

# **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  
Tuesday, July 25, 2023, at 10:00 a.m.  
at the following location:

**Nevada Legislative Building  
Room 4100  
401 S. Carson Street  
Carson City, NV 89701**

and via videoconference to:

**Grant Sawyer State Building  
Room 4401  
555 E. Washington Avenue  
Las Vegas, NV 89101**

**Zoom Meeting Information**

Zoom Meeting Telephone Number: 888-475-4499  
Meeting ID: 894 8406 7475

These minutes constitute a summary of the above proceedings of the Nevada Commission on Ethics. A transcript of the meeting is available for public inspection at the Commission's office. A recording of the meeting is available on YouTube, [Part 1](#) and [Part 2](#).

1. Call to Order and Roll Call.

Chair Kim Wallin, CPA, CMA, CFM appeared in-person in Room 4100 of the Nevada Legislative Building in Carson City and called the meeting to order at 10:07 a.m. Also appearing in-person in Carson City were Commissioners Barbara Gruenewald, Esq., Teresa Lowry, Esq., John T. Moran III, Esq., Stan R. Olsen, and Thoran Towler, Esq. Commissioner Amanda Yen, Esq. appeared via Zoom videoconference. Vice-Chair Brian Duffrin was excused. Present for Commission staff in Carson City were Executive Director Ross E. Armstrong, Esq., Associate Counsel Elizabeth J. Bassett, Esq., Investigator Erron Terry, Senior Legal Researcher Wendy Pfaff and Executive Assistant Kari Pedroza. Conflict Counsel Wayne Klomp, Esq. and Deputy Attorney General Laena St-Jules, Esq. also appeared in person in Carson City.

2. Public Comment.

Executive Director Armstrong noted that the written public comment submitted prior to the Commission's June meeting regarding Item 5, which Item was removed from the June meeting and placed on the July 25 meeting, was included in the meeting materials. (See Attachment A)

There was no public comment provided in-person.

3. Approval of Minutes of the June 13, 2023, Commission Meeting.

Chair Wallin stated that all Commissioners were present for the June 13 Commission Meeting, except for Commissioner Yen who was excused, and Commissioners Moran and Olsen who were not yet appointed to the Commission and therefore precluded from participating in this item.

Commissioner Towler moved to approve the June 13, 2023, Commission Meeting Minutes as presented. Commissioner Gruenewald seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Commissioner Gruenewald:	Aye.
Commissioner Lowry:	Aye.
Commissioner Moran:	Abstain.
Commissioner Olsen:	Abstain.
Commissioner Towler:	Aye.
Commissioner Yen:	Abstain.

4. Welcome and Introductions of new Commissioners

- John T. Moran III, Esq.
- Stan R. Olsen

Chair Wallin introduced and welcomed newly appointed Commissioners Moran and Olsen to the Commission and outlined what they can expect in their roles as Ethics Commissioners.

5. Hearing on Dispositive Motions in Consolidated Case Nos. 21-062C & 21-082C regarding Joseph M. Lombardo, Sheriff of Clark County, State of Nevada, including providing authority to the Chair of the Commission to prepare and issue the order reflecting the Commission's decision and other matters relating thereto, in consultation with Counsel for the Commission.

- The Commission may receive information or evidence concerning this matter and deliberate in a closed session pursuant to NRS 281A.760 (see notes below).
- The Commission will take action on the item in open session.

Chair Wallin introduced the item and stated for the record that proper notice had been provided and waivers were received regarding this item. Chair Wallin further noted that Vice-Chair Duffrin and Commissioner Gruenewald served as members of the Review Panel and would be precluded from participating in the consideration of the dispositive motions under this item pursuant to NRS 281A.220(4).

Chair Wallin asked if any Commissioners needed to make a disclosure on this item.

Commissioner Moran disclosed that he is an acquaintance of former Sheriff Lombardo and now Governor Lombardo and he has known Governor Lombardo in a professional or public capacity for a number of years. Commissioner Moran stated that he would categorize the current relationship as professional acquaintances rather than a personal friendship. Commissioner Moran further disclosed that Governor Lombardo appointed him as a Commissioner to the Nevada Commission on Ethics, with a term to start October 1, 2023 and that upon the unexpected resignation of the Commissioner he was scheduled to replace, his term started on July 1, 2023. Commissioner Moran stated that under NRS 281A.065, his relationship with Governor Lombardo is not within the definition of commitment in a private capacity to the interests of another person and consequently does not require disclosure or abstention under the Ethics Law pursuant to NRS 281A.420. He added that nothing in Judicial Cannon 2.11, the Code of Judicial Conduct, required disclosure or abstention pursuant to the manner of his appointment. Commissioner

Moran shared his belief that he would be fair and impartial in considering the matter and have no actual or perceived bias. He added that neither his acquaintanceship with Governor Lombardo nor his appointment to the Commission on Ethics by Governor Lombardo would materially affect his independence of judgment or that of a reasonable person in his situation. Commissioner Moran stated that he would be participating in and voting on the matter.

Commissioner Olsen disclosed that he is a former coworker of former Sheriff Lombardo, having worked at the Las Vegas Metropolitan Police Department at the same time. Commissioner Olsen categorized the current relationship with Governor Lombardo as former coworkers and professional acquaintances. Commissioner Olsen further disclosed that Governor Lombardo appointed him as a Commissioner to the Nevada Commission on Ethics with a term starting on July 1, 2023 to fill the vacancy caused by the expiration of Commissioner Oscarson's term. He stated that his appointment was made pursuant to statute and in the ordinary course. Commissioner Olsen shared that he registered as a lobbyist during the 2023 Legislative Session of the Nevada Legislature and since its conclusion he has not communicated directly with a State Legislator or member of a local Legislative body on anyone's behalf and does not plan to do so in the future. Commissioner Olsen stated that under NRS 281A.065, his relationship with Governor Lombardo is not within the definition of commitment in a private capacity or in the interest of another person and consequently does not require disclosure or abstention under the Ethics Law pursuant to NRS 281A.420. He added that nothing in Judicial Canon 2.11, the Code of Judicial Conduct, required disclosure or abstention pursuant to the manner of his appointment. Commissioner Olsen shared his belief that he would be fair and impartial in considering the matter and have no actual or perceived bias. He added that neither having been a former coworker of Governor Lombardo nor his appointment to the Commission on Ethics by Governor Lombardo would materially affect his independence of judgment or that of a reasonable person in his situation. Commissioner Olsen stated that he would be participating in and voting on the matter.

Chair Wallin stated that a Request for Judicial Notice had been filed by counsel for the subject as well as an objection to an exhibit attached to the subject's motion for summary judgment. The Request for Judicial Notice requested that the Commission consider an article and still photograph attached to the Request. She outlined that the Executive Director requests that the Commission not consider an email from Associate Counsel Bassett to subject's Counsel Mirkovich during settlement discussions. Chair Wallin noted that the motions, filed by both parties, contain numerous exhibits and neither party requested that the Commission take notice of those documents. Chair Wallin admitted Exhibits 1 and 2 attached to the Request for Judicial Notice into the record. Chair Wallin admitted Exhibit 37 attached to Mr. Lombardo's Motion for Summary Judgment into the record and the Executive Director's objection was overruled.

Chair Wallin informed her fellow Commissioners that all deliberations would be done in a closed session.

Chair Wallin asked the parties in the Complaint to identify themselves for the record. Associate Counsel Elizabeth J. Bassett, Esq. appeared on behalf of Executive Director Armstrong before the Commission in this matter. Colby Williams, Esq. from Campbell and Williams, appeared in person on behalf of Joseph Lombardo, who was not in attendance but was provided proper notice of the Agenda Item and understood that the Commission would proceed in his absence. Mr. Williams noted that his colleagues Samuel Mirkovich, Esq., Phillip Erwin, Esq. and Donald J. Campbell, Esq. were also in attendance in Carson City.

Chair Wallin outlined the dispositive motion hearing order to be as follows:

1. Associate Counsel present argument on the Executive Director's Motion for Summary Judgment
2. Counsel Williams present argument on Mr. Lombardo's Motion for Summary Judgment and present counter arguments to the Executive Director's Motion for Summary Judgment

3. Associate Counsel present argument on the Executive Director's Opposition to Mr. Lombardo's Motion for Summary Judgment and present final remarks
4. Counsel Williams present final remarks

Associate Counsel Elizabeth J. Bassett, Esq. requested that opposing counsel be precluded from using the PowerPoint he submitted as an exhibit approximately 55 minutes prior to the start of the meeting that day. Counsel Williams responded that the PowerPoint is a demonstrative presentation. Chair Wallin allowed the PowerPoint to be admitted for Counsel Williams' use in his presentation but not as an exhibit. Counsel Williams assured the Commission that the PowerPoint did not include additional evidence. Associate Counsel Bassett raised a question as to whether she would have the chance to object to any new evidence included in the PowerPoint and Chair Wallin responded that Associate Counsel Bassett could object during opposing counsel's presentation.

Commissioner Yen asked if the PowerPoint would be displayed on the screen as she did not receive it via electronic mail. Conflict Counsel Klomp informed Commissioner Yen that he would email her the PowerPoint presentation.

Commissioner Moran requested that both parties reserve objections until the conclusion of either opposing party's opening statements and not interrupt one another's presentations. Chair Wallin stated she would allow parties to object as needed.

Counsel Williams noted his potential objection to Exhibit 36 of the Executive Director's Motion for Summary Judgment, dependent on Associate Counsel Bassett's argument associated with the Exhibit. Chair Wallin allowed Counsel Williams to reserve that objection.

Associate Counsel Bassett presented the Executive Director's Motion for Summary Judgment. She argued that the Executive Director determined that sixty-eight (68) alleged violations of the Ethics Law, specifically NRS 281A.400(2) and (7) were properly brought before the Commission and judgment should be granted by the Commission as the pleadings and evidence demonstrate that no genuine issues of material fact exist in regard to these specific violations. Associate Counsel Bassett outlined potential civil penalties allowed for violations determined as willful by the Commission.

On behalf of Mr. Lombardo, Counsel Williams argued the merits of his client's Motion for Summary Judgment before the Commission requesting Summary Judgment be granted by the Commission on the following alleged violations of Ethics Law provisions, NRS 281A.400(2) and (7) and also presented his client's Opposition to the Executive Director's Motion for Summary Judgment.

Associate Counsel Bassett presented the Executive Director's Opposition to Mr. Lombardo's Motion for Summary Judgment and final remarks.

Counsel Williams presented final remarks on behalf of his client, Mr. Lombardo.

All Commissioners with the exception of Commissioner Gruenewald asked questions of Associate Counsel Bassett and Counsel Williams, and each provided responses to the questions.

Chair Wallin called the meeting into confidential closed session for Commission deliberations at 1:43 p.m.

The Commission deliberated in a confidential closed session at an off-site location.

Chair Wallin called the meeting back into open session at 3:59 p.m.

Commissioner Yen stated for the record that the Commission has reviewed the entire record for consolidated matters 21-062C and 21-082C, and has fully considered the pending motions and arguments of counsel. Commissioner Yen thanked Counsel for their excellent arguments.

Commissioner Yen moved to grant Summary Judgment in favor of Governor Lombardo with respect to the claims of violations of NRS 281A. 400(2). Commissioner Yen further moved to grant Summary Judgment to the Executive Director with respect to the claims of violations of NRS 281A.400(7), and a finding that the violations are four (4) in number; one for each video or photograph created by the campaign. With purposes of deterrence and education as the Commission's guiding principles, Commissioner Yen moved to adopt a finding of willfulness and to impose civil penalties in the amount of \$20,000, and issue a censure to Governor Lombardo. Commissioner Yen moved that all other penalties requested by the Executive Director are denied. Commissioner Yen included in her motion direction to counsel for the Commission to prepare an order in coordination with the Chair to reflect the determination of the Commission. Commissioner Lowry seconded the motion. The Motion was put to a vote and carried as follows:

Chair Wallin:	Aye.
Commissioner Gruenewald:	Abstain pursuant to NRS 281A.220.
Commissioner Lowry:	Aye.
Commissioner Moran:	Nay.
Commissioner Olsen:	Nay.
Commissioner Towler:	Aye.
Commissioner Yen:	Aye.

Chair Wallin thanked Mr. Lombardo's counsel and Associate Counsel Bassett for their presentations and arguments. Counsel Williams thanked the Commissioners for their time and consideration of the matter.

6. Nominations and election of the Commission Chair and Commission Vice Chair for the upcoming year.

Chair Wallin introduced the item and opened it up for nominations.

Commissioner Lowry made a motion to reappoint Commissioner Wallin as Chair and to appoint Commissioner Towler as Vice-Chair of the Commission. Commissioner Gruenewald seconded the motion. The Motion was put to a vote and carried unanimously.

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

- a. Quarterly Case Log
- b. Annual Report

Chair Wallin introduced the Item and asked Executive Director Armstrong for his presentation.

a. Quarterly Case Log: Executive Director Armstrong referenced the updated Quarterly Case Logs provided in the meeting materials noting that the Commission's case log is current, and complaint investigations are being completed in a timely matter.

Executive Director Armstrong thanked Associate Counsel Bassett for all her hard work on Requests for Advisory Opinions in the absence of a Commission Counsel.

b. Annual Report: Executive Director Armstrong outlined the typical Annual Report approval timeline noting that the Commission does not usually have a July meeting and that lends to more time to work on the annual report as approval of the report is due by the Commission's second meeting of the new fiscal year.

Executive Director Armstrong referenced the annual report draft provided in the meeting materials and encouraged feedback from the Commission either during the meeting or via electronic mail prior to the next Commission meeting's materials due date. He highlighted the Commission's brand project, new online learning management system and increase in resolved cases during FY23.

Chair Wallin provided her feedback on the readability of the charts and graphs included in the Appendices.

Executive Director Armstrong informed the Commission that with the personnel vacancy savings we were able to hire Michael Briceno as a temporary contract administrative assistant to complete the records retention project at the Commission's office. He thanked Michael for his hard work in going through boxes and boxes of paperwork.

Chair Wallin thanked Michael Briceno for his hard work at the Commission's office.

Chair Wallin asked Executive Director Armstrong about the location of the Commission's August meeting and Executive Director Armstrong reiterated the intention to hold the meeting in Winnemucca or other rural Nevada location to allow more constituents the opportunity to attend a Commission meeting.

Commissioner Moran suggested that the August meeting be held in Tonopah as it is halfway between Carson City and Las Vegas. Commissioner Olsen commented his agreement with Tonopah as the meeting location as opposed to Winnemucca.

Commissioner Gruenewald requested that the Commission not go to a rural location during the summer months. Chair Wallin suggested Tonopah in November.

Executive Director Armstrong summarized that the Commission would meet in Reno in August, Las Vegas in October and Tonopah in November.

Commissioner Gruenewald moved to accept the Executive Director's agency status report as presented. Commissioner Towler 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 requested that an item regarding the appointment of the Personnel Subcommittee of the Commission on Ethic be placed on the August Commission Meeting Agenda.

Chair Wallin thanked Commission staff for all of their hard work. She thanked Executive Assistant Pedroza for all of her meeting coordination efforts for the meetings that day.

Chair Wallin confirmed that new Commission Counsel Brandi Jensen would be starting with the Commission on August 7, 2023.

9. Public Comment.

There was no Public Comment.

10. Adjournment.

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

The meeting was adjourned at 4:16 p.m.

Minutes prepared by:

[/s/ Kari Pedroza](#)

Kari Pedroza  
Executive Assistant

[/s/ Ross Armstrong](#)

Ross Armstrong, Esq.  
Executive Director

Minutes approved August 23, 2023:

Kim Wallin, CPA, CMA, CFM  
Chair

Thoran Towler, Esq.  
Vice-Chair

DRAFT

# **Attachment A**

**From:** [john baietti](#)  
**To:** [Nevada Commission on Ethics](#)  
**Subject:** Joe Lombardo clothing Scandal  
**Date:** Thursday, June 8, 2023 3:05:29 PM

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**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

THIS PREPOSTEROUS SCANDAL must end !! I'm asking the commision on ethics to number 1 stay out of politics. This is a POLITICAL PLOY by a POLITICAL HACK!!! Stick with criminal behavior or actions. Wearing clothes is NOT a crime being seen in public with a legally designated brain dead moron like Dfalco IS CRIMINAL!!! Maybe ask Delfalco if Joes shoes were OK? Joe was our Sheriff!!!! ----Nobody elected/appointed Dumbo Delfalco Fashion Police Commissioner I'm asking the commision to please use common sense and throw DEDUMB DEIDIOT DEFALCO crazy idea that that we need to watch what we wear OUT!!!!!!

We do NOT do fashion police in the Great State of Nevada he "Deweirdo" is making a joke of our Governor and our State

THANKYOU==John Baietti

johnbaietti12345678@gmail.com---702 497 7012

6652 Goldencreek wy Las Vegas NV 89108

P.S---tell the Penalty Finders Committee [\$1.6 million ] to STOP smoking POT when determining a FINE!!!!

**From:** [Kathy Benson](#)  
**To:** [Nevada Commission on Ethics](#)  
**Subject:** Public Comment Re Joseph M Lombardo Matter  
**Date:** Monday, June 12, 2023 4:05:03 PM  
**Attachments:** [Nevada Commission on Ethics-Lombardo Matter June 2023.pdf](#)

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**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Sirs/Ladies:

I submit the attached letter regarding the above matter.

June 12, 2023

NEVADA COMMISSION ON ETHICS  
704 West Nye Lane, Suite 204  
Carson City, NV  
via email: [ncoe@ethics.nv.gov](mailto:ncoe@ethics.nv.gov)

Re: Public Comment on Consolidated Case Nos. 21-062C & 21-082C regarding Joseph M. Lombardo, Sheriff of Clark County, State of Nevada

Dear Sirs/Ladies:

This letter is submitted to express my opinion as a citizen of the State of Nevada in the above matter.

I want to start by saying that I believe the penalties and fine that the Commission has asked of Governor Lombardo to be egregious. As to the Commission's determination, it appears to deviate from Commission precedent (ROF 14-71C – Jim Pitts) and the acknowledgement by the Commission that "...a February 29, 2012 opinion of the U.S. Office of Special Counsel which concluded that the Federal Hatch Act, 5 U.S.C. 1502(a)(1), would not prohibit a candidate subject to its regulation from wearing his/her uniform or using his/her official title while campaigning for reelection." (ROF 14-71C – Jim Pitts, Section 4m.) As a private citizen, I do not have the time to research all issues, and acknowledge there may be other precedents of which I am unaware.

Aside from the above, I believe the determination by the Commission gives an impression of political bias. Not just because of the Damian Sheets statements and the excessive penalties/fine, but because of the "lawfare" being utilized throughout the Country. I believe the suggested penalty that an ethics officer be designated to Governor Lombardo's office is for the purpose of "creating" perceived ethics violations.

I would also like to address the case of Justin Jones. I would hope the Commission would revisit the conduct of Justin Jones. I would also suggest that former Governor Steve Sisolak is complicit in that matter. As a private citizen working for a private company over the years, if I was ever informed of a "retention order", I knew I had to be very careful and always did my best to not be in violation of such order. It appears these laws apply to few.

Thank you for the opportunity to submit my input regarding the above matter.

Regards,

  
Kathy M Benson

# **Agenda Item 4**



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Joseph M. Lombardo**,  
Sheriff of Clark County,  
State of Nevada,

Ethics Complaint  
Consolidated  
Case Nos. 21-062C, 21-082C

\_\_\_\_\_ Subject. /

### **PROPOSED OPINION**

#### **I. INTRODUCTION AND PROCEDURAL HISTORY**

Pursuant to NRS 281A.710(1)(b), the Executive Director initiated an Ethics Complaint with the Nevada Commission on Ethics ("Commission") on September 1, 2021 (Case No. 062C), alleging that then Sheriff Joseph M. Lombardo ("Lombardo") violated the provisions of NRS 281A.400(2) and (7). On September 15, 2021, the Commission conducted its jurisdictional review pursuant to NRS 281A.715 and issued an *Order Initiating Ethics Complaint, Accepting Jurisdiction, and Directing an Investigation*.

On October 6, 2021, the Commission received a waiver of statutory time requirements in Case No. 21-062C for the Executive Director to complete his investigation and present a recommendation to the review panel, and for the review panel to determine whether there is just and sufficient cause for the Commission to render an opinion.

