particular matter or is otherwise unable to act on a particular matter, the Commission may:
  - (a) Request that the Attorney General appoint a deputy to act in the place of the Commission Counsel; or
  - (b) Employ outside legal counsel.



## COMMISSION ON ETHICS EXECUTIVE DIRECTOR POSITION INFORMATION AND DESCRIPTION

This unclassified exempt position is appointed by and reports to the Commission and provides professional management and administration as well as legal and investigatory support to the Commission.

Position Title:	Executive Director
Department/Division	Commission on Ethics
Budget Account #:	1343
Position Control #:	000002
Position is currently Classified or Unclassified:	Unclassified, Exempt
Position reports to:	Commission
Who has final selection of position:	Commission
Current Salary (2017 Compensation Schedule – Employee/ Employer Paid):	\$113,436

### Duties/Major Responsibilities of the Position:

The Executive Director serves as the Commission's Administrator, responsible for developing and implementing the Commission's budget, policies and procedures, including representing the Commission in the media, executive branch, and the Legislature.

### Education and Experience Required to Perform the Duties of the Position:

A bachelor's degree or higher, and at least five years of legal, management, law enforcement, or investigative experience. Experience in State Administration, including government budgeting and the Nevada Legislative process, is preferred.

### Knowledge, Skills and Abilities Required to Perform the Job Functions:

Strong verbal and written communication skills; experience with conducting investigations; administrative and supervisory experience; knowledge of the Nevada legislative process; and government budgeting experience.

### Does this position require licensure/certification (if yes, please detail):

No. Legal Degree Preferred.



Statutes and Regulations Administered by This Position:

NRS and NAC Chapters 281A, 233B, 241 and 239, and statutes and regulations governing the Executive Branch budget.

Dollar amount of the agency budget for which the position is responsible for administration and oversight.

\$790,000

Number and titles of staff that directly report to position:

4 – Executive Assistant, Senior Legal Researcher, Senior Investigator and Associate Counsel

Number of indirect reports:

N/A

## **SPECIFIC JOB DUTIES:**

### **COMMISSION MEETINGS; HEARINGS; PANELS: 35%**

1. In coordination with Commission Counsel, prepare and coordinate Commission meetings, including agendas, scheduling and meeting materials, and provide briefings of agency status and operations during Commission meetings.
2. Confer with Commission Counsel regarding jurisdictional evaluations of all requests for opinion and notifications of parties and interested persons concerning requests for opinions, including the allegations and/or implicated statutes, jurisdictional determinations and appeals, investigatory procedures and scheduling.
3. Supervise investigations of all Third-Party Requests for Opinions (public complaints) against public officers and employees, and provide written recommendations to Commission panels based on Associate Counsel/Senior Investigator's reports regarding legal analysis of just and sufficient cause for the Commission to hold hearings and render opinions.
4. Develop and prepare legal memoranda and/or presentations of Third-Party Requests for Opinion in hearings before the Commission and Commission panels, and/or supervise the same by Associate Counsel, including the development and presentation of legal motions and arguments, witness testimony and evidentiary documents, and engage in negotiations for potential stipulations.

### **ADMINISTRATION, LEADERSHIP AND SUPERVISION: 40%**

5. Develop and implement agency Strategic Plan, performance measures, internal controls, policy manuals, standardized forms and procedures and periodic reports, including the agency's Annual Report which is issued each July in accordance with NAC 281A.180(2).

6. Communicate regularly and work closely with Commission Chair to attain agency goals and objectives.
7. Provide information to Commission members regarding ethics laws and ethics commissions in other jurisdictions.
8. Make recommendations to the Commission, including comments made by Commissioners at hearings, regarding potential administrative and legislative reform.
9. Work with the Commission to develop agency legislative positions, coordinate lobbying effort and recommend substantive legislative changes as approved by the Commission.
10. Work with Commission Counsel on legal issues as necessary.
11. Organize, oversee, and direct agency work flow to ensure policies, goals and objectives are met in a standardized manner.
12. Develop and implement specific agency goals and objectives through leadership and consideration of staff input and feedback.
13. Prepare agency budget request for Commission and advocate for its approval with Executive Branch agencies and Nevada Legislature.
14. Monitor agency budget to ensure compliance with appropriations.
15. Effectively hire, train, supervise and evaluate Commission staff.
16. Ensure agency operations are conducted in accordance with appropriate state laws, regulations, and internal policies.
17. Maintain an open line of communication with staff and Commission Counsel.
18. Be available to the staff to ensure timely direction is provided, and duties are cohesively performed in a coordinated manner.
19. Participate in required, State-sponsored management training programs.

### **PUBLIC INFORMATION: 25%**

20. Represent the Commission at the Nevada Legislature, government meetings, and other meetings/events as necessary.
21. Act as Commission spokesperson for all media inquiries.
22. Promote understanding of Commission mission and statutory mandates through interaction with legislators, government officials, and the public.
23. Provide training seminars to educate public officials and the public regarding Nevada ethics law.
24. Maintain and regularly update Commission website and other public information tools.
25. Respond to requests for public documents in accordance with Commission's Public Records' Policy.

### **RESTRICTIONS**

26. In accordance with NRS 281A.230(4), the Executive Director may not participate in any other employment.



## **COMMISSION ON ETHICS “COMMISSION COUNSEL” POSITION INFORMATION AND DESCRIPTION**

This unclassified, exempt position is appointed by and reports to the Commission. This position serves as the legal advisor to the Commission and its staff in all legal matters and drafts the Commission’s opinions concerning the applicability of the statutory ethical standards to Nevada’s public officers and employees.

