

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, July 21, 2021, at 10:00 a.m.
at the following location:

**Nevada State Capitol Building
Guinn Room
101 N. Carson Street, Second Floor
Carson City, NV 89701**

The meeting was also held virtually via Zoom as follows:

Zoom Meeting Information:

<https://us06web.zoom.us/j/81292073978?pwd=SXRpOFNKeVpDSnRNbjluYktnSGtFQT09>

Zoom Meeting Telephone Number: 669-900-9128

Meeting ID: 812 9207 3978

Passcode: 288278

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 Kim Wallin, CPA, CMA, CFM appeared in Carson City and called the meeting to order at 10:00 a.m. Also appearing in Carson City were Vice-Chair Brian Duffrin and Commissioner Barbara Gruenewald, Esq. Appearing via videoconference were Commissioners Teresa Lowry, Esq., James Oscarson, Thoran Towler, Esq. and Amanda Yen, Esq. Damian Sheets, Esq. was absent. Present for Commission staff in Carson City were Executive Director David R. Hall, Esq., Commission Counsel Tracy L. Chase, Esq., Associate Counsel Elizabeth J. Bassett, Esq., Investigator Erron Terry, Senior Legal Researcher Darci Hayden and Executive Assistant Kari Pedroza.

The pledge of allegiance was conducted.

2. Public Comment.

There was no public comment.

3. Election of Commission Chair and Vice-Chair for Fiscal Year 2021-2022, pursuant to NAC 281A.150.

Commissioner Gruenewald made a motion to reappoint Commissioner Wallin as Chair and Commissioner Duffrin as Vice-Chair of the Commission for Fiscal Year 2021-2022. Commissioner Oscarson seconded the motion. The Motion was put to a vote and carried unanimously.

4. Approval of Minutes of the June 16, 2021 Commission Meeting.

Chair Wallin stated that except for Commissioner Yen who was excused from the meeting and would abstain from participating on this item, all other Commissioners who were present for the June 16 meeting and could participate on this item.

Vice-Chair Duffrin stated that he informed Commission Counsel of a small revision to be made to the June meeting minutes. Chair Wallin requested that references to Performance Measures be replaced with Work Performance Standards throughout the meeting minutes.

Commissioner Oscarson moved to approve the June 16, 2021 Commission Meeting Minutes with corrections discussed. Commissioner Gruenewald seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lowry:	Aye.
Commissioner Oscarson:	Aye.
Commissioner Towler:	Aye.
Commissioner Yen:	Abstain.

5. Approval of Minutes of the July 9, 2021 Personnel Review Subcommittee Meeting.

Chair Wallin stated that she served with Commissioners Duffrin and Oscarson as members of the Personnel Review Subcommittee and each were present at the July 9 Subcommittee meeting and only the Subcommittee members were permitted to act approval of the minutes of the proceedings of the subcommittee.

Commissioner Oscarson moved to approve the July 9, 2021 Personnel Review Subcommittee Minutes as presented. Vice-Chair Duffrin seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Vice-Chair Duffrin:	Aye.
Commissioner Oscarson:	Aye.

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

- Update on Commission Operations
- FY22 Budget Status
- Update on Current Caseload
- Update on Education and Outreach

Update on Commission Operations: Executive Director Hall reported that he attended the Governor's recent cabinet meeting at which direction was given that employees wear masks while in the common areas of buildings and offices regardless of vaccination status. He informed the Commission that the Commission office is open from 8 a.m. to 5 p.m., Monday through Friday.

Certain staff will still work 10-hour shifts and will report to the office Monday through Thursday and others Tuesday through Friday to ensure office coverage five days a week.

FY22 Budget Status: Executive Director Hall informed the Commission that the Commission's Legislatively Approved Budget had been published and was unchanged from the Governor's Recommended Budget.

Update on Current Caseload: Executive Director Hall reiterated staff's efforts to resolve the current backlog of cases. He acknowledged his intent was to bring 5 cases to review panel that month, but there were issues with 2 of those cases. Executive Director Hall stated that there would be 6 cases heard by the review panel in August.

Update on Education and Outreach: Executive Director Hall reiterated that he will be providing training on the Ethics Law to the Association of County Clerks on July 28, 2021. He shared that he has also received requests from Clark County for future training and the Office of the Attorney General to provide training at its Boards and Commission's training.

Commissioner Oscarson asked how many complaint cases are currently backlogged, and Executive Director Hall responded that there are 24 cases. Commissioner Oscarson requested the date of the oldest case on the backlog and Executive Director Hall responded that the oldest case was received in 2019 and has been heard by a Review Panel. Commissioner Oscarson voiced his concerns regarding unresolved cases dating back to 2019 and the need to address the backlog.

At the request of the Chair, Commission Counsel Chase confirmed that she would provide the current case status log to the Commissioners via electronic mail after the meeting.

Vice-Chair Duffrin thanked Chair Wallin and Commission Counsel Chase for instituting the concurrent review panel process to address the backlog in complaint cases. Chair Wallin thanked the Panel Members for their participation in the concurrent review panels.

Chair Wallin asked the Executive Officer how many cases were currently awaiting jurisdictional determination and he provided that 2 were sent out the day before the meeting, 3 would be sent after the meeting and there are 2 additional cases that are not due to go to the Commission until August. Commission Counsel Chase added that she and the Executive Director share drafting duties of the jurisdictional determinations with review by Associate Counsel, and the jurisdictional reviews are currently ahead of the 45-day statutory requirement on all cases.

Commissioner Oscarson clarified that his frustration regarding the backlogged cases was not with staff or the process because staff is doing a good job with a lot of work. He shared that he wanted to keep the work of the Commission up to date in order to provide transparency to the public. He thanked the Commission staff and the review panel members for their continued effort and hard work on the cases.

Chair Wallin asked the Executive Director to share scheduled training information and zoom invites with the Commission to allow Commissioners to attend the trainings, including the upcoming training for July 28, 2021.

Commissioner Yen moved to accept the Executive Director's agency status report as presented. Commissioner Gruenewald seconded the motion. The motion was put to a vote and carried unanimously.

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7. Consideration and approval of the Nevada Commission on Ethics Personnel Review Subcommittee's recommended 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. Pursuant to NRS 241.020(2)(d)(5) and NRS 241.033, proper notice has been provided to both public appointees that the Commission's discussion on this item may include consideration of their individual character and professional competence in performing the duties of their appointed positions.

Chair Wallin introduced the item and stated that her preference in referencing the work of the Personnel Subcommittee is "work performance standards" versus "performance measures." She asked Commission Counsel Chase if proper notice had been provided to the Executive Director and Commission Counsel regarding this agenda item. Commission Counsel Chase acknowledged that both she and Executive Director Hall received proper notice of the agenda item and consented to have their character and competence being discussed in a public meeting.

Chair Wallin reported that the Personnel Subcommittee met several times over the last month with the Executive Director and Commission Counsel in open meetings to discuss each position's job duties and priorities. She outlined the priorities of the Executive Director were reviewing new cases for jurisdictional determination, resolving backlogged cases and Ethics Complaint work. Priorities outlined for the Commission Counsel were litigation, advisory opinions and Ethics Complaints. She referred the Commission to the updated job description and position priorities documents provided in the meeting materials for further information.