On or about September 21, 2021, the Commission served Lombardo via certified mail a *Notice of Complaint and Investigation*, advising him of the allegations in Case No. 21-062C. On or about January 14, 2022, Lombardo, by and through his attorneys Campbel, submitted a response to the allegations.

The Commission received a second Ethics Complaint dated October 21, 2021 (Case No. 082C), alleging violations of NRS 281A.400(7) by Lombardo. The Commission conducted its jurisdictional review of the second Complaint on November 18, 2021, and issued its *Order on Jurisdiction and Investigation*. The Commission consolidated Case Nos. 21-062C and 21-082C on November 18, 2021 ("Consolidated Case") pursuant to its *Order on Consolidation*.

As indicated above, the Commission accepted jurisdiction of the Consolidated Case and directed the Executive Director to investigate and serve notice regarding Lombardo's alleged violations of NRS 281A.400(2) (using position in government to grant an unwarranted advantage to himself or others) and NRS 281A.400(7) (using governmental time, property, equipment, or other facility to benefit a significant personal or pecuniary interest).

On February 24, 2022, the Commission's Review Panel ("Panel")<sup>1</sup> issued a *Review Panel Determination and Referral Order* in the Consolidated Case finding just and sufficient cause for the Commission to hold a hearing and render an opinion in this matter based on credible evidence that alleged Lombardo violated NRS 281A.400(2) and (7).

On February 24, 2022, pursuant to NRS 281A.745 Lombardo waived the statutory time requirements for the Commission to hold an adjudicatory hearing and render an opinion. Additionally, on March 9, 2022, Lombardo waived the notice required under NRS 241.033(1) when considering the character, misconduct, or competence of a subject in ethics complaint proceedings.

On December 12, 2022, the Commission issued an *Amended Notice of Hearing and Scheduling Order and Notice of Hearings and Meetings to Consider Your Character, Alleged Misconduct, Professional Competence or Health*, setting a hearing for dispositive motions for February 15, 2023, and an adjudicatory hearing for May 17, 2023.

On January 12, 2023, the Parties jointly submitted their *Stipulated Facts and Documents* in which they set forth the undisputed facts and uncontested documents for consideration. As reflected in the *Second Amended Notice of Hearing*, the Parties further stipulated to submit this matter on cross motions for summary judgment with each party filing a motion and a response without a reply in support of their respective motions. See *Second Amended Notice of Hearing and Scheduling Order*.

Each Party filed a motion for summary judgment on March 22, 2023, and a response to the opponent's motion on April 19, 2023. The briefing on summary judgment from both parties contained various exhibits and documents in support of the respective motions. The Executive Director objected to one exhibit attached to Lombardo's Motion for Summary Judgment, which contained a settlement communication (Exhibit 37). Lombardo also filed a Request for Judicial Notice on June 6, 2023, seeking to have the Commission take notice of a news report, embedded video, and screen capture from that video.

In a Motion to Continue filed by Lombardo filed on April 27, 2023, then Governor Lombardo sought to continue the scheduled dispositive motion hearing until after the end of the Legislative Session. Pursuant to that request, the hearing on the cross motions for summary judgment was continued to June 13, 2023. See *Order Granting Motion for Continuance* (May 10, 2023); see also *Third Amended Notice of Hearing and Scheduling Order* (May 4, 2023). Upon learning that not all Commissioners would be present in person at the scheduled dispositive motion argument, on June 9, 2023, Lombardo again moved to continue the hearing on dispositive motions so that all Commissioners could attend that meeting in person. Although the 82<sup>nd</sup> Session of the Nevada Legislature had ended by that time, two special sessions of the Legislature had been called, and the 35<sup>th</sup> Special Session of the Legislature was ongoing. Based on that conflict with the hearing date, the Commission again continued the dispositive motion hearing until July 25, 2023. *Order Continuing Hearing* (June 12, 2023); *Fourth Amended Notice of Hearing and Scheduling Order* (June 14, 2023).

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<sup>1</sup> Commissioners Duffrin and Gruenwald served on the Panel and are precluded by NRS 281A.220(4) from participation in further matters after issuance of the Panel Determination.

On July 25, 2023, the Commission heard oral argument on the Parties' motions for summary judgment. Prior to argument, the Commission Chair ruled on Lombardo's Request for Judicial Notice, admitting the documents for the purpose of indicating what was in the public realm at the time. See, e.g., *Von Saher v. Norton Simon Museum of Art*, 592 F.3d 954, 960 (9th Cir. 2010). Additionally, the Chair overruled the Executive Director's objection to the settlement communication attached to Lombardo's Motion for Summary Judgment, admitting the document for the purpose of allowing Lombardo to anticipate what arguments the Executive Director would make in dispositive motion practice. See NRS 48.105(2) (allowing settlement communications for purposes other than establishing liability or invalidity of a claim). All other exhibits attached to the Parties' dispositive motion briefing were admitted for consideration of the Commission.

## II. FINDINGS OF FACT

In rendering this opinion, the Commission reviewed and considered all evidence and testimony set forth in the record. The Commission finds the following facts to be established based on the *Stipulated Facts and Documents*, oral argument, and the preponderance of evidence standard set forth in NRS 281A.790(9), NRS 281A.765, and NRS 233B.125.

1. Lombardo was the elected Sheriff of the Las Vegas Metropolitan Police Department ("LVMPD") in 2014 and 2018.
2. Sheriff is a public officer as defined in NRS 281A.160. The office of Sheriff is not a "resign to run" position.
3. Clark County is a political subdivision as defined in NRS 281A.145.
4. The LVMPD is a local agency as defined in NRS 281A.119.
5. The LVMPD Policy Manual allows employees to appear in uniform for their own campaign photographs since doing so "does not constitute an endorsement." LVMPD Policy Manual § 2/114.00.
6. Lombardo campaigned as a candidate for the office of Governor of Nevada from approximately June 28, 2021, until November 8, 2022.
7. During the course of Lombardo's political campaign, he created at least four visual images including a video and three still photographs (the "Campaign Images"). The Campaign Images depict Lombardo in his Sheriff's uniform and/or wearing his Sheriff badge or lapel pin.
8. After receiving notice that the posting of the Campaign Images violated Nevada's Ethics Law, Lombardo did not take action to remove the Campaign Images from the social media websites.
9. Following its decision on a stipulated agreement regarding similar circumstances, on October 7, 2019, the Commission sent a letter to the Nevada Sheriff's and Chiefs' Association explaining the Commission's past precedent and current guidance for state and local government law enforcement officials who seek elected position. The Letter explained that

use of uniform and badge to support an officer's own political campaign violates NRS 281A.400(7).

10. The creation of the Campaign Images: (i) did not interfere with Lombardo's duties as Sheriff; (ii) did not violate any LVMPD policy; and (iii) to the extent they posed any cost to LVMPD or the public, such cost was nominal.
11. During his campaign for Governor of Nevada, Lombardo maintained various social media accounts including on twitter and Facebook for the purpose of supporting his campaign for Governor of Nevada.
12. Lombardo utilized the Campaign Images at least 33 times by posting them to the Facebook and twitter accounts during his campaign for Governor.
13. The posting of the Campaign Images was a willful act, and the Lombardo campaign posted the Campaign Images in an effort to benefit his campaign for Governor of Nevada.
14. After the Ethics Complaints were made, the Campaign Images were not taken down, but were left posted on the social media websites.
15. Following his election but prior to being sworn in as Governor, Lombardo raised nearly \$2 million in additional campaign contributions.

### **III. STATEMENT OF ISSUES AND RELEVANT STATUTES**

#### **A. ISSUES**

The issues considered by the Commissioner are whether Lombardo's conduct in creating and posting videos and pictures in furtherance of his campaign for Governor of Nevada constitutes a violation of either NRS 281A.400(2) and/or NRS 281A.400(7).

#### **B. RELEVANT STATUTES**

##### **1. Duty to Avoid Conflicts – NRS 281A.020(1) Provides:**

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

##### **2. Use of Government Position to Secure or Grant "Unwarranted" Privileges, Preferences, or Advantages – NRS 281A.400(2) Provides:**

A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or

advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest or any person to whom the public officer or employee has a commitment in a private capacity. As used in this subsection, “unwarranted” means without justification or adequate reason.

**3. Improper use of Government Resources and Property – NRS 281A.400(7) Provides:**

Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer or employee who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer’s or employee’s public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

→ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

**4. Standards for Determining Willful Violation – NRS 281A.775 Provides:**

1. The Commission, in determining whether a violation of this chapter is a willful violation and, if so, the penalty to be imposed on a public officer or employee or former public officer or employee pursuant to NRS 281A.785 or 281A.790, or the review panel, in determining whether to approve a deferral agreement regarding an alleged violation, shall consider, without limitation:

(a) The seriousness of the violation or alleged violation, including, without limitation, the nature, circumstances, extent and gravity of the violation or alleged violation;

(b) The number and history of previous warnings, letters of caution or instruction, deferral agreements or violations or alleged violations of the provisions of this chapter relating to the public officer or employee;

(c) The cost to conduct the investigation and any meetings, hearings or other proceedings relating to the violation or alleged violation;

(d) Any mitigating factors, including, without limitation, any self-reporting, prompt correction of the violation or alleged violation, any attempts to rectify the violation or alleged violation before any ethics complaint is filed and any cooperation by the public officer or employee in resolving the ethics complaint;

(e) Any restitution or reimbursement paid to parties affected by the violation or alleged violation;

(f) The extent of any financial gain resulting from the violation or alleged violation; and

(g) Any other matter justice may require.

2. The factors set forth in this section are not exclusive or exhaustive, and the Commission or the review panel, as appropriate, may consider other factors in the disposition of the matter if they bear a reasonable relationship to the determination of the severity of the violation or alleged violation.

3. In applying the factors set forth in this section, the Commission or the review panel, as appropriate, shall treat comparable situations in a comparable manner and shall ensure that the disposition of the matter bears a reasonable relationship to the severity of the violation or alleged violation.

## **5. Definitions Applicable to Willfulness Determination:**

**NRS 281A.105 “Intentionally” defined.** “Intentionally” means voluntarily or deliberately, rather than accidentally or inadvertently. The term does not require proof of bad faith, ill will, evil intent, or malice.

**NRS 281A.115 “Knowingly” defined.** “Knowingly imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

**NRS 281A.170 “Willful violation” defined.** “Willful violation” means a violation where the public officer or employee:

1. Acted intentionally or knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter, ↪ unless the Commission determines, after applying the factors set forth in NRS 281A.775, that the public officer’s or employee’s act or failure to act has not resulted in a sanctionable violation of this chapter.

**6. Remedies for Violations of Ethics Law – NRS 281A.785 Provides in Pertinent Part:**

1. Except as otherwise provided in this section, in proceedings concerning an ethics complaint, the Commission, based on a finding that a violation of this chapter has been proven, or the review panel, as part of the terms and conditions of a deferral agreement, may, in addition to any other penalty provided by law and in accordance with the provisions of NRS 281A.775:

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(b) Publicly admonish, reprimand or censure the public officer or employee.

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2. In carrying out the provisions of subsection 1, the Commission, based on a finding that a violation of this chapter has been proven, or the review panel, as part of the terms and conditions of a deferral agreement, may publicly:

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(c) Censure a public officer or employee if it is determined that the public officer or employee has willfully violated any provision of this chapter and there is evidence that the willful violation involved bad faith, malicious intent or knowing or reckless disregard of the law or there are no substantial mitigating factors pursuant to NRS 281A.775 for the willful violation, or if such a censure is imposed as part of the terms and conditions of a deferral agreement. A censure is a formal

written condemnation of the conduct of the public officer or employee.

**7. Civil Penalties for Willful Violations – NRS 281A.790 Provides in Pertinent Part:**

1. In addition to any other penalties provided by law and in accordance with the provisions of NRS 281A.775, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

(a) Not to exceed \$5,000 for a first willful violation of this chapter;

(b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and

(c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

\*\*\*

9. A finding by the Commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

#### **IV. DECISION**

The Ethics Law is designed to preserve the public trust and ensure that public officers and employees maintain proper separation between their public duties and private interests. See NRS 281A.020. In furtherance of State policy to protect the public trust, the Code of Ethical Standards was enacted to require proper separation of private interests and commitments from public duties. See NRS 281A.400. As discussed below, the Commission concludes that Lombardo willfully violated NRS 281A.400(7). The Commission finds that Lombardo did not violate NRS 281A.400(2).

**A. NO VIOLATION OF NRS 281A.400(2) – USE OF GOVERNMENT POSITION TO SECURE OR GRANT “UNWARRANTED” PRIVILEGES, PREFERENCES, OR ADVANTAGES**

In order to find a violation of NRS 281A.400(2), the facts must establish by a preponderance of the evidence: (1) that the subject is a public officer or employee; (2) who uses the subject’s position in government; (3) to secure unwarranted privileges, preferences, or advantages for the subject or his business in which he has a significant pecuniary interest.

When first determining whether an endorsement of a campaign by an elected sheriff violated NRS 281A.481(2), the Commission determined that no violation occurred because the definition of “unwarranted” at that time meant that the advantage conferred violated applicable law. *In re Kirkland*, Comm’n Op. No. 98-41 at 3 (1999). As the definition of “unwarranted” has now been supplied by the Legislature to mean “without justification or adequate reason” (see 1999 Nev. Stat 2736, SB 478 (1999)), the analysis in *Kirkland* is no longer applicable.

However, the Commission subsequently held that the use of a title in endorsing a candidate is not a misuse of the public official's position in government. *In re Public Officer*, Advisory Op. No. 19-124A at 6 (2020). Although there may be instances where a candidate's use of the uniform and badge during a campaign rise to the level of using "the subject's position in government" to secure unwarranted privileges, that is not the case here where Lombardo's conduct is limited to using his uniform and badge to further his campaign for Governor of Nevada. The Commission sees no reason to depart from that position under the facts of this case, and therefore grants Lombardo's Motion for Summary Judgment as to any violation of NRS 281A.400(2).

## **B. VIOLATION OF NRS 281A.400(7) – IMPROPER USE OF GOVERNMENT RESOURCES AND PROPERTY**

### **1. Violation of NRS 281A.400(7)**

A violation of NRS 281A.400(7) occurs when a public official uses government time, property, equipment, or other facility to benefit his own significant personal or pecuniary interest. Lombardo argues that this case presents a novel issue to the Commission—an incumbent sheriff running for a different partisan office. He argues that because this is a novel issue, any violation should not be considered "willful." Lombardo further contends that the Limited Use Exception applies here to remove or excuse his conduct in creating and posting the Campaign Images. Specifically, Lombardo maintains that the use of his uniform and badge in first creating the Campaign Images and then posting them in furtherance of his political campaign did not create the appearance of impropriety. Alternatively, he argues that the "appearance of impropriety" standard is so vague and ambiguous that it cannot be applied except in a discriminatory manner. The Commission disagrees.

The Commission has repeatedly found that a candidate running for public office has a significant personal and financial interest in being elected to the position sought. See, e.g., *In re Public Officer*, Advisory Op. No. 19-124A (2020). "Simply, public officers and employees are not entitled to take advantage of public resources to support their own campaign or other political campaigns. *Id.* at 4. The *In re Public Officer* Opinion follows a series of decisions concluding that public officers should not use the accouterments of office to support their own campaigns or to endorse those of other candidates. *In re Kirkland*, Comm'n Op. No. 98-41 (Ethics Law prohibits use of accouterments of office to endorse another political candidate); *In re Kuzanek*, Comm'n Op. No. 14-61C (2014) (undersheriff prohibited from using badge and uniform in campaign for sheriff); *In re Pitts*, Comm'n Op. No. 14-71C (2016) (use of badge and uniform prohibited in reelection campaign for sheriff); *In re Antinoro*, Comm'n Op. Nos. 18-031C/18-052C (2019) (use of uniform and badge in campaign materials and at debates prohibited).

Here, the Campaign Images were posted to social media accounts "in support" of his campaign for Governor of Nevada. The posting of the Campaign Images to support, advance, and bolster Lombardo's Campaign for Governor of Nevada is consistent with the Commission's prior opinions regarding the use of the accouterments of office in support of political campaigns.

Initially, this Commission found that "an endorsement by [a sheriff] that shows his badge, uniform, and official title would result in an 'advantage' to 'any other person,' namely to the candidate endorsed . . . ." *In re Kirkland*, Comm'n Op. No. 98-41 at 3 (1999). In *Kirkland*, the Commission determined that endorsements are sought specifically because they are perceived to have value, but that the issue was whether the

advantage was “unwarranted” as that term was then understood. *Id.* At that time, the Commission applied a definition of “unwarranted” advantage as that “conferred in violation of applicable law.” *Id.* Since that time, the Legislature has provided a different definition, concluding that “‘unwarranted’ means without justification or adequate reason. NRS 281A.400(2).

## 2. The Limited-Use Exception Does Not Apply

The Limited Use Exception to NRS 281A.400(7)(a) does not prohibit use of government resources for personal purposes where the public official meets four criteria: (1) the public agency has a policy allowing for use; (2) the use does not interfere with the public officer’s duties; (3) the cost related to the use is nominal; and (4) the use does not create the appearance of impropriety. The Parties agree that Lombardo meets the first three criteria of the Limited Use Exception but disagree over the application of “the appearance of impropriety.” Lombardo argues that “the appearance of impropriety” standard is unconstitutionally vague, and that enforcement of that element of the Limited Use Exception is “so standardless that it authorizes or encourages seriously discriminatory enforcement.” Lombardo Mot. Summ. J. at 10, citing *Carrigan v. Comm’n on Ethics*, 129 Nev. 894, 899 (2013).

During argument, neither of the Parties could provide authority which would allow the Commission to pass upon the constitutionality of the Legislative comprising Nevada’s Ethics Laws. The Commission declines to do so now, but notes the history of the application of that phrase.

The Commission has historically relied on the legal definition of “the appearance of impropriety” provided by Black’s Law Dictionary, which states the meaning as “conduct or status that would lead a reasonable person to think that the actor is behaving or will behave inappropriately or wrongfully.” *In re Public Official*, Comm’n Op. No. 19-124A at 7 (2020) (citing *Black’s Law Dictionary* at 875 (10th Ed. 2014)).<sup>2</sup> Further, the “appearance of impropriety” standard is utilized in conjunction with other ethical determinations, most notably in the Nevada Code of Judicial Conduct (“NCJC”).<sup>3</sup>

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<sup>2</sup> This Commission decision also incorrectly states that “[t]he courts have determined that the phrase ‘appearance of impropriety’ set forth in NRS 218A.400(7) is not vague and is constitutional. *See Comm’n on Ethics v. Carrigan*, 564 U.S. 117 (2011), and *see Carrigan v. Comm’n on Ethics of Nev.*, 129 Nev. 894, 313 P.3d 880 (2013).” *In re Public Official*, Comm’n Op. No. 19-124A at 7. However, neither of the cases cited in that Commission decision support the conclusion of law—those cases did not evaluate the “appearance of impropriety” statute for constitutionality.

<sup>3</sup> The Commission recognizes that the “appearance of impropriety” language has been removed from the Rules of Professional Conduct (“RPC”) governing attorneys. It is generally believed the phrase was removed from the RPC because “that ambiguous standard has long been abandoned . . . .” *Liapis v. Second Jud. Dist. Ct.*, 128 Nev. 414, 418-19 (2012), citing *MJK Family v. Corp. Eagle Mgmt. Svcs.*, 676 F. Supp. 2d 584, 593 (E.D. Mich. 2009). However, despite recognizing that the RPC no longer contains the “appearance of impropriety” phrase, the Nevada Supreme Court has recognized that it still employs a similar standard when determining whether a public lawyer has a conflict of interest that “undermines the public trust and confidence in the criminal justice system.” *State v. Eighth Jud. Dist. Ct.*, No. 61860, 2013 WL 1097820, 2013 Nev. Unpub. LEXIS 375 at \*3-4 (Nev. Mar. 14, 2013) (unpublished disposition).

Moreover, the NCJC retains the phrase but “judicial discipline will not be premised upon appearance of impropriety alone but must also involve the violation of another portion of the Code as well.” NCJC, Scope at ¶ 6. “The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” NCJC Rule 1.2, Comment at ¶ 5.

Here, however, the appearance of impropriety does not provide a means for discipline or liability. Rather, the absence of an appearance of impropriety provides a safe harbor from the provisions of NRS 281A.400(7). Thus, the determination of a violation of NRS 281A.400(7) does not require an evaluation of the allegedly vague standard. Only the application of the Limited Use Exception determines safe harbor for any violation.