Position Title:	Commission Counsel
Department/Division	Commission on Ethics
Budget Account #:	1343
Position Control #:	000003
Position is currently Classified or Unclassified:	Unclassified - Exempt
Position reports to:	Commission
Who has final selection of position:	Commission
Current Salary (2017 Compensation Schedule – Employee/ Employer Paid):	\$113,436

### Duties/Major Responsibilities of the Position:

In addition to its advisory role, the Commission represents the Commission’s interests in all legal arenas, including administrative, legislative and judicial. In particular, Commission Counsel advises the Commission regarding all requests for opinion and defends the Commission in all litigation, including judicial review of the Commission's administrative opinions. Commission Counsel also coordinates with the Executive Director regarding all administrative regulations and statutory provisions under the Commission’s jurisdiction, and outreach and education to Nevada’s public officers and employees and public attorneys.

### Education and Experience Required to Perform the Duties of the Position:

Graduation from an ABA accredited law school and active membership in the Nevada State Bar Association. Must have substantial experience in administrative law, litigation and Nevada legislative process.

### Knowledge, Skills and Abilities Required to Perform the Job Functions:

Must possess superior legal research, writing, and oral presentation skills and the ability to represent the Commission in litigation, administrative and regulatory matters, whether in the courts of the State of Nevada or the United States and in all federal and state administrative agencies. The Commission Counsel conducts legal research and advises the Commission and staff on all legal matters, in particular the application of Nevada’s Ethics in Government Law.

Does this position require licensure/certification (if yes, please detail):

License to practice law in the State of Nevada.

Statutes and Regulations Administered by This Position:

NRS and NAC Chapters 281A, 233B, 241 and 239.

Dollar amount of the agency budget for which the position is responsible for administration and oversight.

\$0.00

Number and titles of staff that directly report to position:

0

Number of indirect reports:

2 positions: Associate Counsel and Senior Legal

## **SPECIFIC JOB DUTIES:**

### **ADMINISTRATION AND SUPERVISION: 10%**

1. Report legal status of all matters to Commission in closed meetings or open public meetings, as appropriate.
2. Ensure meetings and public hearings are prepared and conducted in accordance with appropriate laws and guidelines, including the Nevada Open Meeting Law.
3. Prepare all legal documentation on behalf and in support of Commission business.
4. Communicate regularly and work closely with Commission Chair to organize Commission's activities and legal caseload.
5. Supervise all legal activities of Commission unrelated to investigations of Third-Party RFOs.
6. Administer all activities related to Commission's legal matters.
7. Assign and supervise workload of Commission's Senior Legal Researcher and Associate Counsel related to legal matters other than Third-Party RFOs.
8. Assist Executive Director to evaluate performance of Senior Legal Researcher and Associate Counsel.
9. Review and assign legal matters to Commission's Associate Counsel, as needed.

### **PUBLIC INFORMATION AND EDUCATION: 5%**

10. Confirm compliance with all Public Records Requests.
11. Provide Outreach and Education via training programs to Public officers and employees.

12. Provide training to government attorneys regarding interpretation and applicability of Ethics in Government Law.

### **REQUESTS FOR OPINIONS: 40%**

#### **13. First-Party Requests for Advisory Opinions:**

- a) Review request and determine Commission's jurisdiction of matter.
- b) Initiate and interview Requester for additional factual information.
- c) Research and/or assign legal research to SLR and/or Associate Counsel.
- d) Analyze and apply the law to the facts presented and discovered.
- e) Approve draft Notices of Hearing, make edits and direct service of notices.
- f) Prepare draft opinions and/or bench memos to the Commission in preparation for hearings.

#### **14. Third-Party Requests for Opinions (complaints):**

- a) Review request and determine Commission's jurisdiction of matter.
- b) Assign and approve notices to Subject and/or Requester regarding jurisdiction.
- c) Provide legal advice to Commission's Associate Counsel and/or Investigator related to legal issues during course of investigation.
- d) Approve any legal forms such as subpoenas during course of investigation.
- e) Evaluate ED recommendations to Panels and Advise Investigatory Panels of legal issues.
- f) Advise Commission of procedural progress of investigations.
- g) Stipulations:
  - i. Advise Associate Counsel and Subject regarding acceptable terms and conditions of stipulations on behalf of Commission.
  - ii. Review draft language and coordinate legal considerations between Associate Counsel, Subject and Commission.
- h) Hearings:
  - i. Serve Executive Director/Associate Counsel and Subject with notices and scheduling orders.
  - ii. Schedule hearings, deadlines and other requirements on behalf of Commission.
  - iii. Initiate and research additional relevant factual and legal information related to the requests.
  - iv. Preside over pre-hearing conferences between parties and Chair of Commission.
  - v. Prepare legal bench memos to the Commission advising on legal considerations of case, including legal motions.
  - vi. Assist Commission to address legal considerations during hearings; respond to legal questions, i.e., legal objections, motions and other rulings.
  - vii. Assist the Commission in its deliberations of evidence and law.

### **OPINIONS: 15%**

15. Draft all final written opinions of the Commission related to RFOs.

**LITIGATION: 25%**

16. Represent the Commission in all litigation before any local, state and federal courts, including drafting legal memoranda to the courts, appearing and presenting arguments before the courts and cooperating in related cases.

**LEGISLATION/REGULATIONS: 5%**

17. Recommend and review all proposed administrative regulations and legislation.