Commissioner Gruenewald requested that 'Other duties as assigned by the Commission or the Chair' be added to the Executive Director's job duties under the Administration heading consist with the Commission Counsel's job duties.

Commission Counsel Chase noted that there were a few repetitive items on the Executive Director's job duties and upon Commission approval these items could be combined.

Commission Counsel Chase thanked the Personnel Subcommittee members for their efforts. Commission Counsel Chase shared appreciation of behalf of herself and Executive Director Hall for being allowed to participate in this process.

Chair Wallin requested that the Executive Director's job duties verbiage be consist with the priorities document.

Commissioner Lowry made a motion to approve the job duties and priorities of the Executive Director and Commission Counsel as recommended by the Personnel Review Subcommittee with the requested corrections. Commissioner Yen seconded the motion. The motion was put to a vote and carried unanimously.

8. 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 Wallin thanked her fellow Commissioners for their support and faith in her as the Commission Chair.

Chair Wallin stated the next meeting would be in August and would be held via Zoom.

9. Public Comment.

There was no public comment.

10. Adjournment.

Commissioner Oscarson made a motion to adjourn the public meeting. Commissioner Lowry seconded the motion. The Motion was put to a vote and carried unanimously.

The meeting adjourned at 10:29 a.m.

Minutes prepared by:

/s/ Kari Pedroza

Kari Pedroza
Executive Assistant

/s/ David R. Hall, Esq.

David R. Hall, Esq.
Executive Director

Minutes approved September 15, 2021:

Kim Wallin, CPA, CMA, CFM
Chair

Brian Duffrin
Vice-Chair

DRAFT

Agenda Item 5

NEVADA COMMISSION ON ETHICS



DRAFT

ANNUAL REPORT FISCAL YEAR 2021

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Commission and Commissioner Information

Nevada Commission on Ethics
as of 06/30/21

Commissioners

Chair Kim Wallin, CPA (D)**
(06/26/18 – 06/25/22)

Vice Chair - Brian Duffrin (NP)*
(11/01/19 – 10/31/23)

Barbara Gruenewald, Esq. (D)**
(10/12/19 - 10/31/23)

Damian R. Sheets, Esq. (D)*
(10/01/19 – 9/30/23)

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

Thoran Towler, Esq. (NP)*
(07/01/2020 – 06/30/24)

James Oscarson (NP)**
(04/06/21 – 06/30/23)

Amanda Yen, Esq. (R)**
(04/14/21 – 12/20/24)

*Appointed by Governor

**Appointed by Legislative Commission

Staff

David R. Hall, Esq.
Executive Director

Tracy L. Chase, Esq.
Commission Counsel

Elizabeth J. Bassett, Esq.
Associate Counsel

Darci L. Hayden
Senior Legal Researcher

Kari Pedroza
Executive Assistant

Erron Terry
Investigator

ANNUAL REPORT TO THE COMMISSION ON ETHICS REGARDING FISCAL YEAR 2021

Pursuant to Nevada Administrative Code 281A.180(2), the Executive Director provides an 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. This report details the Commission's actions and accomplishments between July 1, 2020 and June 30, 2021 (FY21) and includes goals set for the coming year.

The information presented is based upon public records of the Commission. The Commission’s website at ethics.nv.gov provides public access to the Commission's database of opinions, meeting minutes and agendas, press releases and general information about the Commission. It also has instructions and forms for filing Ethics Complaints and requesting Advisory Opinions. The Commission meeting agendas are also on the Nevada Public Notice statewide website at notice.nv.gov.

Placeholder: Executive Director’s Letter will be inserted in future revision.

MISSION STATEMENT

The Commission, 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.

I. About the Nevada Commission on Ethics

A. Nevada Commission on Ethics - Ethics in Government Law

The Commission is an independent public body appointed by the Governor and Legislative Commission to interpret and enforce the provisions of Nevada's Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"). The Ethics Law preserves the public's trust in government and ensures that elected and appointed 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 training to Nevada's public officers, employees and attorneys regarding conflicts of interest and the provisions of the Ethics Law.
- Providing advisory opinions to public officers and employees to guide them in compliance with the Ethics Law.
- Enforcing the provisions of the Ethics Law by investigating and adjudicating alleged misconduct of public officers and employees that violates the Ethics Law ("Ethics Complaints").

In FY21, the Commission had jurisdiction over 137,000 public officers and public employees.

B. Membership

The Commission consists of eight members, appointed equally (four each) 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. No members may be actively involved in any political activity or campaign or conduct lobbying activities for compensation on behalf of private parties. Finally, no 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 help to ensure 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.

C. Requests for Advisory Opinions and Ethics Complaints

The Legislature established the Commission to interpret and enforce the provisions of the Ethics Law. In particular, the Legislature has emphasized the public policy behind the Ethics Law is to ensure the public's trust in government against conflicts between private interests and public duties, while balancing Nevada's form of citizen-based, representative government. The Commission renders guidance to public officers and employees about their compliance obligations under the Ethics Law pursuant to confidential Requests for Advisory Opinion. In addition, the Commission enforces the Ethics Law by rendering opinions and holding proceedings to consider Ethics Complaint cases involving the conduct of public officers and public employees under its jurisdiction. The Commission staff is responsible for reviewing and preparing all advisory opinion and ethics complaint matters, including jurisdictional recommendations, legal research and analysis and preparation and presentation of evidence for hearings and determinations by the Commission. In consideration of these matters, the Commission sets the standard for objectivity and political independence while balancing the best interests of the public and the public officers and employees who serve the public.

1. Confidential Requests for Advisory Opinions

A public officer or employee may request a confidential advisory opinion from the Commission regarding their own compliance obligations under the Ethics Law by utilizing the Commission's on-line forms and filing system or by sending the request to the Commission's offices. All advisory proceedings are confidential unless confidentiality is waived by the requester, and the Commission may consider issuance of advisory opinions to the public officer or public employee either by submission or by holding a closed hearing.

To assist the Commission in this process, the Commission Counsel and staff work directly with the requester to identify the supporting facts and circumstances. Commission

Counsel researches the Commission's opinion precedent, prepares proposed findings of fact, and presents a legal recommendation to the Commission for its review. Once the Commission renders its decision, it is served on the requester. If the requester waives confidentiality of the written opinion, it will be published on the Commission's website, the Legislative Law Library, and LexisNexis. If the requester retains the confidentiality of the opinion, the Commission may publish an abstract opinion, which redacts or sanitizes information which could reveal the identity of the requester. 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.

2. Ethics Complaints

With certain exceptions, any person may file an ethics complaint, or the Commission may initiate a complaint on its own motion, against a public officer or employee alleging a violation of the Ethics Law. The Commission has instituted an on-line filing system to permit filing of ethics complaints by members of the public. Under certain circumstances, including that the requester is employed by the same agency as the subject of an Ethics Complaint, the requester may request protection of their identity in the proceedings.