The Commission has, however, provided decades of guidance on this issue, consistently finding that a sheriff’s use of a uniform or badge in political campaigns or endorsements creates an appearance of impropriety. *E.g.*, *In re Kirkland*, Comm’n Op. No. 98-41 at 5 (use of badge and uniform in campaign endorsement created appearance of impropriety). Most salient, the Commission provided direct guidance to the Nevada Sheriffs’ and Chiefs’ Association in 2019 “about the Commission’s position that the use of uniforms, badges and other physical accouterments of office by elected sheriffs during their campaigns for re-election creates an appearance of impropriety and violates NRS 281A.400(7).” See *In re Antinoro*, Consolidated Stip. Agt., Complaint Nos. 18-031C/18-052C at 8 ¶ 1 (2019) (agreeing to provide specific and directly-applicable guidance to the Nevada Sheriff’s and Chiefs’ Association).

Consistent with its past decisions, the Commission finds here that the personal use of the Sheriff’s uniform and badge in Lombardo’s campaign creates the appearance of impropriety rendering the Limited Use Exception unavailable to Lombardo. endorsements

### **C. WILLFULNESS**

Pursuant to NRS 281A.170, a violation is willful if it is intentional and knowing, which terms are defined in RNS 281A.105 and NRS 281A.115 respectively. For an act to be intentional, NRS 281A.105 requires that the subject act “voluntarily and deliberately.” “The term does not require proof of bad faith, ill will, evil intent or malice.” NRS 281A.105. Here, Lombardo admitted to creating the Campaign Images using his uniform and badge for the purpose of running for the Office of Governor. Further, his campaign posted the Campaign Images at least 33 times on social media. At argument, his counsel acknowledged that his conduct in leaving the Campaign Images posted to his social media websites was based, at least in part, on his disagreement with the Commission that use of the uniform and badge in support of a political campaign violated the Ethics Law. His conduct was therefore neither accidental nor inadvertent, but rather was intentional as defined in NRS 281A.105.

“Knowingly imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission.” NRS 281A.115. The provisions of Chapter 281A do not require Lombardo to have actual knowledge that his conduct violated the Ethics Law. See *State v. Rhodig*, 101 Nev. 608,

611, 707 P.2d 549, 551 (1985) (“[T]he law does not require knowledge that such an act or omission is unlawful.”). Here, Lombardo was aware of the facts constituting the violation, and Commission precedent has consistently established that use of the accouterments of office in connection with a campaign can lead to violations of NRS 281A.400(7) and Nevada’s Ethics Laws. Therefore, the Commission finds, based on a preponderance of the evidence, that Lombardo’s conduct was knowing.

#### **D. NRS 281A.775 – MITIGATING FACTORS AND CIVIL PENALTY**

The Commission considers all relevant mitigating factors set forth in NRS 281A.775 in determining whether a violation is willful and, if so, any civil penalty to be imposed. However, each factor may not necessarily be present or be provided equal weight.

1. Seriousness of the violation. As indicated above, the Commission has now issued a series of opinions establishing that public officers cannot use the accouterments of office in their own political campaigns or endorsement of others. Additionally, the Commission provided express guidance to the Nevada Sheriffs’ and Chiefs’ Association that use of the uniform and badge is a violation of NRS 281A.400(7), and that use of the uniform and badge creates an improper impression that the public employee is acting in an official capacity and of government sanction.
2. The number and history of previous violations. Lombardo has no prior history of Ethics Law violations.
3. The cost to conduct the investigation and hearing. This is a Consolidated Case which proceeded through jurisdictional reviews, investigation, review panel determination, evidentiary motions, several continuances, dispositive motion practice, and a dispositive motion hearing. The Parties were able to stipulate on certain facts and documents and stipulated to waive the adjudicatory hearing, instead stipulating to resolve this matter by dispositive motion practice resulting in some cost-savings.
4. Mitigating factors. Lombardo did not self-report or seek any advisory opinions from the Commission prior to creating and posting the Campaign Images. Lombardo did not remove any of the Campaign Images from social media websites upon learning of the Complaints at issue in this Consolidated Case.
5. Restitution and reimbursement. No restitution or reimbursement was warranted in this Consolidated Case.
6. Extent of financial gain. Lombardo was elected as Governor of Nevada and earns a salary as Governor. Lombardo also accepted campaign contributions during the course of his campaign for Governor, including solicitation of donations on his social media websites where the Campaign Images were posted. *E.g. Stipulated Facts and Documents* at Exhibits 3.

The nature of the violations and the totality of Lombardo’s conduct is determined to be significant when measured against the public’s trust and the public policy of the State of Nevada requiring public officers and employees not use government property for

their benefit. Based upon the record, the Commission determines that Lombardo's conduct constitutes four willful violations of NRS 281A.400(7).

Pursuant to NRS 281A.790(1), the Commission may, in addition to any other penalties, impose civil penalties as follows:

- (a) Not to exceed \$5,000 for a first willful violation of this chapter;
- (b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and
- (c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

The Commission reads this statute as providing authority to issue civil penalties for the first three willful violations of Nevada's Ethics Laws. The Commission is authorized to take any combination of remedies and penalties that the Commission "determines will remedy the violation or alleged violation or deter similar violations or conduct." NRS 281A.785(1)(c). Based on the finding of four willful violations, the Commission imposes a civil penalty of \$20,000 broken out as \$5,000 for the first violation and \$7,500 for the second and third violations.

## **V. CONCLUSIONS OF LAW**

1. At all times relevant to this matter, Lombardo was a "public employee" as defined by NRS 281A.150.
2. Pursuant to NRS 281A.280, the Commission has jurisdiction to render an opinion in this matter.
3. Lombardo, as a public employee, has a duty under the Ethics Law and its interpretive opinions to maintain proper separation between public duties and private interests. See NRS 281A.020.
4. Pursuant to NRS 281A.400(7), Lombardo, as a public employee, is prohibited from using government time, resources, property, equipment, or other facility to benefit his significant personal or pecuniary interests, unless the limited-use exception applies.
5. Pursuant to the provisions of the Ethics Law and the record and based on the preponderance of the evidence, all requirements of the Limited Use Exception set forth in NRS 281A.400(7)(a) are not met; therefore, the conduct is not excused by the exception.
6. Based upon the preponderance of the evidence, Lombardo willfully violated NRS 281A.400(7) four times by using government property, through three pictures and one video showing him in the accouterments of his office as Sheriff of Clark County, in furtherance of his significant personal and pecuniary interest in being elected and receiving a salary as Governor of the State of Nevada.
7. In accordance with the authority of the Commission under NRS 281A.775 and NRS 281A.790, civil penalties are imposed and Lombardo must pay a civil penalty in the amount of \$20,000. Authorization is provided for the Executive Director and Lombardo to enter into a payment schedule, with

payment being completed within ten (10) months after the date of issuance of this opinion.

- 8. A censure is warranted pursuant to NRS 281A.785(1)(b) and (2)(b) because there was evidence that the willful violations involved bad faith, malicious intent, or knowing or reckless disregard of the law. This opinion serves as a censure of Lombardo’s conduct described herein.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.<sup>4</sup>

The following Commissioners participated in this Opinion:

Dated this \_\_\_ day of August, 2023.

NEVADA COMMISSION ON ETHICS

By: \_\_\_\_\_  
Kim Wallin, CPA, CMA, CFM  
Chair

By: \_\_\_\_\_  
Thorin Towler, Esq.  
Vice-Chair

By: \_\_\_\_\_  
Teresa Lowry, Esq.  
Commissioner

By: \_\_\_\_\_  
Amanda Yen, Esq.  
Commissioner

Dissent:

By: \_\_\_\_\_  
J.T. Moran III, Esq.  
Commissioner

By: \_\_\_\_\_  
Stan R. Olsen  
Commissioner

<sup>4</sup> Findings of Fact and Conclusions of Law are set forth separately in this Opinion as required by NRS 233B.125, NRS 281A.765, and NAC 281A.473; however, they are deemed interchangeable for interpretive purposes. See *State, Dep’t of Commerce v. Soeller*, 98 Nev. 579, 586, 656 P.2d 224, 228 (1982) (concluding that when “the conclusion itself gives notice of the facts on which the Commission relied . . . we may imply the necessary factual findings, so long as the record provides substantial evidence to support the Commission’s conclusion”).

# **Agenda Item 5**



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Joseph Rodriguez**, Trustee, Washoe  
County School District; Lieutenant, State Fire  
Marshal Division, State of Nevada,

Ethics Complaint  
Case No. 22-051C

Subject. /

**OPINION**

**I. INTRODUCTION AND PROCEDURAL HISTORY**

Pursuant to NRS 281A.710(1)(b), an Ethics Complaint was filed with the Nevada Commission on Ethics ("Commission") on May 2, 2022, alleging that Joseph Rodriguez, ("Rodriguez"), Washoe County School District ("WCSD") Trustee and Nevada State Fire Marshal Division Lieutenant, violated provisions of the Ethics in Government Law set forth in Chapter 281A of the Nevada Revised Statutes ("Ethics Law").

On June 13, 2022, the Commission conducted its jurisdictional and evidentiary review of the record, including the Ethics Complaint, supporting evidence and the recommendations of the Executive Director. The Commission accepted jurisdiction of the Complaint and directed the Executive Director to investigate and serve a *Notice of Complaint and Investigation* regarding Rodriguez's alleged violations of NRS 281A.400(2) (using position in government to grant an unwarranted advantage to himself or others), NRS 281A.400(7) (using governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest) and NRS 281A.520 (causing a governmental entity to incur an expense or make an expenditure to support or oppose a candidate).

On or about June 13, 2022, the Commission served Rodriguez via certified mail a *Notice of Complaint and Investigation* advising him of the allegations in the Complaint. On or about July 18, 2022, Rodriguez, by and through his attorney Adam Hosmer-Henner, Esq. with McDonald Carano LLP, submitted a response to the allegations.

On July 21, 2022, the Commission served Rodriguez a *Notice of Additional Issues and Facts*. On September 16, 2022, Rodriguez, through his counsel, submitted a supplemental response to this notice.

On September 19, 2022, the Commission received a waiver of statutory time requirements for the Executive Director to complete his investigation until November 16, 2022 and for the Executive Director to present a recommendation to a review panel until November 30, 2022.

On November 16, 2022, the Commission's Review Panel ("Panel")<sup>1</sup> issued a *Review Panel Determination and Referral Order* finding just and sufficient cause for the Commission to hold a hearing and render an opinion in this matter based on credible evidence that alleged Rodriguez violated NRS 281A.400(2) and (7). The Panel further found no just and sufficient cause for the Commission to render an opinion regarding the allegations pertaining to NRS 281A.520. The Commission referred allegations of violations of NRS 281A.400(2) and (7) to the Commission but dismissed allegations related to Rodriguez's alleged use of WCSD photographs under NRS 281A.400(2) and (7) and NRS 281A.520 for lack of sufficient evidence.

On December 5, 2022, pursuant to NRS 281A.745, Rodriguez waived the statutory time requirements for the adjudicatory through the end of March 2023 and provided a further waiver of the time to render an opinion in this matter through the end of December 2023.

On December 6, 2022, the Commission issued a *Notice of Hearing and Scheduling Order and Notice of Hearings and Meetings to Consider Your Character, Alleged Misconduct, Professional Competence or Health*, setting a hearing for discovery-related or dispositive motions or stipulations and an adjudicatory hearing and/or hearing on adjudicatory motions or stipulations for March 15, 2023. Thereafter, each party filed a motion for summary judgment, which motions were fully briefed and submitted for the Commission's consideration.

On February 23, 2023, Rodriguez submitted an *Adjudicatory Motion*, and on February 27, 2023, the Executive Director submitted a *Motion in Limine*. These motions were fully briefed.

On March 2, 2023, the Commission served a *Notice of Hearing and Scheduling Order* on Rodriguez, notifying Rodriguez of the date, time and location that the Commission would hold public meetings to consider discovery-related or dispositive motions or stipulations and conduct an adjudicatory hearing.

On March 14, 2023, the presiding officer, Vice-Chair Duffrin, held a pre-hearing conference, which was attended by Executive Director Armstrong, represented by Associate Counsel Bassett, and counsel for Rodriguez, Mr. Hosmer-Henner. The Vice-Chair discussed procedural matters with the parties relating to the adjudicatory hearing and received comments from the parties on stipulations of facts and exhibits. The Vice-Chair also ruled orally on Rodriguez's *Adjudicatory Motion* and the Executive Director's *Motion in Limine*. Later that same day, the Vice-Chair issued an *Order Granting Executive Director's Motion in Limine* and an *Order Denying Trustee Rodriguez's Adjudicatory Motion*.

On March 15, 2023, the Commission heard oral argument on the parties' motions for summary judgment. The Commission denied both motions. The Commission then held an adjudicatory hearing to consider whether Rodriguez violated NRS 281A.400(2) or NRS 281A.400(7). At the start of the hearing, the parties orally stipulated to the admission of certain facts and exhibits, and during the hearing, orally stipulated to the admission of one additional exhibit. At the conclusion of the adjudicatory hearing and after fully considering the record, testimony, evidence and arguments of the parties, in accordance with the requirements of the law including, without limitation, the mitigating

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<sup>1</sup> Chair Wallin and Commissioners Towler and Sheets served on the Panel and are precluded by NRS 281A.220(4) from participation in further matters after issuance of the Panel Determination.

factors set forth in NRS 281A.775, the Commission deliberated and approved on the record the finding of two willful violations of NRS 281A.400(2) and two willful violations of NRS 281A.400(7). The Commission imposed on Rodriguez a civil penalty in the amount of \$250 per violation, for a total penalty of \$1,000. The Commission also reprimanded Rodriguez and required him to complete ethics training selected by the Executive Director within 60 days of the written decision being issued. The Commission now renders this written opinion setting forth its formal findings of fact and conclusions of law in compliance with NRS 233B.125 and NAC 281A.473.

## **II. FINDINGS OF FACT**

In rendering this opinion, the Commission reviewed and considered all evidence and testimony set forth in the record. The Commission finds the following facts to be established based on the preponderance of evidence standard set forth in NRS 281A.790(9), NRS 281A.765 and NRS 233B.125:

1. Rodriguez has been employed by the State Fire Marshal Division of the Nevada Department of Public Safety since at least 2021, and as such is a public employee as defined in NRS 281A.150.
2. The State Fire Marshal Division is a law enforcement agency.
3. Rodriguez was appointed to serve as a WCSD Trustee beginning in July 2021.
4. Rodriguez successfully campaigned to be elected as a WCSD Trustee in 2022.
5. Rodriguez earns a salary in connection with his position as WCSD Trustee.
6. Rodriguez maintained a campaign website for his election as a WCSD Trustee in 2022 ("Campaign Website"). The Campaign Website was created approximately in Spring 2022.
7. From May 2, 2022 through at least March 15, 2023, the Campaign Website contained a picture of Rodriguez dressed in his State Fire Marshal Division uniform and badge ("Picture One").
8. Picture One was taken approximately in the summer of 2019 during an honor walk where other law enforcement officers appeared in uniform. Rodriguez did not request that the picture be taken and was not considering applying for WCSD Trustee at the time the picture was taken.
9. From May 2, 2022 through at least March 15, 2023, the Campaign Website contained a picture of Rodriguez wearing his State Fire Marshal Division badge and gun in a school classroom ("Picture Two").
10. Picture Two was taken in approximately February 2020. The State Fire Marshal Division promotes fire safety and visits schools throughout the State, and Picture Two was taken during one such school visit. School visits are a routine part of Rodriguez's job and entails him wearing his uniform and badge. Rodriguez believes a parent took the picture, and he was not considering applying for WCSD Trustee at the time the picture was taken.

11. Pictures One and Two appeared on the Campaign Website among twelve other pictures, which included pictures of Rodriguez in other contexts, including with his family and in military uniform.
12. Rodriguez provided many pictures to his campaign team for potential inclusion on his Campaign Website. Rodriguez was aware of which pictures were posted to his Campaign Website.

### **III. STATEMENT OF THE ISSUE AND RELEVANT STATUTES**

#### **A. ISSUES**

The issues considered by the Commission are whether Rodriguez's conduct in posting Pictures One and Two on his Campaign Website constitutes a violation of either NRS 281A.400(2) or NRS 281A.400(7).

#### **B. RELEVANT STATUTES**

##### **1. Duty to Avoid Conflicts – NRS 281A.020(1) Provides:**

1. It is hereby declared to be the public policy of this State that:

(a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

##### **2. Use of Government Position to Secure or Grant “Unwarranted” Privileges, Preferences or Advantages – NRS 281A.400(2) Provides:**

A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest or any person to whom the public officer or employee has a commitment in a private capacity. As used in this subsection, “unwarranted” means without justification or adequate reason.

**3. Improper Use of Government Resources and Property – NRS 281A.400(7) Provides:**

Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer or employee who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal;  
and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

➔ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

**4. Standards for Determining Willful Violation – NRS 281A.775 Provides:**

1. The Commission, in determining whether a violation of this chapter is a willful violation and, if so, the penalty to be imposed on a public officer or employee or former public officer or employee pursuant to NRS 281A.785 or 281A.790, or the review panel, in determining whether to approve a deferral agreement regarding an alleged violation, shall consider, without limitation:

(a) The seriousness of the violation or alleged violation, including, without limitation, the nature, circumstances, extent and gravity of the violation or alleged violation;

(b) The number and history of previous warnings, letters of caution or instruction, deferral agreements or violations or alleged violations of the provisions of this chapter relating to the public officer or employee;

(c) The cost to conduct the investigation and any meetings, hearings or other proceedings relating to the violation or alleged violation;

(d) Any mitigating factors, including, without limitation, any self-reporting, prompt correction of the violation or alleged violation, any attempts to rectify the violation or alleged violation before any ethics complaint is filed and any cooperation by the public officer or employee in resolving the ethics complaint;

(e) Any restitution or reimbursement paid to parties affected by the violation or alleged violation;

(f) The extent of any financial gain resulting from the violation or alleged violation; and

(g) Any other matter justice may require.

2. The factors set forth in this section are not exclusive or exhaustive, and the Commission or the review panel, as appropriate, may consider other factors in the disposition of the matter if they bear a reasonable relationship to the determination of the severity of the violation or alleged violation.

3. In applying the factors set forth in this section, the Commission or the review panel, as appropriate, shall treat comparable situations in a comparable manner and shall ensure that the disposition of the matter bears a reasonable relationship to the severity of the violation or alleged violation.

## **5. Definitions Applicable to Willfulness Determination:**

**NRS 281A.105 “Intentionally” defined.** “Intentionally” means voluntarily or deliberately, rather than accidentally or inadvertently. The term does not require proof of bad faith, ill will, evil intent or malice.

**NRS 281A.115 “Knowingly” defined.** “Knowingly” imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such

other facts as should put an ordinarily prudent person upon inquiry.

**NRS 281A.170 “Willful violation” defined.** “Willful violation” means a violation where the public officer or employee:

1. Acted intentionally and knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter, ↪ unless the Commission determines, after applying the factors set forth in NRS 281A.775, that the public officer’s or employee’s act or failure to act has not resulted in a sanctionable violation of this chapter.

**6. Remedies for Violations of the Ethics Law – NRS 281A.785 Provides in Pertinent Part:**

1. Except as otherwise provided in this section, in proceedings concerning an ethics complaint, the Commission, based on a finding that a violation of this chapter has been proven, or the review panel, as part of the terms and conditions of a deferral agreement, may, in addition to any other penalty provided by law and in accordance with the provisions of NRS 281A.775:

(a) Require the public officer or employee who is the subject of the ethics complaint to:

\*\*\*

(2) Attend and complete training.

\*\*\*

(b) Publicly admonish, reprimand or censure the public officer or employee.

\*\*\*

2. In carrying out the provisions of subsection 1, the Commission, based on a finding that a violation of this chapter has been proven, or the review panel, as part of the terms and conditions of a deferral agreement, may publicly:

\*\*\*

(b) Reprimand a public officer or employee if it is determined that the public officer or employee has willfully violated any provision of this chapter, but there is no evidence that the willful violation involved bad faith, malicious intent or knowing or reckless disregard of the law, or if such a reprimand is imposed as part of the terms and conditions of a deferral agreement. A reprimand is a severe written reproof for the conduct of the public officer or employee.

**7. Civil Penalties for Willful Violations – NRS 281A.790 Provides in Pertinent Part:**

1. In addition to any other penalties provided by law and in accordance with the provisions of NRS 281A.775, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

(a) Not to exceed \$5,000 for a first willful violation of this chapter;

(b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and

(c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

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9. A finding by the Commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

**IV. DECISION**

The Ethics Law is designed to preserve the public trust and ensure that public officers and employees maintain proper separation between their public duties and private interests. See NRS 281A.020. In furtherance of State policy to protect the public trust, the Code of Ethical Standards was enacted to require proper separation of private interests and commitments from public duties. See NRS 281A.400. As discussed below, the Commission concludes that Rodriguez willfully violated NRS 281A.400(2) and (7).

**A. VIOLATION OF NRS 281A.400(2) – USE OF GOVERNMENT POSITION TO SECURE OR GRANT “UNWARRANTED” PRIVILEGES, PREFERENCES OR ADVANTAGES**

As relevant here, a violation of NRS 281A.400(2) occurs when a public employee uses his position in government to secure or grant himself an unwarranted advantage. At issue is whether Rodriguez’s use of Pictures One and Two, showing him with his State Fire Marshal Division uniform, badge and gun, violates NRS 281A.400(2).

The Commission has long held that a campaign endorsement showing badge and uniform (i.e., the accouterments of office) would result in an advantage to the person being endorsed. See *In re Kirkland*, Comm’n Op. No. 98-41 (1999).<sup>2</sup> Consequently, the

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<sup>2</sup> The Commission found no violation of NRS 281A.400(2)’s predecessor statute in this case. However, resolution of the alleged violation turned on whether the use of the accouterments of office was “unwarranted.” The Commission analyzed whether the use was “unlawful,” and because it was not,

Commission has “continue[d] to caution against any attempt, even an incidental one, to bolster a political endorsement by the use of a public office and associated accouterments or any governmental property, equipment or resources.” *In re Public Officer*, Adv. Op. No. 19-124A (2020). This is because “[s]uch uses provide the impression that the public officer is acting in an official capacity implicating NRS 281A.400(2).” *Id.*

Rodriguez contends that he did not violate NRS 281A.400(2) because he used pictures that were taken prior to him considering running for WCSD Trustee and because the pictures were not government property. The Commission does not find these distinctions material.

Rodriguez displayed himself on his Campaign Website with uniform, badge and gun, which “signify the power and prestige of” his law enforcement position, see *In re Antinoro*, Comm’n Op. Nos. Nos. 18-031C/18-052C (2019), and which position is accorded “respect and deference” by the public, see *In re Kirkland*, Comm’n Op. No. 98-41 (1999). In the context of NRS 281A.400(2), the accouterments of office represent a public officer or employee’s position in government; a uniform, badge and gun are powerful, visceral symbols of a peace officer’s position. By posting pictures on his Campaign Website of himself with uniform, gun and badge, Rodriguez invoked and advertised his position in government, thereby creating the impression of prestige and power as well as the impression that he was acting in an official capacity. This provided an unwarranted advantage to Rodriguez in his campaign. It is irrelevant that Rodriguez used pictures from before he considered running for WCSD Trustee; it is the use of the pictures with the accouterments of office, and what they symbolize, as part of his campaign that constitutes the improper use of his position in government.

Accordingly, the Commission determines, based on a preponderance of the evidence, that Rodriguez violated NRS 281A.400(2) twice by posting two pictures of himself in State Fire Marshal Division accouterments on his Campaign Website.

## **B. VIOLATION OF NRS 281A.400(7) – IMPROPER USE OF GOVERNMENT RESOURCES AND PROPERTY**

### **1. Violation of NRS 281A.400(7)**

As relevant here, NRS 281A.400(7) prohibits a public employee from using governmental time, property, equipment or other facility to benefit his own significant personal or pecuniary interest. Rodriguez argues that he did not use governmental resources or property because Pictures One and Two were taken prior to him considering running for WCSD Trustee and were not government property. The Commission disagrees.

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concluded that the use was also not “unwarranted.” NRS 281A.400(2)’s predecessor statute was amended after the opinion in *In re Kirkland* was issued to include that “unwarranted” as used in that statute “means without justification or adequate reason.” See Senate Bill 478, 70th Session, § 14.5 (approved June 9, 1999). That definition remains in NRS 281A.400(2) today.

Commission precedent supports rejection of Rodriguez’s argument. In *In re Kuzanek*, Comm’n Op. No 14-61C (2014), undersheriff Tim Kuzanek displayed pictures of himself in full sheriff’s office dress uniform and a picture of his undersheriff badge as part of campaign materials for his candidacy for sheriff. The Commission found use of these pictures violated NRS 281A.400(7). See *id.* (“The use of Washoe County Sheriff Deputy uniform and undersheriff badge act as a visual endorsement, affirmation . . . , and sanction of Kuzanek’s campaign for sheriff, and provide an unfair advantage to Kuzanek at government cost. This is the type of harm to the public that the Ethics Law is designed to prohibit.”). The Commission has therefore previously concluded that displaying a representation of government property as part of a campaign constitutes use of government property under NRS 281A.400(7). There is no basis to treat a picture of government property differently based solely on when it was taken. Rodriguez used government property, implicating NRS 281A.400(7), when he posted Pictures One and Two showing his uniform, gun and badge on his Campaign Website as part of his campaign.

The Commission also notes that “statutory interpretation should not render any part of a statute meaningless, and a statute’s language should not be read to produce absurd or unreasonable results.” *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). Rodriguez’s proposed interpretation of NRS 281A.400(7) would lead to an absurd or unreasonable result as a violation would turn on when a picture was taken: if a candidate uses a picture from before his campaign, there would be no violation, but if the candidate uses a picture taken after the candidate announces his candidacy, there would be a violation. Such an arbitrary distinction cannot be accepted, including because members of the public viewing the picture would have no way of knowing when the picture was taken.

Finally, there can be no doubt that a benefit to Rodriguez’s personal or pecuniary interests is implicated. As the Commission has previously explained, “incumbent Public Officers seeking re-election have significant personal and financial interests in maintaining the elected position.”<sup>3</sup> *In re Public Officer*, Adv. Op. No. 19-124A (2020) (citing *In re Antinoro*, Comm’n Op. Nos. 18-031C/18-052C (2019)). Rodriguez had a significant personal and financial interest in seeking election as a WCSD Trustee, including because he earns a salary as a WCSD Trustee.

Based upon the record, the Commission determines by a preponderance of the evidence that Rodriguez’s use of Pictures One and Two on his Campaign Website constituted use of government property and was in furtherance of a significant personal and pecuniary interest.

## **2. The Limited-Use Exception Does Not Apply**

The Commission next considers whether Rodriguez’s use of the pictures was permitted by the limited-use exception established in statute. There is no violation of NRS

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<sup>3</sup> While Rodriguez was not technically seeking re-election as he was initially appointed as a WCSD Trustee, his interests in maintaining his position are identical to an incumbent’s interests in seeking re-election.

281A.400(7) if all four factors of the limited-use exception are met. As an initial matter, the Commission notes that no evidence was submitted regarding the first factor, i.e., “[t]he public officer or employee who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances.” Consequently, the limited-use exception does not apply.

The limited-use exception also does not apply because Rodriguez cannot establish that the use of the pictures does not create the appearance of impropriety. For over twenty years, the Commission has held that the use of the accouterments of public office for campaigning purposes is inappropriate, in part because it creates the impression of government sanction. See *In re Kirkland*, Comm’n Op. No. 98-41 (1999). The Commission has followed a hard line: “A public officer will create an appearance of impropriety under NRS 281.481(7)(a)(4)<sup>4</sup> if, in the course of endorsing a person’s candidacy, he uses the physical accouterments of his office or position to bolster the endorsement.” *Id.*; see also *In re Kuzanek*, Comm’n Op. No. 14-61C (2014) (“A public officer and/or employee cannot engage in any activity that involves . . . the use of state or political subdivision badge or uniform to give that person an advantage, and it creates the appearance of impropriety.”); *In re Antinoro*, Comm’n Op. Nos. Nos. 18-031C/18-052C (2019) (“An elected sheriff’s use of his official uniform, badge and ‘other physical accouterments’ of the public office in the course of supporting his own campaign for re-election also creates an appearance of impropriety and violates NRS 281A.400(7).”).

Accordingly, based on a preponderance of the evidence, the limited-use exception does not apply, and the Commission determines that Rodriguez violated NRS 281A.400(7) twice based on Pictures One and Two appearing on his Campaign Website.

### **C. WILLFULNESS**

Pursuant to NRS 281A.170, a violation is willful if it is intentional and knowing, which terms are defined in NRS 281A.105 and NRS 281A.115 respectively. For an act to be intentional, NRS 281A.105 requires that the subject acted “voluntarily and deliberately.” “The term does not require proof of bad faith, ill will, evil intent or malice.” NRS 281A.105. Here, Rodriguez selected pictures for inclusion on his Campaign Website, including Pictures One and Two, and was aware that they were posted. His conduct was therefore neither accidental nor inadvertent, but rather was intentional as defined in NRS 281A.105.

“Knowingly imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission.” NRS 281A.115. The provisions of NRS Chapter 281A do not require Rodriguez to have actual knowledge that his conduct violated the Ethics Law. See *State v. Rhodig*, 101 Nev. 608, 611, 707 P.2d 549, 551 (1985) (“[T]he law does not require knowledge that such an act or omission is unlawful.”). Here, Rodriguez was aware of the facts constituting the violations, and Commission precedent has consistently established that use of the

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<sup>4</sup> NRS 281.481(7)(a)(4) is the predecessor statute to NRS 281A.400(7)(a)(4).

accouterments of office in connection with a campaign endorsement can lead to violations of NRS 281A.400(2) and (7). Therefore, the Commission finds, based on a preponderance of the evidence, that Rodriguez's conduct was knowing.

#### **D. NRS 281A.775 – MITIGATING FACTORS AND CIVIL PENALTY**

The Commission considers all relevant mitigating factors set forth in NRS 281A.775 in determining whether a violation is willful and if so any civil penalty to be imposed. However, each factor may not necessarily be present or be provided equal weight.

1. Seriousness of the violation. The Commission has now issued a series of opinions establishing that public officers and employees cannot use the accouterments of office in campaigns. Use of the accouterments gives an improper impression that the public employee is acting in an official capacity and of government sanction.
2. The number and history of previous violations. Rodriguez has no prior history of Ethics Law violations.
3. The cost to conduct the investigation and hearing. This matter proceeded through an investigation, evidentiary motions, summary judgment motions, and an adjudicatory hearing, leading to additional cost to the Commission.
4. Mitigating factors. Rodriguez did not self-report and did not take down Pictures One and Two from his Campaign Website through the day of the adjudicatory hearing.
5. Restitution and reimbursement. No restitution or reimbursement was warranted in this matter.
6. Extent of financial gain. Rodriguez was elected as WCSD Trustee and earns a salary as a result. Moreover, the Campaign Website solicited and accepted monetary donations to Rodriguez's campaign account.

The nature of the violations and the totality of Rodriguez's conduct is determined to be significant when measured against the public's trust and the public policy of the State of Nevada requiring public officers and employees not use their position in government or government property for their benefit. Based upon the record, the Commission determines that Rodriguez's conduct constitutes two willful violations of NRS 281A.400(2) and two willful violations of NRS 281A.400(7) and imposes a civil penalty of \$250 per willful violation.

#### **V. CONCLUSIONS OF LAW**

1. At all times relevant to this matter, Rodriguez was a "public employee" as defined by NRS 281A.150.

2. Pursuant to NRS 281A.280, the Commission has jurisdiction to render an opinion in this matter.
3. Rodriguez, as a public employee, has a duty under the Ethics Law and its interpretive opinions to maintain proper separation between public duties and private interests. See NRS 281A.020.
4. Pursuant to NRS 281A.400(2), Rodriguez, as a public employee, is prohibited from using his position in government to secure an unwarranted advantage for himself.
5. Based upon the preponderance of the evidence, Rodriguez willfully violated NRS 281A.400(2) twice by using two pictures showing him with the accouterments of his State Fire Marshal Division position to secure an unwarranted advantage in his campaign for WCSD Trustee.
6. Pursuant to NRS 281A.400(7), Rodriguez, as a public employee, is prohibited from using government time, resources, property, equipment or other facility to benefit his significant personal or pecuniary interests, unless the limited-use exception applies.
7. Pursuant to the provisions of the Ethics Law and the record and based on the preponderance of the evidence, all requirements of the limited-use exception set forth in NRS 281A.400(7)(a) are not met; therefore, the conduct is not excused by the exception.
8. Based upon the preponderance of the evidence, Rodriguez willfully violated NRS 281A.400(7) twice by using government property, through two pictures showing him with the accouterments of his State Fire Marshal Division position, in furtherance of his significant personal and pecuniary interest in being elected and receiving a salary as a WCSD Trustee.
9. In accordance with the authority of the Commission under NRS 281A.775 and NRS 281A.790, civil penalties are imposed and Rodriguez must pay a civil penalty in the amount of \$1,000. Authorization is provided for the Executive Director and Rodriguez to enter into a payment schedule, with payment being completed within ten (10) months after the date of issuance of this opinion.
10. Pursuant to NRS 281A.785(1)(a)(2), Rodriguez must, within 60 days after the issuance of this opinion, complete ethics training to be selected by the Executive Director.
11. A reprimand is warranted pursuant to NRS 281A.785(1)(b) and (2)(b) because there was no evidence that the willful violations involved bad faith, malicious intent or knowing or reckless disregard of the law. This opinion serves as a public reprimand of Rodriguez's conduct described herein.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.<sup>5</sup>

The following Commissioners participated in this Opinion:<sup>6</sup>

Dated this 17th day of May, 2023.

NEVADA COMMISSION ON ETHICS

By: /s/ Brian Duffrin  
Brian Duffrin  
Vice-Chair

By: ABSENT  
James Oscarson  
Commissioner

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

By: /s/ Teresa Lowry  
Teresa Lowry, Esq.  
Commissioner

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<sup>5</sup> Findings of Fact and Conclusions of Law are set forth separately in this Opinion as required by NRS 233B.125, NRS 281A.765 and NAC 281A.473; however, they are deemed interchangeable for interpretive purposes. See *State, Dep't of Commerce v. Soeller*, 98 Nev. 579, 586, 656 P.2d 224, 228 (1982) (concluding that when "the conclusion itself gives notice of the facts on which the Commission relied . . . we may imply the necessary factual findings, so long as the record provides substantial evidence to support the Commission's conclusion").

<sup>6</sup> After consultation with Commission Counsel, Commissioner Amanda Yen disclosed that subject Rodriguez is a client of McDonald Carano LLP ("Firm"). Commissioner Yen further disclosed that she is a partner with the Firm and has both a pecuniary interest in her employment and a private commitment to the Firm, as her employer, and its clients under NRS 281A.065. Consequently, the independence of judgment of a reasonable person in Commissioner Yen's situation could be materially affected in voting upon matters related to this case. To avoid any appearance of impropriety and to comply with Nevada's Ethics in Government Law set forth in NRS Chapter 281A and Rule 2.11 of the Code of Judicial Conduct, Commissioner Yen disclosed her private interests and abstained from participation in this case.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **OPINION** in Ethics Complaint Case No. 22-051C via U.S. Certified Mail and electronic mail to the Parties as follows:

**Executive Director:**

Ross E. Armstrong, Esq.  
Executive Director  
Elizabeth J. Bassett, Esq.  
Associate Counsel  
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**Subject:**

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Joseph Rodriguez  
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Certified Mail: 9489 0090 0027 6499 2210 90

DATED: May 18, 2023

  
\_\_\_\_\_  
An employee, Nevada Commission on Ethics

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*Attorneys for Joseph Rodriguez*

**BEFORE THE NEVADA COMMISSION ON ETHICS**

7 In re Joseph Rodriguez, Trustee,  
8 Washoe County School District;  
9 Lieutenant, State Fire Marshall Division,  
10 State of Nevada,

Ethics Complaint  
Case No. 22-051C

**TRUSTEE RODRIGUEZ'S  
MOTION FOR RECONSIDERATION**

Subject.

11  
12 Joseph Rodriguez (“Trustee Rodriguez”) hereby files a Motion for Reconsideration,  
13 pursuant to NAC 281A.442, of the Opinion served by the Commission in this matter on May 18,  
14 2023.

**MEMORANDUM OF POINTS AND AUTHORITIES**

15  
16 **I. INTRODUCTION**

17 In its Opinion, the Commission found that Trustee Rodriguez “willfully violated NRS  
18 281A.400(2) twice” and “willfully violated NRS 281A.400(7) twice” by using two pictures of  
19 himself with the accoutrements of office on his campaign website. Opinion 13. Without waiving  
20 any of the arguments advanced in briefing or at the hearing, which arguments are specifically  
21 preserved for judicial review and appeal, Trustee Rodriguez requests limited reconsideration of  
22 the Opinion as only one violation of NRS 281A.400(2) and one violation of NRS 281A.400(7)  
23 should be deemed to be a willful violation, with the other two violations deemed to be non-willful.

24 **II. LEGAL STANDARD**

25 NAC 281A.442(7) permits a motion for reconsideration to be filed prior to the filing of a  
26 petition for judicial review. While no standards are specifically set forth in this provision, the  
27 standards for reconsideration generally require a moving party to demonstrate any of the  
28 following: (1) the judgment was based upon a manifest error of law or fact; (2) there is newly

1 discovered or previously unavailable evidence; (3) to prevent manifest injustice; and (4) there is  
2 an intervening change in controlling law. See 11 CHARLES ALAN WRIGHT & ARTHUR R.  
3 MILLER, FEDERAL PRACTICE AND PROCEDURE § 2810.1 (2d ed. 1995) (discussing FRCP  
4 59(e)).

5 **III. ARGUMENT**

6 The Commission concluded that Trustee Rodriguez’s violations were willful based on an  
7 analysis of NRS 281A.170, which holds that a violation is willful if it is intentional and knowing.  
8 Further, the Commission concluded that Trustee Rodriguez was not required to have knowledge  
9 of the prohibition against the act or omission. Opinion 11. Read strictly, this could deem every  
10 violation to be a willful one as there are only rare situations where a party would not be aware of  
11 their own actions or their own omissions. Consequently, the Legislature charges the Commission  
12 to review additional factors in determining whether a violation is willful. NRS 281A.775. The  
13 Commission “shall consider, without limitation” the factors listed in NRS 281A.775(1), which  
14 include “[a]ny other matter justice may require.” NRS 281A.775(g). For the following four  
15 reasons, together with the arguments advanced in prior briefing and at the hearing, Trustee  
16 Rodriguez submits that at least two of the violations should be deemed to be non-willful.

17 First, the pictures on the campaign website were posted at the same time and appear on the  
18 same page of the website. In effect, there was a single act by Trustee Rodriguez, which was to  
19 approve the posting of a number of photographs to the website. Opinion 4 (“Rodriguez provided  
20 many pictures to his campaign team for potential inclusion on his Campaign Website. Rodriguez  
21 was aware of which pictures were posted to his Campaign Website.”) The Commission has  
22 previously taken the position that these circumstances constitute a single violation. *See* Opinion  
23 14-70C (“Although several statutes or violations are implicated by the conduct, the Commission  
24 has more consistently determined that multiple violations of the Ethics Law arising out of the  
25 same course of conduct constitutes a single violation, and the Commission will weigh the  
26 significance of the conduct in its determination of willfulness and the amount of any sanction.”)  
27 In the *In re: Matson* Opinion, the Commission determined that while the individual “engaged in  
28 a series of activities motivated by her bid for re-election and personal retaliation” there should

1 only be “one willful violation.” *Id.* Thus, the Commission should revise its Opinion to find only  
2 one willful violation by Trustee Rodriguez or at a maximum, two.