For each complaint, the Commission determines whether it has jurisdiction, and it may direct the Executive Director to investigate the alleged violations of the Ethics Law or instead of investigating the case, the Commission may issue instructive letters to the subject. Conversely, the Commission may dismiss the complaint if it determines the complaint is not filed on the proper form, it does not have jurisdiction over the subject, or the allegations are not supported by sufficient evidence demonstrating a violation of the Ethics Law.

For ethics complaints that are investigated, the Executive Director's investigation is preliminary and serves to assist a Review Panel, comprised of three Commissioners, to consider a "just and sufficient cause" determination, meaning whether the investigation confirmed there to be a minimal level of evidence for the Commission to hold additional proceedings. The proceedings before the Review Panel are confidential; however, the

Review Panel's determination becomes public and is published on the Commission's website.

In addition, the Review Panel may resolve the case by dismissal with or without issuance of instructive letters, or approval of a deferral agreement between the Executive Director and the subject of the ethics complaint. A deferral agreement is an agreement between the Executive Director and the subject of the Complaint acknowledging sufficient evidence of a violation but deferring any finding of a violation through the imposition of various terms and conditions, including corrective action and education. Once the terms and conditions are satisfied, the complaint is dismissed.

If the ethics complaint is referred to the Commission for additional proceedings, the Executive Director and subject become parties for purposes of presenting the case and associated adjudication proceedings before the Commission. The Ethics Law provides authority for the Commission to resolve ethics complaint cases based upon the merits through several appropriate means, including dismissal, confidential letters of caution or instruction, stipulated settlements, deferral agreements, or holding an adjudicatory hearing and issuance of a decision. The Commission has authority to impose monetary sanctions and other statutory penalties provided it makes a finding in its issued opinion that conduct of the public officer or employee constituted a "willful" violation of the Ethics Law. For non-willful conduct and willful conduct that may not warrant monetary penalties, the Commission may impose administrative penalties in the form of appropriate corrective action, referrals for disciplinary action and requirements for education and public apologies.

II. Fiscal Report – FY21

The Commission's biennial funding is divided between the State General Fund and certain of Nevada's local governments (cities and counties). The proportions for the State Fund and local governments are based on the number of public officers and employees who serve the State compared to local governments. Labor data from the Nevada Department of Employment, Training and Rehabilitation provides that 28 percent of

Nevada's public officers and employees serve the State and 72 percent serve local governments for FY21.

A. Commission Budget

The Commission's budget for FY21 is \$942,937. The Commission closed the fiscal year well-within budget. To do so, the Commission implemented stringent measures to maintain operations and expenditures within budgetary authority given the forecasted revenue shortfall that trailed the pandemic. The Commission provided the budget reductions requested by the Governor's staff while continuing to maintain its statutory duties, mission directives and service to the public. Even under State closure directives, the Commission and its staff were accessible and continued to timely meet all operational and procedural deadlines.

III. Legislative and Regulatory Matters

Although there were no regulatory amendments to NAC Chapter 281A during FY21, the Commission actively participated in the 81st (2021) Legislative session presenting its next biennium budget and providing bill review for fiscal and operational effects. The Commission also presented Assembly Bill 65 ("AB 65") seeking procedural amendments to the Ethics Law, which bill was sponsored by the Governor as one of his bill-draft requests. AB 65 was an omnibus bill that would have improved and streamlined the Commission's processes to: (1) increase opportunities to obtain education on the Ethics Law, (2) improve confidentiality protections for public officers/employees submitting complaints; and (3) improve the administrative process for both advisory opinions and ethics complaint cases.

The Commission, through Chair Wallin, Vice-Chair Duffrin and its staff presented and provided to the Legislature detailed background and reasons why the passage of AB 65 would serve to improve Commission operations to the benefit of those that are subject to its jurisdiction or otherwise utilize its services. Towards the end of the session, the Committee on Ways and Means sponsored an amendment to the bill (Amendment 777) that sought to establish three new legislative committees to address ethics violations by members of the Legislature and staff of the Legislative Counsel Bureau. The bill, as

amended, passed the Assembly on May 29, 2021, with a vote of 31 yeas, 9 nays, and 2 excused. The bill, as amended passed the Senate on May 31, 2021, with a vote of 17 yeas and 4 nays.

Even though AB 65 traversed both houses of the Legislature and was recommended to the Governor for signature, the Governor vetoed the bill on June 11, 2021. In the veto letter, the Governor was very clear in confirming his support of work of the Commission and the portion of the bill that streamlined the Commission's processes and clarified its powers and duties. In support of his veto, the Governor's identified Amendment 777, "which converted AB 65 from a mostly housekeeping measure into a significant policy change: creating new legislative ethics commissions within the legislative branch." The letter concludes indicating that "Nevadans hold their public officials to high ethical standards, and they rightly expect that those standards will be effectively and efficiently enforced. Particularly in light of the fact that the separate legislative and executive ethics commissions were consolidated more than thirty years ago, I firmly believe that a more robust examination of the costs and benefits of returning to that structure should be conducted." Prior to the next legislative session, the Commission will consider its options including resubmission of a portion of the bill and regulatory amendments.

IV. Administrative Proceedings

A. Advisory Opinions

During pandemic that spanned FY21, the Commission continued to timely render advisory opinions and preventative advice to public officers and employees. In the prior fiscal year, the Commission rendered a record number of advisory opinions (41 opinions). FY21 requests had a downward trend. The Commission received 15 Requests for Advisory Opinion, 8 were withdrawn or dismissed prior to issuance of a written opinion, 7 written opinions were issued, and 5 abstracts of opinion were issued for opinions that did not receive a waiver of confidentiality to protect the identity of the requester.¹