3           Second, even though the Commission did not find the distinctions to be material between  
4 photographs taken while running for office and those taken prior to running for office, these  
5 distinctions had never before been considered or discussed by the Commission. Opinion 9.  
6 Accordingly, the interpretation of NRS 281A.400(2) and NRS 281A.400(7) would be vague and  
7 ambiguous, and unconstitutionally so, to a public officer. The prior decisions of the Commission,  
8 which do not constitute precedent, discuss the use of government resources in a way that “provide  
9 the impression that the public officer is acting in an official capacity.” Opinion 9 (quoting *In re*  
10 *Public Officer*, Adv. Op. No. 19-124A (2020). As the photographs were taken prior to running for  
11 office, Trustee Rodriguez did not *use* any government resources creating them to benefit his  
12 campaign. The Commission’s conclusion that Trustee Rodriguez “used government property . . .  
13 when he posted Pictures One and Two showing his uniform, gun and badge on his Campaign  
14 Website as part of his campaign” is erroneous as the photographs were not government property.  
15 Interpreting NRS 281A.400 in this fashion is void for vagueness as applied to Trustee Rodriguez.

16           Third, the Commission is impermissibly preventing Trustee Rodriguez from exercising his  
17 First Amendment rights to accurately depict himself to voters. The Commission’s interpretation  
18 of NRS 281A.400 chills the ability of candidates to freely and accurately use their own life  
19 experiences to run for office. The Commission is obligated to narrowly interpret its statutes to  
20 avoid unnecessarily interfering with the First Amendment. *See Dehne v. Avaino*, 219 F. Supp.  
21 2d 1096, 1110–11 (D. Nev. 2001). Accordingly, the interpretation of NRS 281A.400 is overbroad  
22 because it shuts down more speech than is necessary to protect the public interest.

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**IV. CONCLUSION**

For all of the above reasons, Trustee Rodriguez requests reconsideration of the Opinion to reduce the number of willful violations and, correspondingly, the number of fines and total amount of fines levied against Trustee Rodriguez. At a minimum, Trustee Rodriguez requests that the number of willful violations be reduced from four to two and the total civil penalty be reduced from \$1,000 to \$500.

Dated: June 2, 2023

McDONALD CARANO LLP

By: /s/ Adam Hosmer-Henner  
Adam Hosmer-Henner  
100 W. Liberty Street, Tenth Floor  
Reno, Nevada 89501  
(775) 788-2000  
ahosmerhenner@mcdonaldcarano.com

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP and that on the June 2, 2023, I caused a true and correct copy of the foregoing **TRUSTEE RODRIGUEZ’S MOTION FOR RECONSIDERATION** to be served on the parties below via email:

Ross E. Armstrong  
Executive Director  
Elizabeth J. Bassett  
Associate Counsel  
704 W. Nye Lane, Suite 204  
Carson City, NV 89703  
[rarmstrong@ethics.nv.gov](mailto:rarmstrong@ethics.nv.gov)  
[ebassett@ethics.nv.gov](mailto:ebassett@ethics.nv.gov)  
[k.pedroza@ethics.nv.gov](mailto:k.pedroza@ethics.nv.gov)

Dated: June 2, 2023

/s/ Pamela Miller  
An employee of McDonald Carano LLP

4876-8946-4914, v. 2

1 Elizabeth J. Bassett, Esq. (NV Bar No. 9013)  
2 Associate Counsel  
3 Nevada Commission on Ethics  
4 704 West Nye Lane, Suite 204  
5 Carson City, Nevada 89703  
6 (775) 687-5469  
7 Email: [ebassett@ethics.nv.gov](mailto:ebassett@ethics.nv.gov)

8 *Attorney for Ross E. Armstrong, Esq.*  
9 *Executive Director*

10 **STATE OF NEVADA**

11 **BEFORE THE COMMISSION ON ETHICS**

12 In re **Joseph Rodriguez**, Trustee,  
13 Washoe County School District;  
14 Lieutenant, State Fire Marshall  
15 Division, State of Nevada,

Ethics Complaint Case  
No. 22-051C

16 Subject /

17 **EXECUTIVE DIRECTOR'S PARTIAL NON-OPPOSITION TO**  
18 **SUBJECT'S MOTION FOR RECONSIDERATION**

19 Ross E. Armstrong, Esq., Executive Director of the Nevada Commission on  
20 Ethics ("Commission"), through the Commission's Associate Counsel, Elizabeth J.  
21 Bassett, Esq., hereby submits this Partial Non-Opposition to Subject Joseph  
22 Rodriguez's ("Rodriguez") Motion for Reconsideration ("Motion") of the Commission's  
23 Opinion in this matter.

24 **LEGAL ARGUMENT**

25 **I. The Executive Director Does Not Oppose Subject's Request that the**  
26 **Commission Reduce the Number of Willful Violations**

27 Subject's Motion argues that the Commission should reconsider its finding that  
28 Subject committed four total willful violations in this matter. For the following reasons,  
the Executive Director does not oppose Subject's request that the Commission  
reconsider its order in this matter and instead find that Rodriguez committed two willful  
violations and two nonwillful violations.

1 The format of the adjudicatory hearing in this matter did not allow the parties to  
2 sufficiently argue the number of willful violations that should be found against Subject  
3 for his violations of NRS 281A.400(2) and (7). At the hearing, the parties argued the  
4 following issues together before the Commission deliberated and ruled on the parties'  
5 competing motions for summary judgment: the merits of the violations alleged against  
6 Subject, how many violations of the Ethics Law should be found and whether the  
7 Commission should find those violations to be willful. In this format, the Executive  
8 Director argued that to the extent the Commission found Rodriguez violated the Ethics  
9 Law, the Commission should find those violations were willful. The Commission  
10 ultimately found Rodriguez committed four willful violations of the Ethics Law.

11 Given the number of photographs at issue in this matter, the nature of their use,  
12 and the overall totality of the circumstances, the Executive Director agrees with  
13 Rodriguez that the additional penalty associated with a finding of three or more willful  
14 violations is too severe in this matter. NRS 281A.790(4)(c) requires:

15 In addition to any other penalties provided by law, if a proceeding results  
16 in an opinion that: . . . One or more willful violations of this chapter have  
17 been committed by a public officer . . . the willful violations shall be  
18 deemed to be malfeasance in office for the purposes of NRS 283.440 and  
19 the Commission: . . . (2) Shall file a complaint in the appropriate court for  
20 removal of the public officer pursuant to NRS 283.440 when the public  
21 officer is found in the opinion to have committed three or more willful  
22 violations of this chapter.

23 Thus, if the current finding of four willful violations is upheld, the Commission will be  
24 required to file a complaint for Rodriguez's removal from public office.

25 In light of the facts in this matter, the Executive Director agrees with Rodriguez  
26 that his removal from office is not warranted. In making a determination as to  
27 willfulness, the Commission shall consider "any other matter justice may require".  
28 NRS 281A.775(1)(g). Additionally, the Commission "may consider other factors in the  
disposition of the matter if they bear a reasonable relationship to the determination of  
the severity of the violation" NRS 281A.775(2). The arguments of the parties in their  
briefings and at the hearing omitted arguments and discussion about the secondary

1 consequences of three or more willful violations. Had the secondary consequences  
2 been thoroughly argued, the Executive Director would have requested the  
3 Commission find that Rodriguez committed two willful violations and two nonwillful  
4 violations because the application of NRS 281A.790(4)(c) is too severe in this matter.  
5 Thus, the Executive Director does not oppose Rodriguez's request that the  
6 Commission reconsider its holding and instead find that two of his violations were  
7 willful and two were nonwillful.

8 The Executive Director takes no position on Rodriguez's request that the  
9 Commission also reduce the civil penalty assessed against him as a result of his  
10 violations from \$1,000 to \$500.

11 DATED this 15<sup>th</sup> day of June, 2023.

12 NEVADA COMMISSION ON ETHICS

13 /s/ Elizabeth J. Bassett

14 Elizabeth J. Bassett, Esq.  
15 Associate Counsel



1 Adam Hosmer-Henner (NSBN 12779)  
2 McDONALD CARANO LLP  
3 100 West Liberty Street, Tenth Floor  
4 Reno, Nevada 89501  
5 Telephone: (775) 788-2000  
6 ahosmerhenner@mcdonaldcarano.com

7 *Attorneys for Joseph Rodriguez*

8 **BEFORE THE NEVADA COMMISSION ON ETHICS**

9 In re Joseph Rodriguez, Trustee,  
10 Washoe County School District;  
11 Lieutenant, State Fire Marshall Division,  
12 State of Nevada,

Ethics Complaint  
Case No. 22-051C

13 Subject.

14 **REQUEST FOR SUBMISSION**

15 Trustee Joseph Rodriguez (“Subject”) filed a Motion for Reconsideration of the Opinion  
16 served by the Commission in this matter on June 2, 2023. On June 15, 2023, Executive Director  
17 Ross E. Armstrong filed a Partial Non-Opposition to Subject’s Motion for Reconsideration.  
18 Subject does not intend to file a Reply in Support of the Motion for Reconsideration and requests  
19 that the Motion for Reconsideration be submitted for decision.

20 Dated: June 16, 2023

21 McDONALD CARANO LLP

22 By: /s/ Adam Hosmer-Henner  
23 Adam Hosmer-Henner  
24 100 W. Liberty Street, Tenth Floor  
25 Reno, Nevada 89501  
26 (775) 788-2000  
27 ahosmerhenner@mcdonaldcarano.com  
28

**CERTIFICATE OF SERVICE**

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I hereby certify that I am an employee of McDonald Carano LLP and that on the June 16, 2023, I caused a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** to be served on the parties below via email:

Ross E. Armstrong  
Executive Director  
Elizabeth J. Bassett  
Associate Counsel  
704 W. Nye Lane, Suite 204  
Carson City, NV 89703  
[rarmstrong@ethics.nv.gov](mailto:rarmstrong@ethics.nv.gov)  
[ebassett@ethics.nv.gov](mailto:ebassett@ethics.nv.gov)  
[k.pedroza@ethics.nv.gov](mailto:k.pedroza@ethics.nv.gov)

Dated: June 16, 2023

/s/ Pamela Miller  
An employee of McDonald Carano LLP

# **Agenda Item 6**



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Larry Grant**, Member, Mineral  
County Board of Commissioners, State  
of Nevada,

Ethics Complaint  
Case No. 23-005C

Subject. /

**PROPOSED**  
**STIPULATED DEFERRAL AGREEMENT**  
**NRS 281A.740**

1. This Stipulated Deferral Agreement (“Stipulation”) is entered into in Ethics Complaint Case No. 23-005C regarding Larry Grant (“Subject”) following a Settlement Conference.

2. At all material times, Subject served as the Director of Hawthorne Utilities, a branch of the Mineral County Government and was a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over Subject as a public officer whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280.

3. This Stipulation is entered into based upon the parties’ agreement and Commission’s determination that Subject’s alleged conduct may be appropriately addressed through the terms and conditions of a deferral agreement instead of proceeding to an adjudicatory hearing before the Commission.

4. The facts relied upon by the Commission to make its determination are summarized in Appendix A (“Relevant Facts Relied Upon by the Commission”).<sup>1</sup>

5. No findings have been made by the Commission that Subject violated the Ethics Law, and this Stipulation does not constitute an admission by Subject of any violation of the Ethics Law.

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<sup>1</sup> The Relevant Facts Relied Upon by the Commission do not constitute part of the “Investigative File” as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulation.

**A. Procedural History:**

1. On or about January 11, 2023, the Commission received Ethics Complaint No. 23-005C from a member of the public (“Requester”).

2. On February 27, 2023, the Commission issued an *Order on Jurisdiction and Investigation* directing the Executive Director to conduct an investigation regarding Subject’s alleged violations of the following provisions of the Ethics Law:

**NRS 281A.400(2)** Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity.

**NRS 281A.400(5)** Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally and using the information to further the pecuniary interests of himself or any other person or business entity.

**NRS 281A.400(7)** Using governmental time, property or equipment or other facility to benefit his significant personal or pecuniary interest or the interest of an employee or any person to whom the public officer or employee has a commitment in a private capacity.

**NRS 281A.400(9)** Attempting to benefit his personal or pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.

**NRS 281A.400(10)** Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.

3. In the *Order on Jurisdiction and Investigation*, the Commission granted Requester confidentiality pursuant to NRS 281A.750.

4. Pursuant to NAC 281A.415, the Commission directed the Executive Director to serve a *Notice of Additional Issues and Facts* regarding the following violations in addition to the allegations set forth in the Ethics Complaint:

**NRS 281A.420(1)** Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest or commitment in a private capacity to the interest of another person that is reasonably affected by an official matter.

**NRS 281A.420(3)** Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.

5. On February 27, 2023, the Executive Director provided a *Notice of Complaint and Investigation* and a separate *Notice of Additional Issues and Facts* to Subject pursuant to NRS 281A.720 and NAC 281A.410 and provided Subject with an opportunity to submit a response to the allegations.

6. On April 26, 2023, the Review Panel issued its Panel Determination, finding that the facts do not establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion regarding the alleged violation of NRS 281A.400(5) and (9) and NRS 281A.420(1) and (3) and dismissed those allegations. The Review Panel further found that the facts do establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion regarding the alleged violation of NRS 281A.400(2), (7) and (10) and referred those violations to the Commission.

7. In lieu of a written response, Subject provided an interview to the Commission's Investigator addressing the allegations of the Complaint on May 10, 2023.

8. On May 31, 2023, the parties attended a settlement conference presided over by Commissioner Barbara Gruenewald and Deputy Attorney General Laena St-Jules, Esq. Aided by Commissioner Gruenewald, Subject and the Commission now enter into this Stipulation.

**B. Terms and Conditions of Stipulation:**

1. This Stipulation shall be in effect for a period of two (2) years (the "Deferral Period") from the date of approval by the Commission.

2. Subject must comply in all material respects with the provisions of the Ethics Law set forth in NRS Chapter 281A during the Deferral Period without being the subject of another ethics complaint arising from an alleged violation of the Ethics Law which occurs during the Deferral Period and for which a Review Panel determines that there is just and sufficient cause for the Commission to determine that Subject violated any Ethics Law.

3. Subject shall receive ethics training as determined by the Executive Director within 60 days from the date of the Commission's approval of this Stipulation.

4. To assist Subject in his compliance obligations, the Commission will issue a confidential letter of caution detailing the application of the Ethics Law to the Subject's circumstances.

5. During the Deferral Period, the Executive Director shall monitor Subject's compliance with this Stipulation. Should the Executive Director discover that Subject has not complied with any term or condition of this Stipulation, the Executive Director shall:

- a. Inform the Commission of any alleged failure of Subject to comply with this Stipulation;
- b. Give Subject written notice of any alleged failure to comply with this Stipulation; and
- c. Allow Subject not less than 15 days to respond to such a notice.

6. The Commission may vacate this Stipulation and conduct further proceedings in the matter, including an adjudicatory hearing, if the Commission finds that Subject failed to comply with the terms and conditions of this Stipulation.

7. If Subject complies with the terms and conditions of this Stipulation, the Commission shall issue a superseding Order dismissing the Complaint.

8. This Stipulation applies only to the alleged conduct related to this Complaint, and is not intended to apply to any future unrelated alleged conduct.

**C. Acceptance:** We, the undersigned parties, have read this Stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. \_\_\_\_\_  
Larry Grant

The above Deferral Agreement is approved:

FOR ROSS E. ARMSTRONG, ESQ.  
Executive Director  
Nevada Commission on Ethics

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. /s/ \_\_\_\_\_  
Elizabeth J. Bassett, Esq.  
Associate Counsel

Nevada Commission on Ethics

Approved as to form by:

FOR THE NEVADA COMMISSION  
ON ETHICS

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. /s/ \_\_\_\_\_  
Laena St-Jules, Esq.  
Deputy Attorney General

The above Stipulated Deferral Agreement is approved by the Commission.

Dated: \_\_\_\_\_

By: /s/ Kim Wallin \_\_\_\_\_  
Kim Wallin, CPA, CMA, CFM  
Chair

By: /s/ Stan Olsen \_\_\_\_\_  
Stan Olsen  
Commissioner

By: /s/ Brian Duffrin \_\_\_\_\_  
Brian Duffrin  
Commissioner

By: /s/ Amanda Yen \_\_\_\_\_  
Amanda Yen, Esq.  
Commissioner

By: /s/ Teresa Lowry \_\_\_\_\_  
Teresa Lowry, Esq.  
Commissioner

By: /s/ John Moran \_\_\_\_\_  
John Moran III, Esq.  
Commissioner

## **Appendix A – Relevant Facts Relied Upon by the Commission**

- A. Grant was elected to fill seat C on the Mineral County Board of Commissioners (“Board”) on November 22, 2022 and assumed that office in January of 2023.
- B. Prior to his position on the Board, Grant was the Director of Hawthorne Utilities, a branch of the Mineral County Government, from 2014 until his retirement on December 28, 2022.
- C. The Nevada Division of Environmental Protection (“NDEP”) requires every utility company in the state of Nevada, including Hawthorne Utilities, to have a cross connection control program.
- D. Grant was required to be a certified cross-connection inspector and tester as a condition of his job as Director of Hawthorne Utilities.
- E. Cross-connection inspection certifications are regulated by the American Waste Water Association (“AWWA”) and expire every three years.
- F. In November 2022, Grant received training on County time and at County expense to recertify for his Cross Connection Specialist Certification and Backflow Prevention Assembly Tester Certification.
- G. On or about December 8, 2022, a notice was mailed out to Mineral County businesses by Hawthorne Utilities. This notice was printed on Hawthorne Utilities letterhead and identified Grant as the current Director.
- H. The notice advised business owners of their obligation under a Mineral County Ordinance to have their backflow devices inspected annually by personnel licensed by the County, and further advised them that they were obligated to have the inspection performed within thirty days of receipt of the letter.
- I. This notice also included a list of licensed inspectors entitled “Approved Testers.” Grant’s own personal business, “Grant H20” was listed, along with nine other approved testers, and identified Grant as the owner of the business.
- J. Grant did not perform any backflow inspections while still employed as the Director of Hawthorne Utilities.



Submitted Electronically on 01-11-2023

# NEVADA COMMISSION ON ETHICS

## ETHICS COMPLAINT

[NRS 281A.700 to 281A.790](#)

**1. SUBJECT OF THE COMPLAINT** - person you allege violated provisions of NRS Chapter 281A, the Nevada Ethics in Government Law. *(Please use a separate form for each individual.)*

<b>Subject Name:</b> <i>(Last, First)</i>	Grant, Larry		<b>Title of Public Office:</b> <i>(Position)</i>	Director/County Commissioner
<b>Public Entity:</b> <i>(Name of the entity employing this position)</i>	Hawthorne Utilities/Mineral County Board of Commissioners			
<b>Address:</b>	395 E Street		<b>City, State, Zip Code:</b>	Hawthorne, NV 89415
<b>Telephone:</b>	<i>Work:</i> 775-945-2434	<i>Other (home/cell):</i>	<b>Email:</b>	lgrant@mineralcountynv.org

2. Describe the alleged conduct of the public officer or employee (subject) that you believe violated NRS Chapter 281A. *(Include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)*

Mr. Larry Grant was the Director of Hawthorne Utilities for several years until his election to the Mineral County Board of Commissioners in November of 2022 for a term to begin in January 2023. On or about December 8, 2022, Mr. Grant was the Director of Hawthorne Utilities and caused to have sent out a notice of inspection to all Mineral County businesses. The notice instructed that to be in compliance with County Code, each business must have an inspection completed and included a list of a list of licensed testers. The list, titled "Approved Testers" included "Larry Grant - Grant H2O" with an address and phone number. It is alleged that the Larry Grant on the list is the same Larry Grant who caused to have the notices sent. It is further alleged that Mr. Grant did this to secure business for himself while the director or Hawthorne Utilities and then while he is a Commissioner for Mineral County in violation of the various NRS sections previously specified. It is further alleged that after his election to the Board of Mineral County Commissioners, and his announcement of retirement from Hawthorne Utilities, that Mr. Grant attended license training in December 2022. It is alleged that he did not need this license (or the extension of the license) to complete his job as Director of Hawthorne Utilities but that he secured the license, on County time and at County expense, so that he would have the license for his private business (Grant H2O).