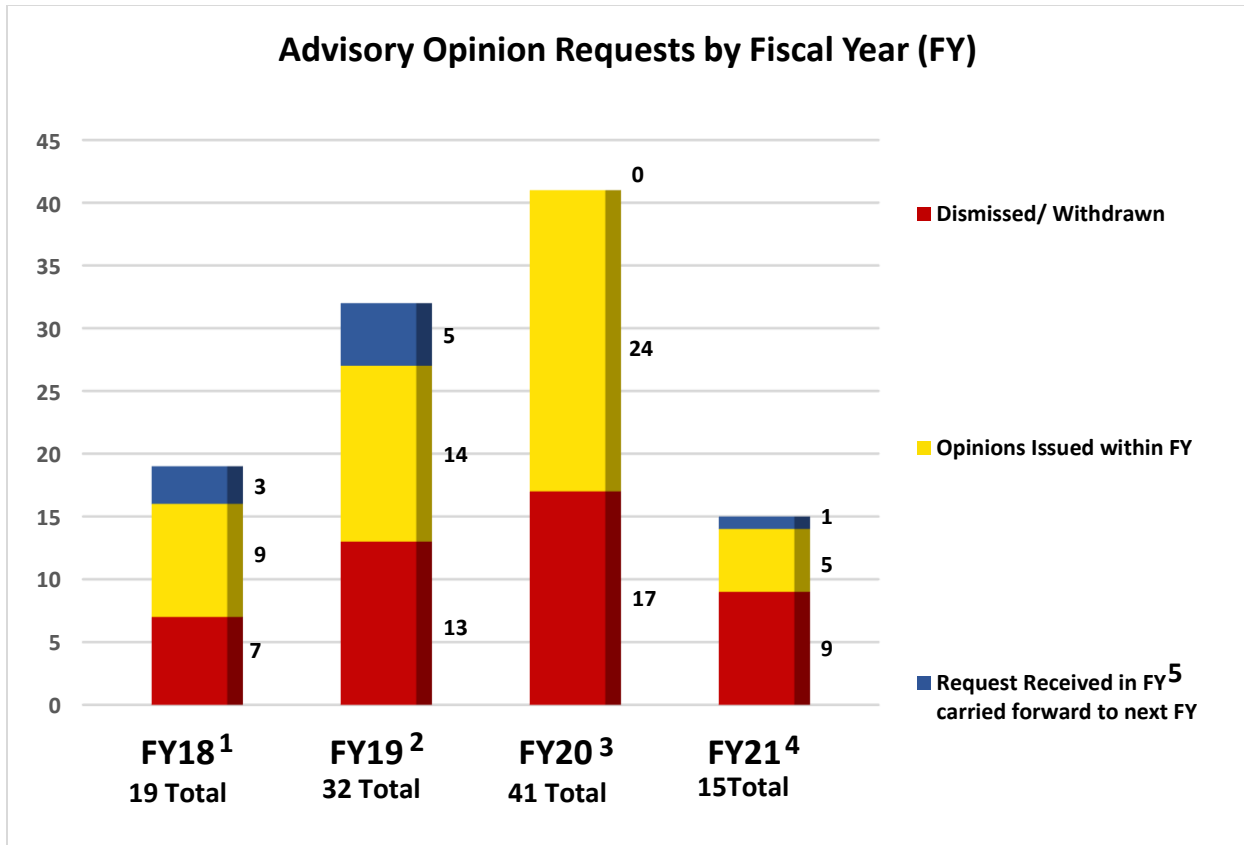
FY 2021: Requests for Advisory Opinions Received: 15

<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed by Commission</u>	<u>Stayed by Order</u>	<u>Written Opinions Issued</u>	<u>Abstract Opinions Issued from Written Opinions (No Waiver of Confidentiality)</u>
9	6	0	5	4 of 5

FY 2020: Requests for Advisory Opinions Received: 41

<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed by Commission</u>	<u>Stayed by Order</u>	<u>Written Opinions Issued</u>	<u>Abstract Opinions Issued from Written Opinions (No Waiver of Confidentiality)</u>
17	24	0	24	19 of 24

¹ The Commission’s advisory opinion 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 or which require significant investigation, negotiation or hearings, or other Commission resources.



¹ **FY18 – Advisory Opinions:** The Commission received 19 Advisory Opinion Requests in FY18, 7 of which were dismissed or withdrawn. In the 12 remaining cases, the Commission issued 9 Opinions in FY18 and 3 in FY19.

Abstract Opinions: Of the 12 cases, 11 remained confidential and required 11 additional Abstract Opinions. The Commission completed 6 of the 11 Abstract Opinions in FY18 and 5 Abstract Opinions in FY19.

² **FY19 -** The Commission received 32 Advisory Opinion Requests in FY19, 13 of which were dismissed or withdrawn. In the 19 remaining cases, the Commission issued 14 Opinions in FY19 and 5 Opinions in FY20.

Abstract Opinions: Of the 19 cases, 12 remained confidential and required an additional 12 Abstract Opinions. The Commission completed 8 Abstract Opinions in FY19, and 4 Abstract Opinions in FY20.

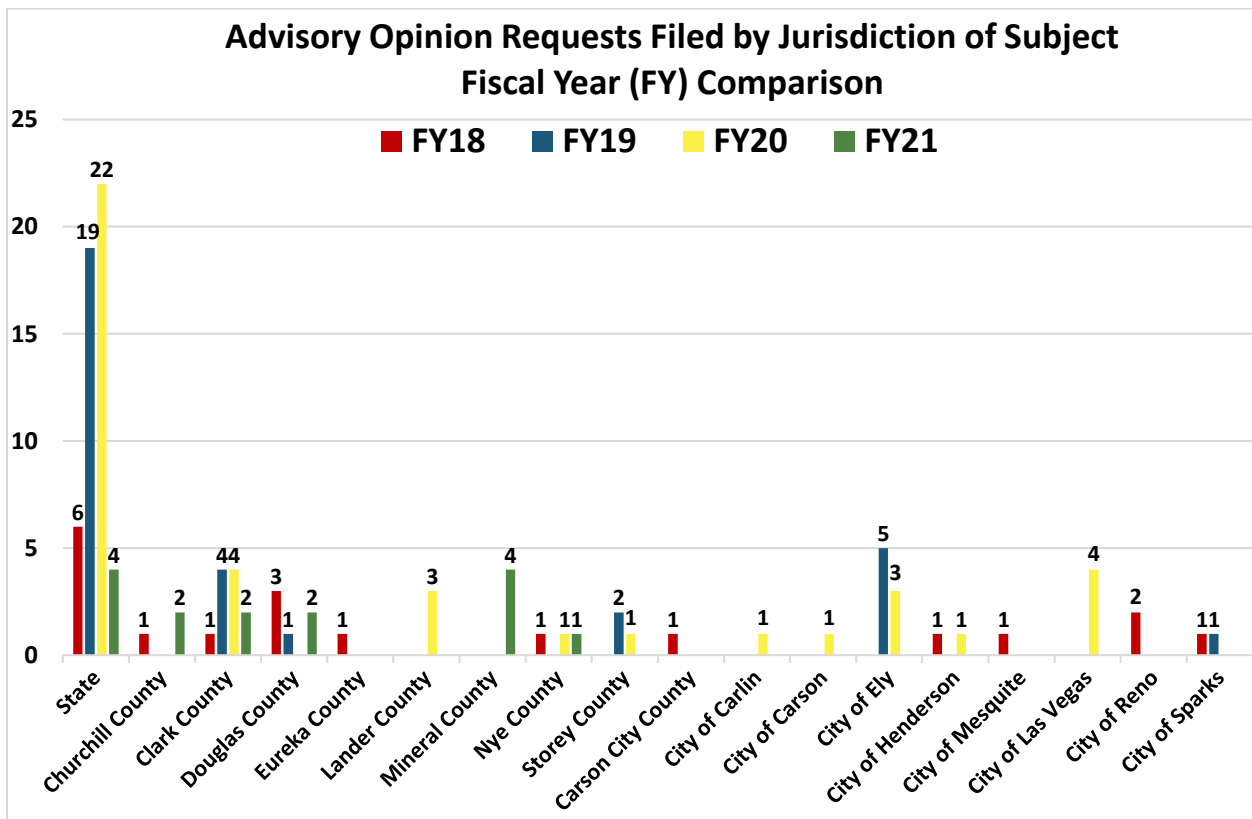
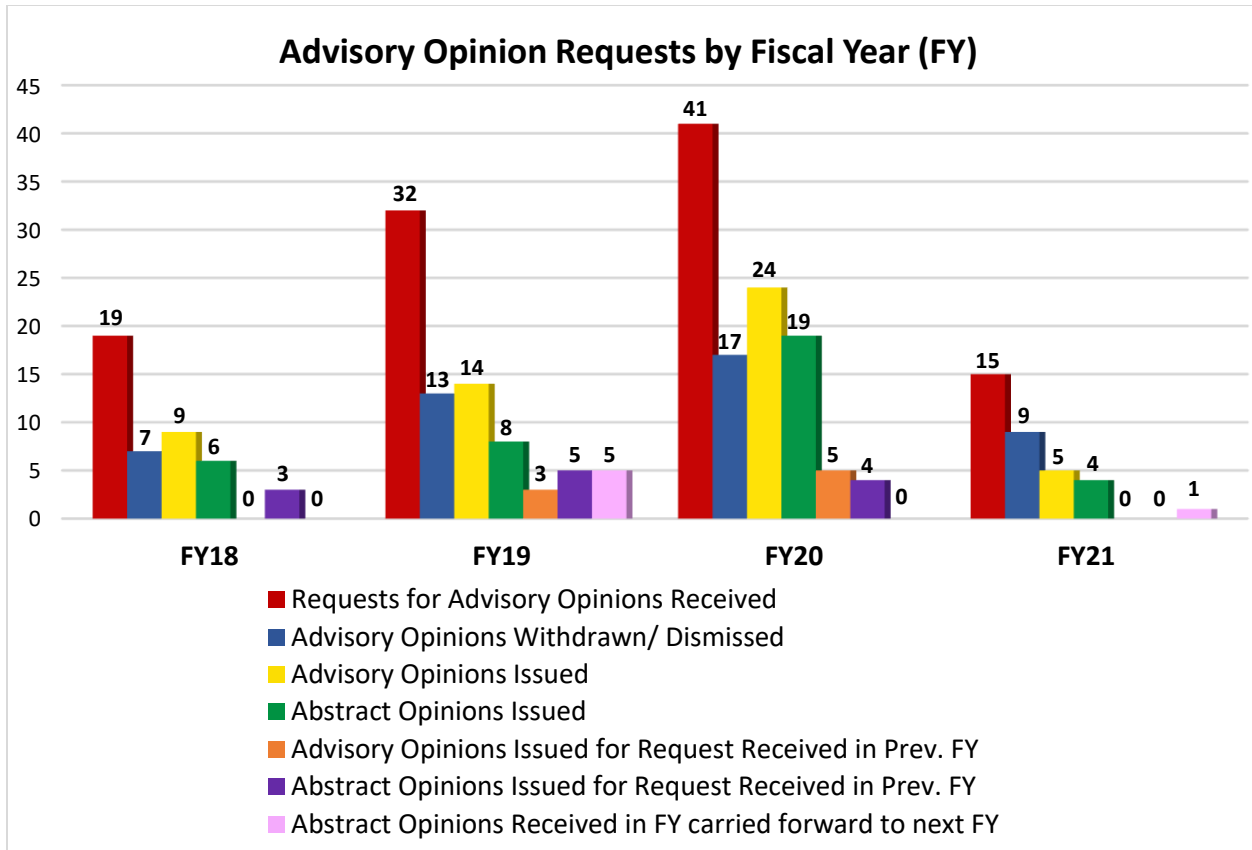
³ **FY20 -** The Commission received 41 Advisory Opinion Requests in FY20, 17 of which were dismissed or withdrawn. In the remaining 24 Requests, the Commission issued 24 Opinions in FY20. 5 additional Opinions were issued in FY20 for requests received in FY19.

Abstract Opinions: Of the 24 cases, 19 remained confidential and required an additional 19 Abstract Opinions, all of which were completed within the FY.

⁴ **FY21 -** The Commission received 15 Advisory Opinion Requests in FY21, 9 of which were dismissed or withdrawn. In the remaining 6 Requests, the Commission issued 5 Opinions in FY21 and 1 Opinion in FY22.

Abstract Opinions: Of the 6 cases, 1 remained confidential and required an additional 5 Abstract Opinions. The Commission completed 4 Abstract Opinions in FY21 and 1 Abstract Opinion in FY22.

⁵ A Dismissed or Withdrawn case does not consider the many staff hours expended on jurisdictional analysis, factual development, legal analysis, and communications with the requester.



B. Ethics Complaints

Procedural continuances were processed in FY21 to address good cause extensions sought by subjects of complaint cases who provide waivers of the associated time deadlines, which has resulted in a larger ethics complaint case load being processed during FY21 and thereafter, without increases to staffing and resources. The Commission has proactively established operational priorities to focus available resources to reduce the backlog of complaint cases, which will continue to be implemented and reviewed by the Commission in the future.

FY21 Cases - Ethics Complaints Received in FY21: 69²

<u>Dismissed, without a Letter of Caution or Instruction</u>	<u>Withdrawn</u>	<u>Investigated</u>
42	1	26

Ethics Complaints Received in FY21, Resolved in FY21: 8

<u>Dismissed, with a Letter of Instruction</u>	<u>Dismissed, with a Letter of Caution</u>	<u>Dismissed by Panel without a Letter</u>	<u>Dismissed by Panel with a Letter of Instruction</u>	<u>Dismissed by Panel with a Letter of Caution</u>	<u>Stipulations/Opinions</u>
4	2	1	1	0	0

Ethics Complaints Received in FY21, Pending Resolution in FY22: 18

FY20 Cases - Ethics Complaints Received in FY20 carried forward to FY21: 22³

Ethics Complaints Received in FY20; Investigated/ Resolved in FY21: 9⁴

<u>Dismissed by Panel without a Letter</u>	<u>Dismissed by Panel with a Letter of Instruction</u>	<u>Dismissed by Panel with a Letter of Caution</u>	<u>Panel Deferral Agreements</u>	<u>Stipulations/Opinions</u>
4	2	0	0	3

Ethics Complaints Received in FY20; Pending Resolution in FY22: 13⁵

<u>Cases Pending Adjudicatory Hearing in FY22</u>	<u>Investigations Remain in Progress for FY22</u>
5	8

² Beginning FY21 all consolidated cases will be calculated as individual cases for statistical purposes (Complaint No. 20-081C was consolidated with 20-085C, counted as 2 cases herein, Complaint No. 21-028C was consolidated with 21-029C, counted as 2 cases herein). Statistics provided prior to FY21 may not match current statistics as the methodology was changed.