3. Is the alleged conduct currently pending before another administrative, law enforcement or judicial body? If yes, describe:

No.
-----

4. NRS Chapter 281A requires public officers and employees to hold public office as a public trust and avoid conflicts between public duties and private interests. (NRS 281A.020) What provisions of NRS Chapter 281A are relevant to the conduct alleged? **Please check all that apply.**

<input type="checkbox"/> NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity for himself or person to whom he has a commitment in a private capacity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
<input checked="" type="checkbox"/> NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and himself, any business entity in which he has a significant pecuniary interest or any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for himself or any person to whom he has a commitment in a private capacity for the performance of his duties as a public officer or employee.
<input checked="" type="checkbox"/> NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
<input type="checkbox"/> NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests or the interests of any person to whom he has a commitment in a private capacity.
<input checked="" type="checkbox"/> NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his significant personal or pecuniary interest, or any person to whom he has a commitment in a private capacity. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
<input checked="" type="checkbox"/> NRS 281A.400(9)	Attempting to benefit his personal or pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.
<input checked="" type="checkbox"/> NRS 281A.400(10)	Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.
<input type="checkbox"/> NRS 281A.410	Representing or counseling a private person for compensation on an issue pending before a public agency while employed, or within 1 year after leaving the service of a public agency, including before any state agency of the Executive or Legislative Department. (State and local legislators and part-time public officers and employees may represent/counsel private persons before agencies they do not serve, except local legislators may not represent/counsel private persons before other local agencies within the same county.)
<input type="checkbox"/> NRS 281A.420(1)	Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceeding year that is reasonably affected by an official matter.
<input type="checkbox"/> NRS 281A.420(3)	Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.
<input type="checkbox"/> NRS 281A.430	Bidding on or entering into a government contract in which he has a significant pecuniary interest. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.500	Failing to file or timely file a Nevada Acknowledgment of Ethical Standards for Public Officers form.
<input type="checkbox"/> NRS 281A.510	Accepting or receiving an improper honorarium.
<input type="checkbox"/> NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.

<input type="checkbox"/> NRS 281A.550	Negotiating or accepting employment from a business or industry regulated by or contracted with former public agency within one year after leaving the service of the agency. (Failing to honor the applicable "cooling off" period after leaving public service).
---------------------------------------	--

\*Pursuant to NRS 281A.065, a public officer or employee has a commitment in a private capacity to the following persons:

1. Spouse; domestic partner
2. Household member
3. Family member within 3<sup>rd</sup> degree of consanguinity/affinity.
4. Employer or spouses/domestic partner/household member's employer
5. Substantial and continuing business relationships, i.e. partner, associate, or business entity.
6. Substantially similar relationships to those listed above, including close, personal relationships akin to family and fiduciary relationships to business entities.

**5. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS.** (NRS 281A.710 through 281A.715.)

Attach all documents or items you believe support your allegations, including witness statements, public or private records, audio or visual recordings, documents, exhibits, concrete objects, or other forms of proof.

**6. Witnesses:** Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide.

Name and Title:	<b>Ana Conway</b>		
Address:		City, State, Zip:	Hawthorne, NV 89415
Telephone:	<i>Work:</i>	<i>Other (home/cell):</i> 775-945-2486	Email: aconway@mineralcountynv.org
Nature of Testimony:	Ms. Conway will be able to testify regarding the sending of the letters, why and how Grant H2O appeared on the letters and other relevant information. Ms. Conway will also be able to testify about the necessity of Mr. Grant to renew his license in December 2022, the cost to the County to have that renewed, and the amount of time Mr. Grant spent on the training.		

Name and Title:	<b>Teresa McNally</b>		
Address:		City, State, Zip:	Hawthorne, NV 89415
Telephone:	<i>Work:</i>	<i>Other (home/cell):</i> 775-945-3676	Email: clerk-treasurer@mineralcountynv.org
Nature of Testimony:	Ms. McNally will be able to testify to the fact that Mr. Grant did not attend scheduled meetings due to the fact that he was at training, that it was alleged that the training was necessary for the County, and that it was paid for by the County.		

Name and Title:	<b>Julia Workman</b>		
Address:		City, State, Zip:	Hawthorne, NV 89415
Telephone:	<i>Work:</i>	<i>Other (home/cell):</i> 775-945-2434	Email: jworkman@mineralcountynv.org
Nature of Testimony:	Ms. Workman is the person who signed and sent the letters that included the list of approved testers. She will be able to testify regarding the instructions she was given, how and why Larry Grant appeared on the list, etc.		

**7. Requesters Information:**

Your Name:	[REDACTED]		
Your Address:		City, State, Zip:	[REDACTED]
Your Telephone:	<i>Day:</i>	<i>Evening:</i>	Email: [REDACTED]

***Your identity as the Requester will be provided to the Subject if the Commission accepts jurisdiction of this matter, unless:***

Pursuant to NRS 281A.750, I request that my identity as the requester of this Ethics Complaint remain confidential because (please check

appropriate box):

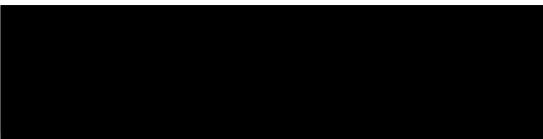


A copy of this Complaint will be provided to the Subject. If your request for confidentiality is approved by the Commission, the Complaint will be redacted to protect your identity as the Requester. The Commission may decline to maintain the confidentiality of your identity as the Requester for lack of sufficient evidence of your employment status with the same public body, agency or employer, or proof of a bona fide threat of physical force or violence.

If the Commission declines to maintain my confidentiality, I wish to:

- Withdraw my Complaint, **OR**
- Submit the Complaint understanding that the Subject will know my identity as the Requester.

**By my signature below, I affirm that the facts set forth in this document and all of its attachments are true and correct to the best of my knowledge and belief. I am willing to provide sworn testimony regarding these allegations. I acknowledge that this Ethics Complaint, the materials submitted in support of the allegations, and the Commission's investigation are confidential unless and until the Commission's Review Panel renders a determination. Certain Commission proceedings and materials, including the Investigatory File remain confidential pursuant to NRS 281A.750 through 281A.760.**

Signature:   
Print Name: 

Date: 01-11-2023

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You may file a Complaint using the Commission's [online form](https://ethics.nv.gov) submission at [ethics.nv.gov](https://ethics.nv.gov) (Preferred) or You must submit this form bearing your signature to the Executive Director via: **delivery/mail** to Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City, Nevada, 89703, **email** to [NCOE@ethics.nv.gov](mailto:NCOE@ethics.nv.gov), or **fax** to (775) 687-1279



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Larry Grant**, Member, Mineral  
County Board of Commissioners,  
State of Nevada,

Ethics Complaint  
Case No. 23-005C  
**Confidential**

\_\_\_\_\_  
Subject. /

**ORDER ON JURISDICTION AND INVESTIGATION**

Pursuant to NRS 281A.715

The Nevada Commission on Ethics ("Commission") received an Ethics Complaint on January 11, 2023 regarding Larry Grant ("Subject"). On February 27, 2023, pursuant to the requirements of the Nevada Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law") and NAC 281A.405, the Commission conducted its jurisdictional and evidentiary review of the record, including the Ethics Complaint, supporting evidence and the recommendation of the Executive Director.<sup>1</sup>

IT IS HEREBY ORDERED:

The Commission accepts jurisdiction of this Ethics Complaint and directs that the identity of the Requester be maintained as confidential under NRS 281A.750. Further, the Commission directs the Executive Director to investigate and serve a *Notice of Complaint and Investigation* regarding the Subject's alleged violations of the following provision of the Ethics Law:

**NRS 281A.400(2)** Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity.

**NRS 281A.400(5)** Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.

**NRS 281A.400(7)** Using governmental time, property or equipment or other facility to benefit his significant personal or pecuniary interest or the interest of an employee or any person to whom the public officer or employee has a commitment in a private capacity.

<sup>1</sup> The following Commissioners participated in this jurisdictional review: Chair Wallin, Vice-Chair Duffrin and Commissioners Gruenewald, Lowry, Oscarson, Towler, and Yen.

**NRS 281A.400(9)** Attempting to benefit his personal or pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.

**NRS 281A.400(10)** Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.

Separately, pursuant to NAC 281A.415, the Executive Director is directed to serve a *Notice of Additional Issues and Facts* regarding the following violations in addition to the allegations set forth in the Ethics Complaint:

**NRS 281A.420(1)** Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceding year that is reasonably affected by an official matter.

**NRS 281A.420(3)** Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan pecuniary interest, or commitment in a private capacity to the interest of another person.

DATED this 27<sup>th</sup> day of February 2023.

NEVADA COMMISSION ON ETHICS

/s/ Kim Wallin

Kim Wallin, CPA, CMA, CFM  
Commission Chair

## CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited through the State of Nevada mailroom for mailing via U.S. Postal Service, certified mail, return receipt requested, a true and correct copy of the foregoing **Order on Jurisdiction and Investigation**, addressed as follows:

Larry Grant  
Commissioner  
Mineral County Board of  
County Commissioners  
105 South A Street  
P.O. Box 1450  
Hawthorne, NV 89415

Cert. Mail No.: 9171 9690 0935 0037 6407 02

Dated: 2/27/23



Employee, Nevada Commission on Ethics



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Larry Grant**, Member, Mineral  
County Board of Commissioners,  
State of Nevada,

Ethics Complaint  
Case No. 23-005C

Subject. /

**REVIEW PANEL DETERMINATION**  
NRS 281A.730; NAC 281A.440

The Nevada Commission on Ethics ("Commission") instructed the Executive Director to investigate alleged violations of NRS 281A.400(2), (5), (7), (9) and (10) and NRS 281A.420(1) and (3) regarding the conduct of Larry Grant ("Grant").

Grant is a public officer as defined in NRS 281A.160, and the Commission has jurisdiction over this matter pursuant to NRS 281A.280 because the allegations contained in the Complaint relate to Grant's conduct as a public officer and have associated implications under the Ethics Law.

On April 19, 2023, a Review Panel consisting of Commissioner Thoran Towler, Esq. (Presiding Officer), Commissioner Barbara Gruenewald, Esq. and Commissioner Damian Sheets, Esq., considered the following: (1) Ethics Complaint; (2) Order on Jurisdiction and Investigation; and (3) Executive Director's Recommendation to the Review Panel with Summary of Investigatory Findings and Relevant Evidentiary Exhibits.<sup>1</sup>

Under NAC 281A.430, the Panel unanimously finds and concludes that the facts do not establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the alleged violation of NRS 281A.400(5) and (9) and NRS 281A.420(1) and (3) and those allegations are dismissed.

The Panel further unanimously finds and concludes that the facts do establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the alleged violation of NRS 281A.400(2), (7) and (10). Therefore, these alleged violations are referred to the Commission.

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<sup>1</sup>All materials provided to the Review Panel, except the Ethics Complaint and the Order on Jurisdiction and Investigation, represent portions of the investigatory file and remain confidential pursuant to NRS 281A.750.

Dated this 19<sup>th</sup> day of April, 2023.

REVIEW PANEL OF THE NEVADA COMMISSION ON ETHICS

By: /s/ Thoran Towler  
Thoran Towler, Esq.  
Commissioner/Presiding Officer

By: /s/ Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

By: /s/ ABSENT  
Damian Sheets, Esq.  
Commissioner

**CERTIFICATE OF MAILING**

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the foregoing **REVIEW PANEL DETERMINATION** via Personal Service, US Certified mail and electronic mail to the Subject addressed as follows:

Ross E. Armstrong, Esq.  
Executive Director  
Elizabeth J. Bassett, Esq.  
Nevada Commission on Ethics

Email: [rarmstrong@ethics.nv.gov](mailto:rarmstrong@ethics.nv.gov)

Email: [ebassett@ethics.nv.gov](mailto:ebassett@ethics.nv.gov)

Larry Grant  
Commissioner  
Mineral County Board of  
County Commissioners  
105 South A Street  
P.O. Box 1450  
Hawthorne, NV 89415

Email: [lgrant@mineralcountynv.org](mailto:lgrant@mineralcountynv.org)

Certified Mail No.: 9489 0090 0027 6499 2214 10



Dated: 4/26/23

  
\_\_\_\_\_  
Employee, Nevada Commission on Ethics

# **Agenda Item 7**



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Raymond Tulloch**, Trustee,  
Incline Village General Improvement  
District, State of Nevada

Ethics Complaint  
Case No. 23-054C

Subject. /

**PROPOSED**  
**STIPULATED DEFERRAL AGREEMENT**  
**NRS 281A.740**

1. This Stipulated Deferral Agreement (“Agreement”) is entered into in Ethics Complaint Case No. 23-054C regarding Raymond Tulloch (“Tulloch” or “Subject”).

2. At all material times, Tulloch served as a Trustee of the Incline Village General Improvement District (“IVGID”) and was a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over Tulloch as a public officer whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280.

3. This Deferral Agreement (“Agreement”) is entered into based upon the Commission’s determination that Tulloch’s alleged conduct may be appropriately addressed through the terms and conditions of a deferral agreement in lieu of an adjudicatory hearing before the Commission.

4. The facts relied upon by the Commission to make its determination are summarized in Appendix A (“Relevant Facts Relied Upon by the Commission”).<sup>1</sup>

5. No findings have been made by the Commission that Tulloch violated the Ethics Law, including, but not limited to, those pertaining to voting and/or abstention, and this Agreement does not constitute an admission by Tulloch of any violation of the Ethics Laws.

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<sup>1</sup> The Relevant Facts Relied Upon by the Commission do not constitute part of the “Investigative File” as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Agreement.

**A. Procedural History:**

1. On or about April 3, 2023, the Commission received Ethics Complaint No. 23-054C from a member of the public (“Requester”).

2. On May 18, 2023, the Commission issued an *Order on Jurisdiction and Investigation* directing the Executive Director to conduct an investigation regarding Tulloch’s alleged violations of the following provisions of the Ethics Law:

**NRS 281A.400(1)** Seeking or accepting a gift, service, favor, or economic opportunity for oneself or any person to whom he has a commitment in a private capacity.

**NRS 281A.420(3)** Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.

3. Pursuant to NAC 281A.415, the Commission directed the Executive Director to serve a *Notice of Additional Issues and Facts* regarding the following violations in addition to the allegations set forth in the Ethics Complaint:

**NRS 281A.420(1)** Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceding year that is reasonably affected by an official matter.

4. On May 18, 2023, the Executive Director provided a *Notice of Complaint and Investigation* and a separate *Notice of Additional Issues and Facts* to Tulloch pursuant to NRS 281A.720 and NAC 281A.410.

5. In lieu of an adjudicatory hearing before the Commission, Tulloch and the Commission now enter into this Agreement.

**B. Terms and Conditions of Deferral Agreement:**

1. This Agreement shall be in effect for a period of two (2) years (the “Deferral Period”) from the date of approval by the Commission.

2. Tulloch must comply in all material respects with the provisions of the Ethics Law set forth in NRS Chapter 281A during the Deferral Period without being the subject

of another ethics complaint arising from an alleged violation of the Ethics Law which occurs during the Deferral Period and for which a Review Panel determines that there is just and sufficient cause for the Commission to determine that Tulloch violated any Ethics Law.

3. Tulloch shall receive ethics training as approved by the Executive Director within 60 days from the date of the Commission's approval of this Agreement.

4. The Commission admonishes Tulloch pursuant to NRS 281A.785(1)(b) and cautions him to ensure that he properly disclose his private interests when performing his public duties as a Trustee for IVGID.

5. During the Deferral Period, the Executive Director shall monitor Tulloch's compliance with this Agreement. Should the Executive Director discover that Tulloch has not complied with any term or condition of this Agreement, the Executive Director shall:

- a. Inform the Commission of any alleged failure of Tulloch to comply with this Agreement;
- b. Give Tulloch written notice of any alleged failure to comply with this Agreement; and
- c. Allow Tulloch not less than 15 days to respond to such a notice.

6. The Commission may vacate this Agreement and conduct further proceedings in the matter, including an adjudicatory hearing, if the Commission finds that Tulloch failed to comply with the terms and conditions of this Agreement.

7. If Tulloch complies with the terms and conditions of this Agreement, the Commission shall dismiss this complaint with prejudice.

8. This Agreement applies only to the alleged conduct related to this Complaint and is not intended to apply to any future unrelated alleged conduct.

**C. Acceptance:** We, the undersigned parties, have read this Agreement, understand each and every provision therein, and agree to be bound thereby.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. \_\_\_\_\_  
Raymond Tulloch

FOR RAYMOND TULLOCH

\_\_\_\_\_  
Katherine F. Parks, Esq.  
Thorndal Armstrong

The above Deferral Agreement is approved:

FOR ROSS E. ARMSTRONG, ESQ.  
Executive Director  
Nevada Commission on Ethics

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. /s/\_\_\_\_\_  
Elizabeth J. Bassett, Esq.  
Associate Counsel  
Nevada Commission on Ethics

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. /s/\_\_\_\_\_  
Laena St-Jules, Esq.  
Deputy Attorney General

The above Deferral Agreement is approved by the Nevada Commission on Ethics:<sup>2</sup>

Dated: \_\_\_\_\_, 2023

By: /s/ Kim Wallin\_\_\_\_\_  
Kim Wallin, CPA, CMA, CFM  
Chair

By: /s/ Teresa Lowry\_\_\_\_\_  
Teresa Lowry, Esq.  
Commissioner

By: /s/ Thoran Towler\_\_\_\_\_  
Thoran Towler, Esq.  
Vice Chair

By: /s/ John Moran\_\_\_\_\_  
John Moran III, Esq.  
Commissioner

By: /s/ Brian Duffrin\_\_\_\_\_  
Brian Duffrin  
Vice-Chair

By: /s/ Stan Olsen\_\_\_\_\_  
Stan Olsen  
Commissioner

By: /s/ Barbara Gruenewald\_\_\_\_\_  
Barbara Gruenewald, Esq.  
Commissioner

By: /s/ Amanda Yen\_\_\_\_\_  
Amanda Yen, Esq.  
Commissioner

<sup>2</sup> On April 7, 2022, Subject Tulloch executed a written waiver of the Review Panel proceedings. Accordingly, all listed Commissioners had authority to consider and approve this Stipulated Agreement under NRS 281A.220(4).

## **Appendix A – Relevant Facts Relied Upon by the Commission**

- A. Tulloch is a Trustee of IVGID having been first elected in 2022.
- B. IVGID is a General Improvement District established by Washoe County under the authority of NRS Chapter 318.
- C. IVGID operates various recreational facilities in Incline Village including the Diamond Peak Ski Area.
- D. Tulloch is seasonally employed by Mt. Rose — Ski Tahoe ski resort (“Mt. Rose”) as the ski team head coach. Tulloch receives compensation for his employment with Mt. Rose.
- E. Tulloch’s 2023 Financial Disclosure Statement, filed with the Nevada Secretary of State, lists Mt Rose as a source of Tulloch’s income along with “Palisades Tahoe part-time employment income – coaching”.
- F. The March 8, 2023 IVGID Trustee’s Meeting Agenda included Item G.5 entitled:  
  
Review, discuss and possibly approve Diamond Peak Ski Resort’s 2023-2024 Picture Pass holder daily lift ticket rates including Picture Pass holders and Non-Picture Pass holder season pass rate proposal. (Requesting Staff Member: General Manager Diamond Peak Ski Resort Mike Bandelin)
- G. A review of the video of the March 8th Meeting shows that Tulloch participated in the discussion of and voted on Item G.5 but did not make any disclosure regarding his employment with either Mt. Rose or Palisades.
- H. The March 22, 2023 IVGID Trustee’s Meeting Agenda included Item G.5 entitled:  
  
Review, discuss and possibly award a Procurement Agreement for Replacement Snowboard Rental Equipment – 2021/2022 Capital Project: Fund: Community Services; Division: Ski; Project # 3468RE0002; Project Type Equipment & Software; Vendor: Amer Sports Salomon in the amount of \$131,880.00 (Requesting Staff Member: General Manager Diamond Peak Ski Resort Mike Bandelin)
- I. The March 22nd Agenda also included Item G.6 entitled:  
  
Review, discuss and possibly approve Diamond Peak Ski Resort’s 2023-2024 Picture Pass holder daily lift ticket rates including Picture Pass holders and Non-Picture Pass holder season pass rate proposal. (Requesting Staff Member: General Manager Diamond Peak Ski Resort Mike Bandelin)
- J. A review of the video of the March 22nd Meeting shows that Tulloch participated in the discussion of and voted on both Items G.5 and G.6 but did not make any disclosure regarding his employment with either Mt. Rose or Palisades.