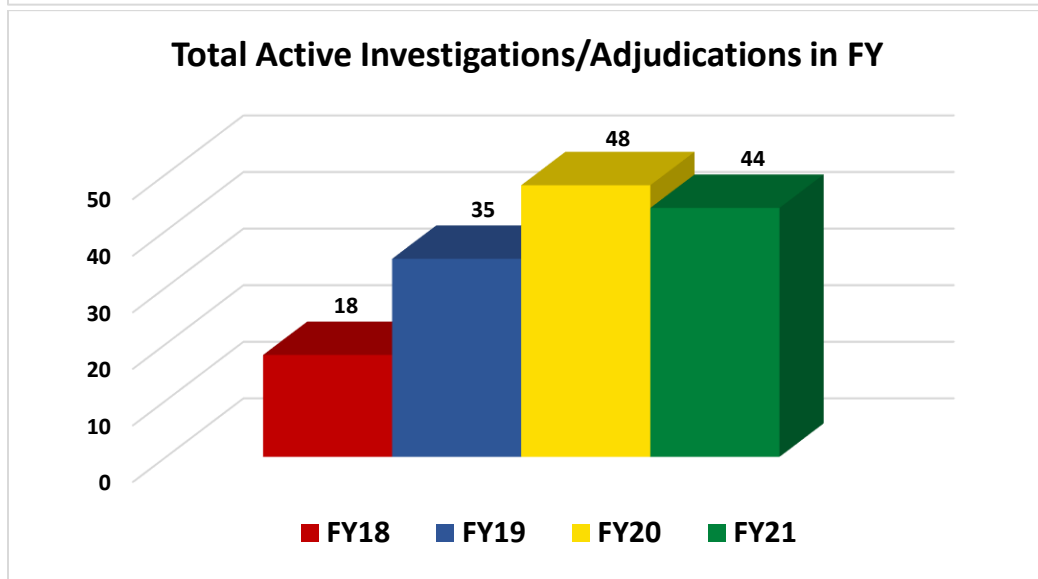
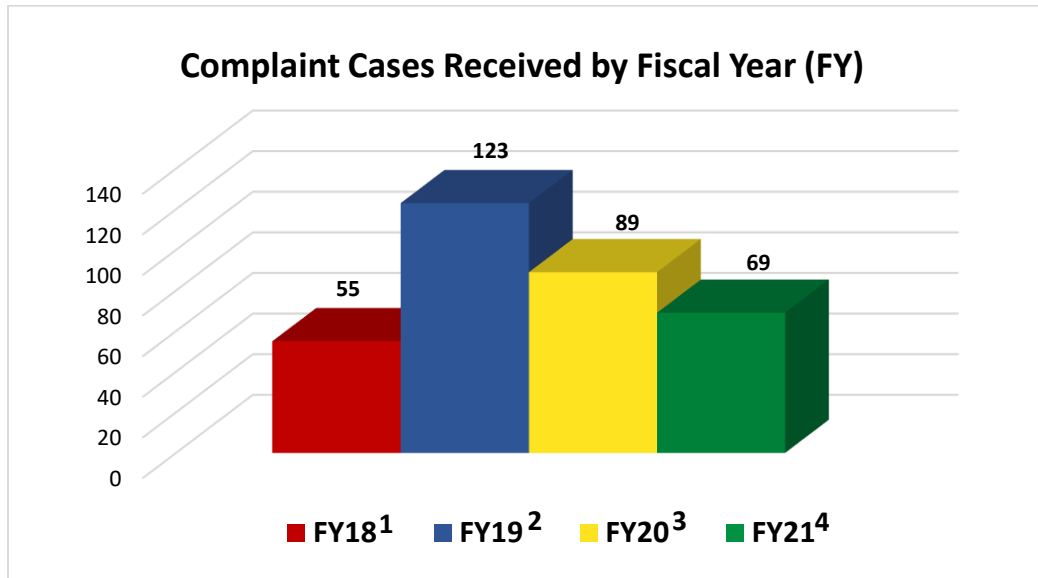
³ Complaint No. 19-081C was consolidated with 19-082C & 19-105C, counted as 3 cases herein.

⁴ 7 of the 20 cases carried forward from FY20 were resolved in FY21: Complaint Nos. **1)** 19-065C - panel dismissal with letter of instruction, **2)** 19-067C - panel dismissal, **3)** 19-081C - stipulation (consolidated with 19-082C & 19-105C, counts as 3 cases and 3 stipulations herein), **4)** 19-093C - panel dismissal, **5)** 19-113C - panel dismissal, **6)** 19-128C - panel dismissal with letter of instruction, and **7)** 19-129C - panel dismissal.

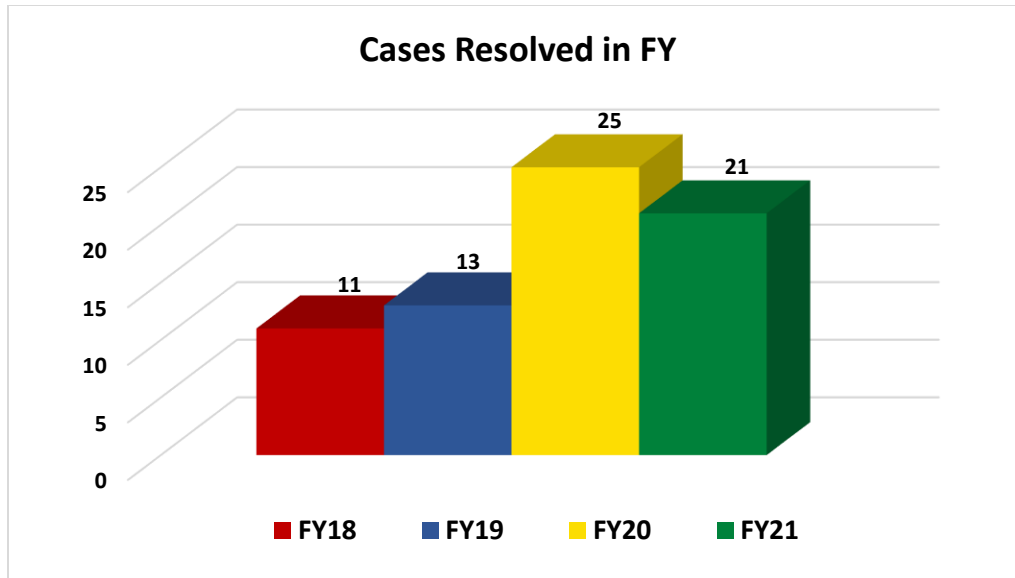
⁵ 5 of the 13 outstanding cases from FY20 are pending adjudicatory hearing in FY22: Complaint Nos. **1)** 19-088C, **2)** 19-095C, **3)** 19-102C, **4)** 20-007C, and **5)** 20-010C, the remaining 8 cases are pending investigation in FY22: Complaint Nos. **1)** 19-111C, **2)** 19-126C, **3)** 20-001C, **4)** 20-018C, **5)** 20-023C, **6)** 20-027C, **7)** 20-043C, and **8)** 20-048C.

FY19 Cases - Ethics Complaints Received in FY19; Investigated/Resolved in FY21: 4⁶

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



⁶ All 4 cases carried forward from FY19 were resolved in FY21: Complaint Nos. **1)** 18-060C - stipulation, **2)** 18-061C - stipulation (consolidated with 18-139C, counted as 2 cases herein), and **3)** 19-035C - panel dismissal with letter of instruction.



Complaint Case Statistics by Fiscal Year (FY) Footnotes

¹ **FY18**

13 Active Investigations of Complaints received in FY18; 5 additional Active Investigations from prior Fiscal Years.

- Total Active Investigations = 18
- Total Cases Resolved in FY18 = 11

² **FY19**

28 Active Investigations of Complaints received in FY19; 7 additional Active Investigations from prior Fiscal Years.

- Total Active Investigations = 35
- Total Cases Resolved in FY19 = 13

³ **FY20**

25 Active Investigations of Complaints received in FY20; 23 additional Active Investigations from prior Fiscal Years (including 1 from FY18).

- Total Active Investigations = 48
- Total Investigations Resolved = 25

⁴ **FY21**

18 Active Investigations of Complaints received in FY21; 26 additional Active Investigations from prior Fiscal Years (including 4 from FY19).

- Total Active Investigations = 44
- Total Investigations Resolved = 21

Dismissed/ Withdrawn Cases – No Investigation

In FY18, 25 of the 39 Complaints were dismissed/ withdrawn.

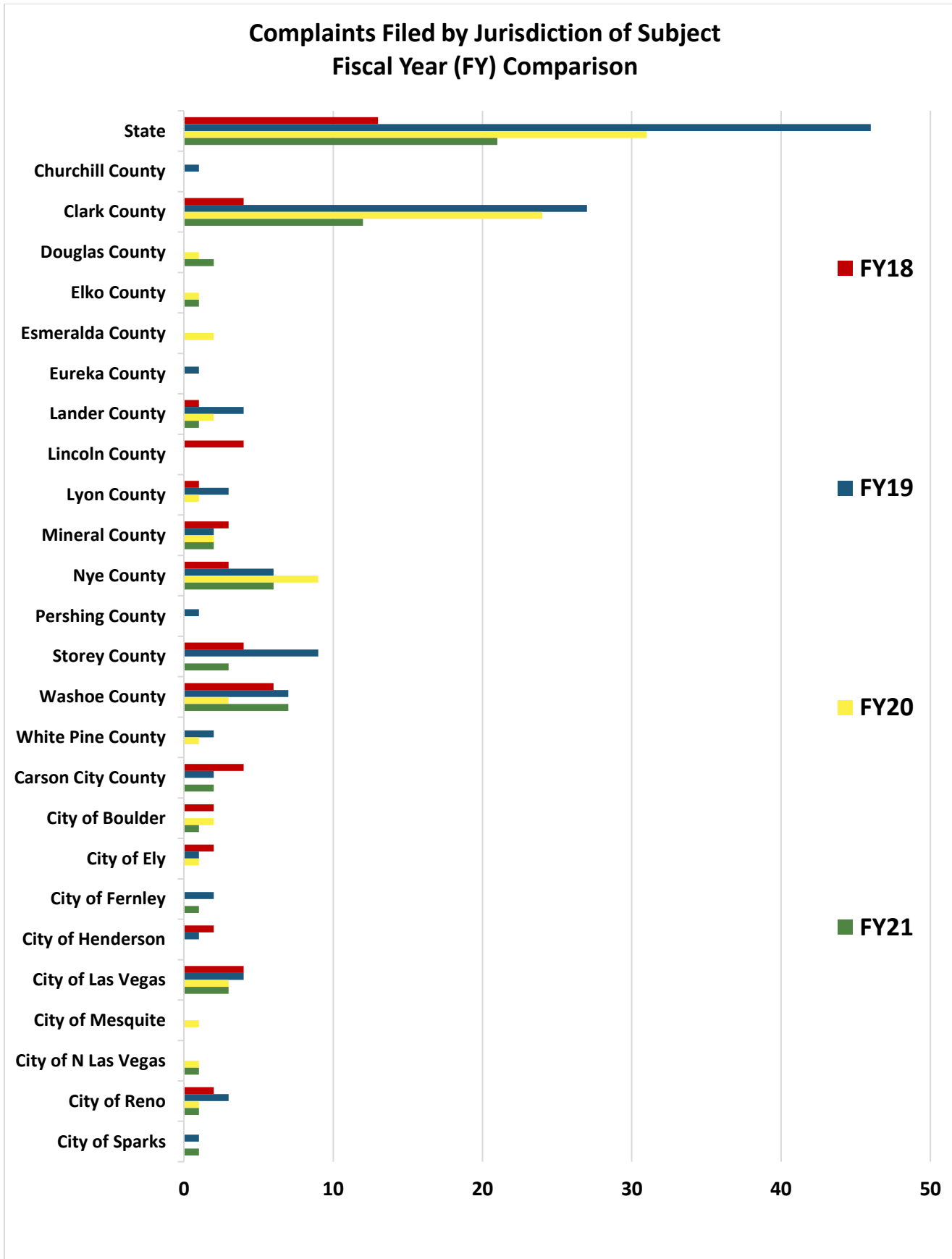
In FY19, 81 of the 123 Complaints were dismissed/ withdrawn.

In FY20, 64 of the 89 Complaints were dismissed/ withdrawn.

In FY21, 47 of the 69 Complaints were dismissed/ withdrawn.

The Commission reviews every Complaint and issues a Formal Order in each case regarding its jurisdiction and determination whether to formally investigate the allegations. Staff prepare a written recommendation in every case regarding whether the Commission has jurisdiction in the matter and whether the Complaint is filed with sufficient evidence in support of the allegations to warrant an investigation. The recommendation includes preliminary investigation, legal research and legal analysis with 4-5 staff members working on each case. Many cases are dismissed with a separate Letter of Caution or Instruction.

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C. Penalties/Sanctions Imposed

In ethics complaints in which the Commission finds there to be a willful violation, the Commission has authority to impose certain fines and penalties. Payment schedules were established in some cases to permit installment payments for amounts due, with some installment payments extending into future fiscal years, depending on the amount of the penalty imposed. Pursuant to State law, the Commission collects and deposits all funds received from the imposition of sanctions into the State General Fund, and the Commission does not receive any associated benefit to its budget. Subjects who fail to remit payment of a civil sanction are reported to the State Controller for collection.

In FY21, the Commission imposed \$44,787.74 in civil penalties, representing a significant upward trend from the previous year’s \$5,000. Total collections during FY21 amount to \$36,999.40.

<u>FY 2020 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 FY20</u>
Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority	6/17/2019	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$8,700	\$2,269.56
<u>FY 2021 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 FY21</u>
Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority	6/17/2019	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$8,700	\$5,787.40
Donald Smith, Clinical Social Worker II, Department of Health & Human Services	8/19/2020	<u>NRS 281A.400(1), (2), and (7)</u>	\$6,500	\$4,566.67
Rossi Ralenkotter, Former Chief Executive Officer, Las Vegas Convention & Visitors Authority	8/19/2020	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$24,406.38	\$24,406.38
John Brig Lawson, Former Senior Director of Business Partnerships, Las Vegas Convention & Visitors Authority	11/18/2020	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$13,881.36	\$2,238.95
<u>FY 2022 Outstanding Sanctions Owed</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Owed in FY22</u>
Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority	6/17/2019	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$8,700	\$643.04
Donald Smith, Clinical Social Worker II, Department of Health & Human Services	8/19/2020	<u>NRS 281A.400(1), (2), and (7)</u>	\$6,500	\$1,933.33
John Brig Lawson, Former Senior Director of Business Partnerships, Las Vegas Convention & Visitors Authority	11/18/2020	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$13,881.36	\$11,642.41

D. Acknowledgment of Ethical Standards Forms

Pursuant to NRS 281A.500, certain public officers are required to file with the Commission an Acknowledgment of Ethical Standards Forms (“Acknowledgment Forms”) after their election or appointment to public office. Elected and appointed public officers are encouraged to visit the Commission’s website or contact Commission offices to determine their individual filing requirements. In furtherance of transparency to the public, the Commission also published filed Acknowledgment Forms on the Commission’s website. In FY21, the Commission received 625 filings, which was slightly lower than FY20, which may be the result of delays in hiring to meet anticipated budgetary shortfalls associated with the pandemic at the State and local levels.