Submitted Electronically on 04-02-2023

# NEVADA COMMISSION ON ETHICS

## ETHICS COMPLAINT

[NRS 281A.700 to 281A.790](#)

1. **SUBJECT OF THE COMPLAINT** - person you allege violated provisions of NRS Chapter 281A, the Nevada Ethics in Government Law. *(Please use a separate form for each individual.)*

<b>Subject Name:</b> <i>(Last, First)</i>	Tulloch, Raymond		<b>Title of Public Office:</b> <i>(Position)</i>	Trustee
<b>Public Entity:</b> <i>(Name of the entity employing this position)</i>	Incline Village General Improvement District			
<b>Address:</b>		<b>City, State, Zip Code:</b>	Incline Village, NV 89451	
<b>Telephone:</b>	<i>Work:</i>	<i>Other (home/cell):</i>	<b>Email:</b>	raytulloch@munrotulloch.com
		207-409-4872		

2. Describe the alleged conduct of the public officer or employee (subject) that you believe violated NRS Chapter 281A. *(Include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)*

Tulloch has included employment at the Mt. Rose Ski Area as a source of income on his 2023 Financial Disclosure Statement: 2023 Annual Financial Disclosure - Secretary of State of Nevada (nvsos.gov) During public comment at the IVGID Board of Trustees (BOT) meeting on February 22, 2023 (livestream at 8:00-10:40), a parcel owner questioned whether Mr. Tulloch's employment at Mt. Rose Ski Area was a violation of the Nevada Ethics in Government Law (Nevada Revised Statutes (NRS) Chapter 281). The livestream video of the BOT meeting can be found here: IVGID on Livestream Nevada Revised Statutes Chapter 281A (administered by the Nevada Commission on Ethics) can be found here: NRS: CHAPTER 281A - ETHICS IN GOVERNMENT (state.nv.us)

It is the nature of Tulloch's employment at Mt. Rose Ski Area and the explicit conflicts such employment creates with regard to his duties as an IVGID Board of Trustees member that raise serious ethical concerns. Tulloch is not employed at Mt. Rose Ski Area simply as a cook, lift operator, mechanic, or ski instructor with no management oversight of operations or core decision making. Rather, Tulloch stated he is employed as the director of all of the ski programs at Mt. Rose Ski Area (2/22/23 BOT meeting livestream at 24:00-26:00), including the development programs (Ripper/Shredders/All Mountain) and competitive programs (Freeride/Lake League/Far West/Masters). There is a clear and present conflict of interest between Tulloch's duties as an IVGID BOT member to set the budget for IVGID's Diamond Peak

Ski Area, affecting all of Diamond Peak Ski Area's operations (from determining capital investments in infrastructure to setting prices for daily lift tickets and season passes) as well as the policy decisions that affect Diamond Peak personnel--both topics were items on the IVGID BOT meeting for 3/22/23 where he vehemently complained about (1) revenues from Diamond Peak Ski Area's operations being used to support IVGID's portfolio of recreation venues/programs and (2) even considering additional incentives to recruit and retain IVGID personnel, including at the Diamond Peak Ski Area. Tulloch has stated that there is no conflict of interest because Diamond Peak Ski Area doesn't have a ski team (2/22/23 BOT meeting livestream at 24:00-26:00). That statement is a failed attempt by Tulloch to deflect from the explicit conflict. IVGID's Diamond Peak Ski Area does have a ski team. The Diamond Peak Ski Team is operated by the Diamond Peak Ski Education Foundation, a 501(c)(3) foundation. The Diamond Peak Ski Team uses the Diamond Peak Ski Area's lifts and runs to train and compete throughout the entire ski season. That ski team has approximately 200 racers and 50 instructors. All Diamond Peak Ski Team racers and instructors and family members purchase season passes, daily tickets, food and beverages while at the Diamond Peak Ski Area. The activities of the Diamond Peak Ski Team generate substantial revenues for IVGID's Diamond Peak Ski Area. Not only is Tulloch (and his employer, Mt. Rose Ski Area) competing against the Diamond Peak Ski Team for the same pool of athletes and instructors, but also Tulloch's employer (the Mt. Rose Ski Area) is directly competing against IVGID's Diamond Peak Ski Area for skiers and snowboarders purchasing season passes, daily lift tickets, food and beverages. Therefore, Tulloch's discussions and votes as an IVGID BOT member regarding the capital investments, ticket/pass pricing, and employee incentives at Diamond Peak Ski Area directly affect the revenues of Tulloch's employer, Mt. Rose Ski Area. Tulloch appears to be in direct violation of the following Nevada Revised Statutes Chapter 281A provisions: 281A.020(1) (b)--failing to avoid conflicts between public and private interests 281A.400(1) - failing to avoid employment with private interests that would improperly influence 281A.420(1)(b)--failing to disclose a conflict of interest 281A.420(3)(b)--failing to abstain from acting on a matter in which abstention is required Conclusion: Because Tulloch's employment at Mt. Rose Ski Area is such a serious conflict of interest, simple disclosure before any IVGID BOT meeting on items involving Diamond Peak Ski Area is not enough. The Nevada Commission on Ethics should determine that Tulloch must abstain from all discussions and/or votes involving Diamond Peak Ski Area. IVGID's Diamond Peak Ski Area operations are interwoven with the operations of the entire portfolio of IVGID's other recreational venues, because the revenues generated from the Diamond Peak Ski Area have historically been used, in part, to provide significant monetary support for all of

IVGID's other recreational venues for years. Therefore, Tulloch should be required to abstain from any discussions/actions involving all of IVGID's recreational venues as explained below. Tulloch's recent arguments during IVGID BOT budget meetings to mandate that each of IVGID's recreational venues be treated as stand-alone ventures and be self-sustaining is an attempt by Tulloch to sever the historical interwoven nature of IVGID's portfolio of recreational venues. Tulloch's argument is self-serving, because such treatment would allow Tulloch to argue that he should continue to act on the IVGID BOT on all matters involving recreational venues, other than the Diamond Peak Ski Area, if the Nevada Commission on Ethics rules against Tulloch and finds that Tulloch must abstain from acting on any matter involving the Diamond Peak Ski Area. Conclusion: Because the Diamond Peak Ski Area is so interwoven with the entire portfolio of IVGID's other recreational venues, the Nevada Commission on Ethics should determine that Tulloch must abstain from all discussions and/or votes involving all of IVGID's recreational venues.

3. Is the alleged conduct currently pending before another administrative, law enforcement or judicial body? If yes, describe:

He continuing to vote on financial issues that effect the recreational facilities in Incline Village and may not have provided adequate disclosure.

4. NRS Chapter 281A requires public officers and employees to hold public office as a public trust and avoid conflicts between public duties and private interests. (NRS 281A.020) What provisions of NRS Chapter 281A are relevant to the conduct alleged? **Please check all that apply.**

<input checked="" type="checkbox"/> NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity for himself or person to whom he has a commitment in a private capacity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
<input type="checkbox"/> NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and himself, any business entity in which he has a significant pecuniary interest or any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for himself or any person to whom he has a commitment in a private capacity for the performance of his duties as a public officer or employee.
<input type="checkbox"/> NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
<input type="checkbox"/> NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests or the interests of any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his significant personal or pecuniary interest, or any person to whom he has a commitment in a private capacity. (Some exceptions apply).

<input type="checkbox"/> NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.400(9)	Attempting to benefit his personal or pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.
<input type="checkbox"/> NRS 281A.400(10)	Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.
<input type="checkbox"/> NRS 281A.410	Representing or counseling a private person for compensation on an issue pending before a public agency while employed, or within 1 year after leaving the service of a public agency, including before any state agency of the Executive or Legislative Department. (State and local legislators and part-time public officers and employees may represent/counsel private persons before agencies they do not serve, except local legislators may not represent/counsel private persons before other local agencies within the same county.)
<input type="checkbox"/> NRS 281A.420(1)	Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceeding year that is reasonably affected by an official matter.
<input checked="" type="checkbox"/> NRS 281A.420(3)	Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.
<input type="checkbox"/> NRS 281A.430	Bidding on or entering into a government contract in which he has a significant pecuniary interest. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.500	Failing to file or timely file a Nevada Acknowledgment of Ethical Standards for Public Officers form.
<input type="checkbox"/> NRS 281A.510	Accepting or receiving an improper honorarium.
<input type="checkbox"/> NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.
<input type="checkbox"/> NRS 281A.550	Negotiating or accepting employment from a business or industry regulated by or contracted with former public agency within one year after leaving the service of the agency. (Failing to honor the applicable "cooling off" period after leaving public service).

\*Pursuant to NRS 281A.065, a public officer or employee has a commitment in a private capacity to the following persons:

1. Spouse; domestic partner
2. Household member
3. Family member within 3<sup>rd</sup> degree of consanguinity/affinity.
4. Employer or spouses/domestic partner/household member's employer
5. Substantial and continuing business relationships, i.e. partner, associate, or business entity.
6. Substantially similar relationships to those listed above, including close, personal relationships akin to family and fiduciary relationships to business entities.

**5. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS.** (NRS 281A.710 through 281A.715.)

Attach all documents or items you believe support your allegations, including witness statements, public or private records, audio or visual recordings, documents, exhibits, concrete objects, or other forms of proof.

**6. Witnesses:** Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide.

Name and Title:			
Address:		City, State, Zip:	, NV
Telephone:	<i>Work:</i>	<i>Other (home/cell):</i>	Email:
Nature of Testimony:			

**7. Requesters Information:**

Your Name:	Steven Ross		
Your Address:		City, State, Zip:	Incline Village, NV 89451

Your Telephone:	<u>Day:</u> [REDACTED]	<u>Evening:</u> [REDACTED]	<u>Email:</u> [REDACTED]
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*Your identity as the Requester will be provided to the Subject if the Commission accepts jurisdiction of this matter, unless:*

Pursuant to NRS 281A.750, I request that my identity as the requester of this Ethics Complaint remain confidential because (please check appropriate box):

I am a public officer or employee who works for the same public body, agency or employer as the subject of this Ethics Complaint. Provide evidence in the text box below, or as an attachment, of your employment with the same public body, agency or employer.

**OR**

I can show a reasonable likelihood that disclosure of my identity will subject me or a member of my house-hold to a bona fide threat of physical force or violence. Describe in the text box below, or in an attachment, the facts and circumstances that support a reasonable likelihood of a bona fide threat of physical force or violence.

---

**A copy of this Complaint will be provided to the Subject. If your request for confidentiality is approved by the Commission, the Complaint will be redacted to protect your identity as the Requester. The Commission may decline to maintain the confidentiality of your identity as the Requester for lack of sufficient evidence of your employment status with the same public body, agency or employer, or proof of a bona fide threat of physical force or violence.**

If the Commission declines to maintain my confidentiality, I wish to:

- Withdraw my Complaint, **OR**
- Submit the Complaint understanding that the Subject will know my identity as the Requester.

**By my signature below, I affirm that the facts set forth in this document and all of its attachments are true and correct to the best of my knowledge and belief. I am willing to provide sworn testimony regarding these allegations. I acknowledge that this Ethics Complaint, the materials submitted in support of the allegations, and the Commission's investigation are confidential unless and until the Commission's Review Panel renders a determination. Certain Commission proceedings and materials, including the Investigatory File remain confidential pursuant to NRS 281A.750 through 281A.760.**



Date: 04-02-2023

Signature:

Print Name: Ross Steven

---

You may file a Complaint using the Commission's [online form](http://ethics.nv.gov) submission at [ethics.nv.gov](http://ethics.nv.gov) (Preferred) or You must submit this form bearing your signature to the Executive Director via: **delivery/mail** to Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204, Carson City, Nevada, 89703, **email** to [NCOE@ethics.nv.gov](mailto:NCOE@ethics.nv.gov), or **fax** to (775) 687-1279



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

In re **Raymond Tulloch**, Trustee,  
Incline Village General Improvement  
District, State of Nevada,

Ethics Complaint  
Case No. 23-054C  
**Confidential**

\_\_\_\_\_  
Subject. /

**ORDER ON JURISDICTION AND  
NOTICE OF ADDITIONAL ISSUES AND FACTS**  
Pursuant to NRS 281A.715

The Nevada Commission on Ethics (“Commission”) received an Ethics Complaint on April 3, 2023, regarding Raymond Tulloch (“Subject”). On May 18, 2023, pursuant to the requirements of the Nevada Ethics in Government Law set forth in NRS Chapter 281A (“Ethics Law”) and NAC 281A.405, the Commission conducted its jurisdictional and evidentiary review of the record, including the Ethics Complaint, supporting evidence, and the recommendation of the Executive Director.<sup>1</sup>

**IT IS HEREBY ORDERED:**

The Commission accepts jurisdiction of this Ethics Complaint and directs the Executive Director to investigate and serve a *Notice of Complaint and Investigation* regarding the Subject’s alleged violations of the following provisions of the Ethics Law:

- NRS 281A.400(1)** Seeking or accepting a gift, service favor, economic opportunity for oneself or any person to whom he has a commitment in a private capacity.
- NRS 281A.420(3)** Failing to abstain from acting on an official matter which is materially affected by the acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.

---

<sup>1</sup> The following Commissioners participated in this jurisdictional review: Chair Wallin, Vice-Chair Duffrin and Commissioners Gruenewald, Lowry, Oscarson, and Towler. Commissioner Amanda Yen disclosed that the Incline Village General Improvement District are clients of the law firm of McDonald Carano (“Firm”). Commissioner Yen is a partner with the Firm and has both a pecuniary interest in her employment and a private commitment to the Firm, as her employer, and its clients under NRS 281A.065. Consequently, the independence of judgment of a reasonable person in Commissioner Yen’s situation could be materially affected in voting upon matters related to this case. In order to avoid any appearance of impropriety and comply with Nevada’s Ethics in Government Law set forth in NRS Chapter 281A and Rule 2.11 of the Code of Judicial Conduct, Commissioner Yen is disclosing her private interests and is abstaining from participation in this case.

In addition, based on information provided in the Complaint and pursuant to NAC 281A.415, the Commission accepts jurisdiction, and the Executive Director is directed to serve a *Notice of Additional Issues and Facts*, regarding the following implicated violations:

**NRS 281A.420(1)** Failing to sufficiently disclose the acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceding year that is reasonably affected by an official matter.

DATED this 18<sup>th</sup> day of May, 2023.

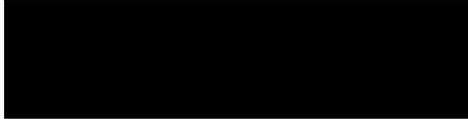
NEVADA COMMISSION ON ETHICS

/s/ Kim Wallin

\_\_\_\_\_  
Kim Wallin, CPA, CMA, CFM  
Commission Chair

**CERTIFICATE OF MAILING**

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing, via U.S. Postal Service, certified mail, return receipt requested, through the State of Nevada mailroom, a true and correct copy of the foregoing **Order on Jurisdiction and Investigation and Notice of Additional Facts and Issues**, addressed as follows:



Cert. Mail No.: 9489 0090 0027 6499 2211 13

Dated: May 18, 2023

  
\_\_\_\_\_  
Employee, Nevada Commission on Ethics

# **Agenda Item 8**



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Eric Blondheim**, Undersheriff,  
Pershing County, State of Nevada,

Ethics Complaint  
Case No. 23-057C

Subject. /

**PROPOSED**  
**STIPULATED DEFERRAL AGREEMENT**  
**NRS 281A.740**

1. This Stipulated Deferral Agreement (“Stipulation”) is entered into in Ethics Complaint Case No. 23-057C regarding Eric Blondheim (“Subject”).

2. At all material times, Subject served as Undersheriff for the Pershing County Sheriff’s Office (“PCSO”) and was a public employee as defined in NRS 281A.150. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over Subject as a public employee whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280.

3. This Stipulation is entered into based upon the parties’ agreement and Commission’s determination that Subject’s alleged conduct may be appropriately addressed through the terms and conditions of a deferral agreement in lieu of an adjudicatory hearing before the Commission.

4. The facts relied upon by the Commission to make its determination are summarized in Appendix A (“Relevant Facts Relied Upon by the Commission”).<sup>1</sup>

5. No findings have been made by the Commission that Subject violated the Ethics Law, and this Stipulation does not constitute an admission by Subject of any violation of the Ethics Law.

---

<sup>1</sup> The Relevant Facts Relied Upon by the Commission do not constitute part of the “Investigative File” as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulation.

**A. Procedural History:**

1. On or about April 10, 2023, the Commission filed Ethics Complaint No. 23-057C on its own Motion.

2. On April 10, 2023, the Commission issued an *Order on Jurisdiction and Investigation* directing the Executive Director to conduct an investigation regarding Subject's alleged violations of NRS 281A.400(7) and NRS 281A.520.

3. On April 10, 2023, the Executive Director provided a *Notice of Complaint and Investigation* to Subject pursuant to NRS 281A.720 and NAC 281A.410.

4. On June 21, 2023, the Executive Director presented a recommendation relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.725. The Review Panel issued its Panel Determination on June 26, 2023, finding that the facts establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion regarding the alleged violation of NRS 281A.400(7) and NRS 281A.520 and referred those violations to the Commission.

5. In lieu of an adjudicatory hearing before the Commission, Subject and the Commission now enter into this Stipulation.

**B. Terms and Conditions of Stipulation:**

1. This Stipulation shall be in effect for a period of two (2) years (the "Deferral Period") from the date of approval by the Commission.

2. Subject must comply in all material respects with the provisions of the Ethics Law set forth in NRS Chapter 281A during the Deferral Period without being the subject of another ethics complaint arising from an alleged violation of the Ethics Law which occurs during the Deferral Period and for which a Review Panel determines that there is just and sufficient cause for the Commission to determine that Subject violated any Ethics Law.

3. Subject shall receive ethics training as approved by the Executive Director within 60 days from the date of the Commission's approval of this Stipulation.

4. The Commission admonishes Subject pursuant to NRS 281A.785(1)(b) and cautions him to ensure that he properly separate government expenses and campaign support as Undersheriff for PCSO.

5. During the Deferral Period, the Executive Director shall monitor Subject's compliance with this Stipulation. Should the Executive Director discover that Subject has not complied with any term or condition of this Stipulation, the Executive Director shall:

- a. Inform the Commission of any alleged failure of Subject to comply with this Stipulation;
- b. Give Subject written notice of any alleged failure to comply with this Stipulation; and
- c. Allow Subject not less than 15 days to respond to such a notice.

6. The Commission may vacate this Stipulation and conduct further proceedings in the matter, including an adjudicatory hearing, if the Commission finds that Subject failed to comply with the terms and conditions of this Stipulation.

7. If Subject complies with the terms and conditions of this Stipulation, the Commission shall issue a superseding Order dismissing the Complaint.

8. This Stipulation applies only to the alleged conduct related to this Complaint and is not intended to apply to any future unrelated alleged conduct.

**C. Acceptance:** We, the undersigned parties, have read this Stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. \_\_\_\_\_  
Eric Blondheim

The above Stipulated Deferral Agreement is approved:

FOR ROSS E. ARMSTRONG, ESQ.  
Executive Director  
Nevada Commission on Ethics

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. /s/ \_\_\_\_\_  
Elizabeth J. Bassett, Esq.  
Associate Counsel  
Nevada Commission on Ethics

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023. /s/ \_\_\_\_\_

Laena St-Jules, Esq.  
Deputy Attorney General

The above Stipulated Deferral Agreement is approved by the Nevada Commission on Ethics:

Dated: \_\_\_\_\_, 2023

By: /s/ Kim Wallin  
Kim Wallin, CPA, CMA, CFM  
Chair

By: /s/ Amanda Yen  
Amanda Yen, Esq.  
Commissioner

By: /s/ Brian Duffrin  
Brian Duffrin  
Vice-Chair

By: /s/ John Moran  
John Moran III, Esq.  
Commissioner

By: /s/ Stan Olsen  
Stan Olsen  
Commissioner

## Appendix A – Relevant Facts Relied Upon by the Commission

- A. Subject is the Undersheriff of Pershing County.
- B. The Pershing County Sheriff's Office ("PCSO") has a mobile app used for push notifications to residents of the County for events like weather alerts, public safety issues, community health, missing persons, and most wanted alerts.
- C. The mobile app is paid for with COVID-19 federal relief funds and local funds.
- D. Pershing County Personnel Policies state "Employees shall not engage in political activity of any kind during working hours. This includes, but is not limited to soliciting money, influence, service, or any other valuable thing to aid, promote, or defeat any political committee or the nomination or election of any person to public office."
- E. The app was used by the PCSO to promote a campaign rally for U.S. Senate candidate Adam Laxalt to the community. Subject confirmed that he executed this push notification and that he has authority to send push notifications on behalf of the Sheriff's Office.
- F. The push notification sent by Subject provided the date, time and place of the Laxalt rally, and stated:

*Pershing County residents come down to the Court House to support  
Republican Adam Laxalt for US Senate and help Defend the Great State of  
Nevada!!*

This matched Laxalt's campaign slogan. See <https://www.adamlaxalt.com/>

- G. Pershing County Sheriff Jerry Allen, Subject's employer, endorsed Laxalt for election to the U.S. Senate. Subject did not publicly endorse a candidate in the U.S. Senate race.