V. Outreach and Education Program

In FY21, the Executive Director continued the program of outreach and training to Nevada’s public officers and employees, and the general public. To address the effects of budgetary reductions on in-person trainings, the Commission increased its virtual training and outreach programs and offered training materials on its website and via YouTube.

In FY21, the Commission provided 13 in-person or virtual trainings. The number of attendees at these training is difficult to compile based upon the virtual environment and technology issues, including the fact that the Commission’s website training is available for viewing at any time and could include multiple viewers. The Commission receives data on the number of “views” received, which confirms 1,376 views during FY21, which number is included as part of total trainings data provided.

Virtual and alternative training methods that are easily accessible is the trend of the future. In addition to the Commission’s training programs, 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 government attorneys regarding the provisions of Nevada’s Ethics in Government Law set forth in NRS Chapter 281A, the ability for public officers and employees to obtain guidance on their own compliance obligations and processes to file

ethics complaints, including the statutory requirement that the requester provide sufficient evidence to support the alleged violation of the Ethics Law.

The Commission will continue to evaluate and determine where best to focus its training and outreach efforts to fulfill its important mission to providing outreach and education about the requirements of Nevada's Ethics in Government Law.

VI. Litigation and Appellate Review

During FY21, the Commission defended its decisions in proceedings including judicial review in State and other courts, some of which related to assertion of the statutory confidentiality protections established for advisory opinions issued by the Commission.

Smith v. Review Panel of the Nevada Commission on Ethics Eighth Judicial District Court, Case No. A-20-812778-J

Donald Smith is the subject of three ethics complaints administratively identified as complaint numbers 19-081C, 19-082C and 19-105C ("Complaints"). On March 24, 2020, Smith filed the petition to challenge the three-member Review Panel's determination referring certain allegations set forth in the Complaints to the Commission for adjudicatory proceedings pursuant to NRS 281A.730 and he also filed an Application to Stay the administrative proceedings before the Commission.

On April 22, 2020, the Review Panel filed a motion to dismiss asserting the District 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 and provisions of NRS Chapter 281A that asserted the Review Panel's determination was not a final decision, but is an interlocutory order, and the final decision to be issued by the Commission and related rights of judicial review provide petitioner with an adequate remedy at law. Further, the motion asserted that petitioner did not properly name all parties and comply with other statutory requirements.

On April 22, 2020, the Review Panel also filed an opposition to petitioner's Application for Stay and a Motion to Stay the briefing schedule related to the merits of the

judicial review until such time as the Court ruled upon the motion to dismiss and whether it had jurisdiction to consider the petition. The parties thereafter stipulated to the Review Panel's requested stay of proceedings, which stipulation was confirmed by court order issued on June 3, 2020.

The issues set forth in motion to dismiss were fully briefed and oral arguments were presented to the District Court on June 10, 2020. The District Court issued a minute order dated June 16, 2020, granting the motion to dismiss in favor of the Commission instructing that judicial review of the final decision of the Commission will provide petitioner with an adequate remedy at law and therefore the court did not have subject matter jurisdiction under NRS 281A.130 to review the interlocutory order issued by the Review Panel. The District Court directed the preparation of a proposed order consistent with the minute order and the final order was issued on July 6, 2020.

Petitioner had a thirty-day period and associated statutory rights to pursue an appeal to the Nevada Supreme Court. However, Petitioner did not seek the appeal and the Commission proceeded with adjudication of the merits of allegations set forth in the Ethics Complaints in administrative proceedings, and the case was resolved by a stipulation dated August 3, 2020 and approved by the Commission.

In re Gypsum Resources Materials, LLC
United States Bankruptcy Court, District of Nevada
Case No.: 19-14796-MKN, Adv. Proc. No. 19-01105-MKN

On August 3, 2020, the Commission received a subpoena issued in an adversary proceeding filed in the In re Gypsum Resources Materials, LLC, Chapter 11 bankruptcy case, which sought certain records pertaining to confidential advisory opinion number 19-003A. The Commission pursuant to the confidential advisory opinion process established in NRS Chapter 281A ("Ethics Law") may provide guidance on their own circumstances to public officers and public employees about their compliance obligations under the Ethics Law.

The records related to an advisory opinion are confidential under the Ethics Law, unless the requester waives confidentiality, with the exception of an Abstract Opinion that removes identifying characteristics of the requester. The federal subpoena sought

confidential information protected by the Ethics Law and privileged information protected by the Nevada Revised Statutes.

The Commission prepared a privilege log and objected to the subpoena asserting challenges of relevance under Federal Rule of Civil Procedure 26(b), NRS Chapter 281A confidentiality protections established by the Nevada Legislature to protect the confidential advisory opinions process and records, qualified (deliberative process) privilege, attorney-client privilege, and attorney work-product privilege. Upon review of a motion for a protective order filed by a party in the adversary proceeding seeking protection of the records of the Commission, the court determined that certain records were relevant to the adversary proceeding based upon a finding that requester, by his own conduct, had waived the right to confidentiality.

All privilege protections unique to the Commission were applied by the court. The court further ordered that those records that were to be produced based upon the finding of waiver by the requester would nevertheless remain confidential pursuant to NRS 281A.685 and not be subject to public dissemination. The court directed that such records would be subject to a stipulated confidentiality and protective order entered by the court on October 5, 2020.

VII. Closing Remarks

FY21 can be best summarized as a year of telecommuting and new training opportunities to increase education about Nevada's Ethics in Government Law. Even though the COVID-19 pandemic and resultant budget reductions affected its operations, the Commission deftly navigated these challenges by being available to assist the public, increasing its virtual training programs, maintaining timely issuance of preventative advice to public officers and public employees, and efficiently processing complaint cases in a virtual environment to protect the health and safety of all those appearing before the Commission, with the understanding of the circumstances presented by subjects requesting good cause continuances.

While the number of advisory opinions and new complaint cases decelerated during FY 21 from the prior year of record filings, the Commission remained steadfast in its commitments to improve its educational programs and advisory opinion and ethics

complaint processes by preparing and presenting AB 65 to the 81st Legislative session. The Commission is effectively poised to consider the available avenues to address the important procedural changes covered by AB 65 in the upcoming biennium through a future bill draft request or regulations.

The Commission and its staff will continue to utilize virtual opportunities and developing technology, and will focus available resources to improve services to the public to ensure the public's trust in government oversight is maintained.



Nevada Commission on Ethics

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