Submitted Electronically on 04-05-2023

# NEVADA COMMISSION ON ETHICS

## ETHICS COMPLAINT

[NRS 281A.700 to 281A.790](#)

1. **SUBJECT OF THE COMPLAINT** - person you allege violated provisions of NRS Chapter 281A, the Nevada Ethics in Government Law. *(Please use a separate form for each individual.)*

<b>Subject Name:</b> <i>(Last, First)</i>	Blondheim, Eric		<b>Title of Public Office:</b> <i>(Position)</i>	Undersheriff
<b>Public Entity:</b> <i>(Name of the entity employing this position)</i>	Sheriff's Office			
<b>Address:</b>	395 9th Street		<b>City, State, Zip Code:</b>	Lovelock, NV 89419
<b>Telephone:</b>	<i>Work:</i> 775-273-2641	<i>Other (home/cell):</i>	<b>Email:</b>	eblondheim@pershingcountynv.gov

2. Describe the alleged conduct of the public officer or employee (subject) that you believe violated NRS Chapter 281A. *(Include specific facts and circumstances to support your allegation: times, places, and the name and position of each person involved.)*

The Pershing County Sheriff's Office has a mobile app that is used for push notifications for residents of Pershing County to be used for weather alerts, public safety issues, community health, missing persons, most wanted, etc. This app is being paid for using ARPA COVID-19 Relief Money from the United States Government. This app was used for partisan politics on November 1st, 2022 by the Pershing County Sheriff's office to announce the arrival of Adam Laxalt in our community for a speech. The push notification stated the date, time and place of arrival then stated the following: "Pershing County Residents come down to the Court House park to support Republican Adam Laxalt for US Senate and help Defend the the Great State of Nevada!!! US Eric Blondheim" Eric Blondheim is a Pershing County Sheriff's Deputy The above information was provided in an Ethics Complaint. The investigation revealed that the individual who executed the notification was Undersheriff Blondheim.

3. Is the alleged conduct currently pending before another administrative, law enforcement or judicial body? If yes, describe:

Unknown

4. NRS Chapter 281A requires public officers and employees to hold public office as a public trust and avoid conflicts between public duties and private interests. (NRS 281A.020) What provisions of NRS Chapter 281A are relevant to the conduct alleged? **Please check all that apply.**

<input type="checkbox"/> NRS 281A.400(1)	Seeking or accepting any gift, service, favor, employment, engagement, emolument or economic opportunity for himself or person to whom he has a commitment in a private capacity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
<input type="checkbox"/> NRS 281A.400(2)	Using his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(3)	Participating as an agent of government in the negotiation or execution of a contract between the government and himself, any business entity in which he has a significant pecuniary interest or any person to whom he has a commitment in a private capacity.
<input type="checkbox"/> NRS 281A.400(4)	Accepting any salary, retainer, augmentation, expense allowance or other compensation from any private source for himself or any person to whom he has a commitment in a private capacity for the performance of his duties as a public officer or employee.
<input type="checkbox"/> NRS 281A.400(5)	Acquiring, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, and using the information to further the pecuniary interests of himself or any other person or business entity.
<input type="checkbox"/> NRS 281A.400(6)	Suppressing any governmental report or other document because it might tend to affect unfavorably his pecuniary interests or the interests of any person to whom he has a commitment in a private capacity.
<input checked="" type="checkbox"/> NRS 281A.400(7)	Using governmental time, property, equipment or other facility to benefit his significant personal or pecuniary interest, or any person to whom he has a commitment in a private capacity. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.400(8)	A State Legislator using governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of himself or any other person, or requiring or authorizing a legislative employee, while on duty, to perform personal services or assist in a private activity. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.400(9)	Attempting to benefit his personal or pecuniary interest or the interests of any person to whom he has a commitment in a private capacity through the influence of a subordinate.
<input type="checkbox"/> NRS 281A.400(10)	Seeking other employment or contracts for himself or any person to whom he has a commitment in a private capacity through the use of his official position.
<input type="checkbox"/> NRS 281A.410	Representing or counseling a private person for compensation on an issue pending before a public agency while employed, or within 1 year after leaving the service of a public agency, including before any state agency of the Executive or Legislative Department. (State and local legislators and part-time public officers and employees may represent/counsel private persons before agencies they do not serve, except local legislators may not represent/counsel private persons before other local agencies within the same county.)
<input type="checkbox"/> NRS 281A.420(1)	Failing to sufficiently disclose his acceptance of a gift or loan, pecuniary interest, commitment in a private capacity to the interest of another person or the nature of any representation or counseling provided to a private person for compensation before another agency in the preceeding year that is reasonably affected by an official matter.
<input type="checkbox"/> NRS 281A.420(3)	Failing to abstain from acting on an official matter which is materially affected by his acceptance of a gift or loan, pecuniary interest, or commitment in a private capacity to the interest of another person.
<input type="checkbox"/> NRS 281A.430	Bidding on or entering into a government contract in which he has a significant pecuniary interest. (Some exceptions apply).
<input type="checkbox"/> NRS 281A.500	Failing to file or timely file a Nevada Acknowledgment of Ethical Standards for Public Officers form.
<input type="checkbox"/> NRS 281A.510	Accepting or receiving an improper honorarium.
<input checked="" type="checkbox"/> NRS 281A.520	Requesting or otherwise causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate during the relevant timeframe.
<input type="checkbox"/> NRS 281A.550	Negotiating or accepting employment from a business or industry regulated by or contracted with former public agency within one year after leaving the service of the agency. (Failing to honor the applicable "cooling off" period after leaving public service).

\*Pursuant to NRS 281A.065, a public officer or employee has a commitment in a private capacity to the following persons:

1. Spouse; domestic partner
2. Household member
3. Family member within 3<sup>rd</sup> degree of consanguinity/affinity.

4. Employer or spouses/domestic partner/household member's employer
5. Substantial and continuing business relationships, i.e. partner, associate, or business entity.
6. Substantially similar relationships to those listed above, including close, personal relationships akin to family and fiduciary relationships to business entities.

**5. YOU MUST SUBMIT EVIDENCE TO SUPPORT YOUR ALLEGATIONS.** (NRS 281A.710 through 281A.715.)

Attach all documents or items you believe support your allegations, including witness statements, public or private records, audio or visual recordings, documents, exhibits, concrete objects, or other forms of proof.

**6. Witnesses:** Identify all persons who have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide.

Name and Title:	<b>Jerry Allen</b>		
Address:		City, State, Zip:	Lovelock, NV 91498
Telephone:	<i>Work:</i> 775-273-2641	<i>Other (home/cell):</i>	Email:
Nature of Testimony:	Can testify to the funding of the app, the use of the app in ordinary circumstances, Blondheim's use of the app in this circumstance.		

**7. Requesters Information:**

Your Name:	<b>Ross Armstrong</b>		
Your Address:		City, State, Zip:	Carson City, NV 89703
Your Telephone:	<i>Day:</i> 775-687-5469	<i>Evening:</i>	Email: rarmstrong@ethics.nv.gov

***Your identity as the Requester will be provided to the Subject if the Commission accepts jurisdiction of this matter, unless:***

Pursuant to NRS 281A.750, I request that my identity as the requester of this Ethics Complaint remain confidential because (please check appropriate box):

I am a public officer or employee who works for the same public body, agency or employer as the subject of this Ethics Complaint. Provide evidence in the text box below, or as an attachment, of your employment with the same public body, agency or employer.

**OR**

I can show a reasonable likelihood that disclosure of my identity will subject me or a member of my house-hold to a bona fide threat of physical force or violence. Describe in the text box below, or in an attachment, the facts and circumstances that support a reasonable likelihood of a bona fide threat of physical force or violence.

--

**A copy of this Complaint will be provided to the Subject. If your request for confidentiality is approved by the Commission, the Complaint will be redacted to protect your identity as the Requester. The Commission may decline to maintain the confidentiality of your identity as the Requester for lack of sufficient evidence of your employment status with the same public body, agency or employer, or proof of a bona fide threat of physical force or violence.**

If the Commission declines to maintain my confidentiality, I wish to:

- Withdraw my Complaint, **OR**
- Submit the Complaint understanding that the Subject will know my identity as the Requester.

**By my signature below, I affirm that the facts set forth in this document and all of its attachments are true and correct to the best of my knowledge and belief. I am willing to provide sworn testimony regarding these allegations. I acknowledge that this Ethics Complaint, the materials submitted in support of the allegations, and the Commission's investigation are confidential unless and until the Commission's Review Panel renders a determination. Certain Commission proceedings and materials, including the Investigatory File remain confidential pursuant to NRS 281A.750 through 281A.760.**



Signature:

Date: 04-05-2023

Print Name: Ross Armstrong

---

You may file a Complaint using the Commission's online form submission at [ethics.nv.gov](https://ethics.nv.gov) (Preferred) or  
You must submit this form bearing your signature to the Executive Director via:  
**delivery/mail** to Nevada Commission on Ethics, 704 W. Nye Lane, Suite 204,  
Carson City, Nevada, 89703,  
**email** to [NCOE@ethics.nv.gov](mailto:NCOE@ethics.nv.gov), or **fax** to (775) 687-1279



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Eric Blondheim**, Undersheriff,  
Pershing County Sheriff's Office,  
State of Nevada,

Ethics Complaint  
Case No. 22-057C  
**Confidential**

Subject. /

**ORDER REGARDING INITIATING AN ETHICS COMPLAINT,  
JURISDICTION, AND INVESTIGATION**  
Pursuant to NRS 281A.280 and NRS 281A.715

The Commission has jurisdiction to investigate and take appropriate action regarding an alleged violation of NRS Chapter 281A, the Ethics in Government Law ("Ethics Law") by a public officer or employee or former public officer or employee in any proceeding commenced by an ethics complaint, which is filed with the Commission or initiated by the Commission on its own motion, within 2 years after the alleged violation or reasonable discovery of the alleged violation in accordance with NRS 281A.710.<sup>1</sup>

**IT IS ORDERED:**

The Commission hereby initiates an Ethics Complaint against Pershing County Undersheriff Eric Blondheim, accepts jurisdiction, and directs the Executive Director to investigate potential violations of the following statutes:

**NRS 281A.400(7)** Using governmental time, property or equipment or other facility to benefit his significant personal or pecuniary interest or that of a person to whom he has a commitment in a private capacity.

**NRS 281A.520** Causing a governmental entity to incur an expense to support or oppose a ballot measure or candidate.

Further, the Commission directs the Executive Director to serve this order with a Notice of Complaint and Investigation as required by NRS 281A.720.

DATED this 10<sup>th</sup> day of April, 2023.

**NEVADA COMMISSION ON ETHICS**

/s/ Kim Wallin

Kim Wallin, CPA, CMA, CFM  
Commission Chair

<sup>1</sup> The following Commissioners participated in this jurisdictional review: Chair Wallin, Vice-Chair Duffrin and Commissioners Gruenewald, Lowry, Oscarson, Towler, and Yen

**CERTIFICATE OF MAILING**

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing, via U.S. Postal Service, certified mail, return receipt requested, through the State of Nevada mailroom, a true and correct copy of the foregoing **Order Regarding Initiating an Ethics Complaint, Jurisdiction, and Investigation**, addressed as follows:

Eric Blondheim, Undersheriff  
Pershing County Sheriff's Office  
395 9<sup>th</sup> Street  
Lovelock, NV 89419

Cert. Mail No.: 9489 0090 0027 6499 1974 70

Dated: 4/10/23

  
\_\_\_\_\_  
Employee, Nevada Commission on Ethics



**STATE OF NEVADA**

**BEFORE THE NEVADA COMMISSION ON ETHICS**

In re **Eric Blondheim**, Undersheriff,  
Pershing County, State of Nevada,

Ethics Complaint  
Case No. 23-057C

\_\_\_\_\_  
Subject. /

**REVIEW PANEL DETERMINATION AND REFERRAL ORDER**  
NRS 281A.730; NAC 281A.440

The Nevada Commission on Ethics (“Commission”) received this Ethics Complaint on April 10, 2023, regarding the alleged conduct of Eric Blondheim (“Blondheim”). On April 10, 2023, the Commission instructed the Executive Director to investigate the alleged violations of NRS 281A.400(7) and NRS 281A.520.

Blondheim is a public officer as defined in NRS 281A.160, and the Commission has jurisdiction over this matter pursuant to NRS 281A.280 because the allegations contained in the Complaint relate to Blondheim’s alleged conduct as a public officer and have associated implications under the Ethics Law.

On June 21, 2023, a Review Panel consisting of Commissioner Thoran Towler, Esq. (Presiding Officer), Commissioner Barbara Gruenewald, Esq., and Commissioner Teresa Lowry, Esq., considered the following: (1) Ethics Complaint (2) Order on Jurisdiction and Investigation; (3) Blondheim’s Response to the Complaint; and (4) Executive Director’s Recommendation to the Review Panel with Summary of Investigatory Findings and Relevant Evidentiary Exhibits.<sup>1</sup>

Under NAC 281A.430, the Panel unanimously finds and concludes that the facts do establish credible evidence to support a determination that just and sufficient cause exists for the Commission to render an opinion in the matter regarding the alleged violation of NRS 281A.400(7) and NRS 281A.520. Therefore, these alleged violations are referred to the Commission.

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\_\_\_\_\_  
<sup>1</sup>All materials provided to the Review Panel, except the Ethics Complaint and the Order on Jurisdiction and Investigation, represent portions of the investigatory file and remain confidential pursuant to NRS 281A.750.

Dated this 26th day of June, 2023.

REVIEW PANEL OF THE NEVADA COMMISSION ON ETHICS

By: /s/ Thoran Towler  
Thoran Towler, Esq.  
Commissioner/Presiding Officer

By: /s/Barbara Gruenewald  
Barbara Gruenewald, Esq.  
Commissioner

By: /s/ Teresa Lowry  
Teresa Lowry, Esq.  
Commissioner

**CERTIFICATE OF MAILING**

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted via email a true and correct copy of the foregoing **REVIEW PANEL DETERMINATION AND REFERRAL ORDER** addressed as follows:

Eric Blondheim, Undersheriff  
Pershing County Sheriff's Office  
P.O. Box 147  
395 9<sup>th</sup> St  
Lovelock NV 89419

Certified Mail No.: 9489 0090 0027 6499 1975 17

Dated: 06/26/2023

/s/ Wendy Pfaff  
Employee, Nevada Commission on Ethics

# **Agenda Item 9**



# ANNUAL REPORT

## FISCAL YEAR 2023



### Nevada Commission on Ethics

Email: [ncoe@ethics.nv.gov](mailto:ncoe@ethics.nv.gov)  
Website: [ethics.nv.gov](http://ethics.nv.gov)

Tel: 775-687-5469  
704 W. Nye Lane, Suite 204  
Carson City, Nevada 89703

# TABLE OF CONTENTS

To Nevadans _____	3
<b>Commission Background</b> _____	<b>4</b>
What We Do _____	4
Mission Statement _____	5
Commissioners & Staff _____	5
Commission’s Guiding Principles _____	6
<b>FY 2023 Highlights</b> _____	<b>7</b>
Staff Retirements _____	7
Cases Filed with the Commission _____	7
Campaign Cases from the 2022 Election Season _____	7
Brand Development and Adoption _____	8
<b>Fiscal Update</b> _____	<b>9</b>
<b>Regulatory and Legislative Status</b> _____	<b>10</b>
Regulatory Status _____	10
2023 Legislative Session _____	10
<b>Education &amp; Outreach</b> _____	<b>11</b>
Setting a Foundation for Modernization _____	11
Modernization Plan _____	11
Leveraging Virtual Options _____	11
Nevada Ethics Online _____	11
<b>Commission Operations</b> _____	<b>12</b>
Operations Focus _____	12
Status of Goals from Fiscal Year 2023 _____	13
Goals for Fiscal Year 2024 _____	13
<b>Appendixes</b> _____	<b>14</b>
Appendix A Investigated Cases Resolved in FY 2023 _____	14
Appendix B Investigated Cases Resolved by Review Panels in FY 2023 _____	15
Appendix C Advisory Opinions Issued _____	16
Appendix D Count of Open Complaint Cases as of June 30, 2023 _____	17
Appendix E Data Graphs _____	18

# TO NEVADANS

## Introductory Letter

Kim Wallin, CPA, CMA, CFM  
Chair

Ross E. Armstrong, Esq.  
Executive Director

DRAFT

*“A public office is a public trust and shall be held for the sole benefit of the people” - NRS 281A.020(1)(a)*

# COMMISSION BACKGROUND

## What We Do

The Nevada Commission on Ethics 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, Nevada Revised Statutes Chapter 281A. The Ethics Law preserves the public's trust in government. It sets forth various standards of conduct to guide public officers and employees to avoid conflicts of interest and maintain integrity in public service. The Commission's primary functions include:

- Providing outreach and training to Nevada's public officers, employees, and other interested entities regarding conflicts of interest and 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 related to the Ethics Law.



8 Commissioners



Over 139,000 public officers  
and employees



6 Staff Members

## 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.

## Commissioners & Staff

<b>Commissioners</b>	
<b>Kim Wallin, CPA, CMA, CFM</b> Chair	<b>Brian Duffrin</b> Vice Chair
<b>Barbara Gruenewald, Esq.</b> Commissioner	<b>Teresa Lowry, Esq.</b> Commissioner
<b>James Oscarson</b> Commissioner	<b>Damian Sheets, Esq.*</b> Commissioner
<b>Thoran Towler, Esq.</b> Commissioner	<b>Amanda Yen, Esq.</b> Commissioner
<b>Commission Staff</b>	
Ross Armstrong, Esq, Executive Director	Tracy L. Chase, Esq., Commission Counsel*
Elizabeth Bassett, Esq., Assoc. Counsel	Darci Hayden, Senior Legal Researcher* Wendy Pfaff, Senior Legal Researcher*
Erron Terry, Investigator	Kari Pedroza, Executive Assistant

\*indicates individual served for part of the fiscal year

## Commission's 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.

# FY 2023 HIGHLIGHTS

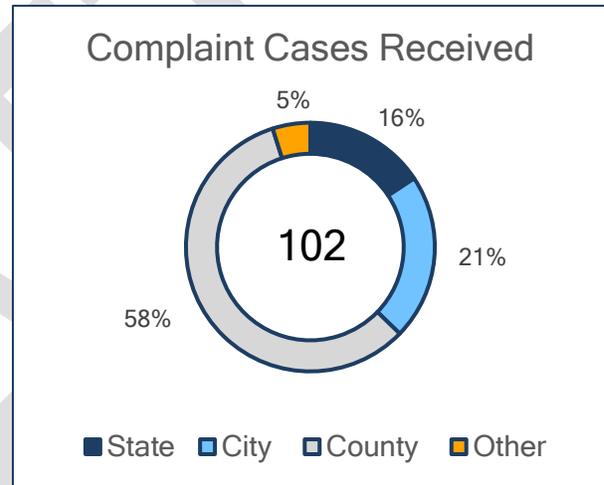
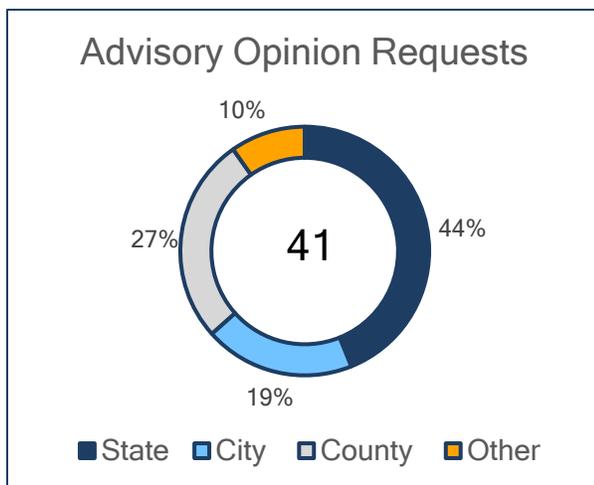
## Staff Retirements

The Commission completed a transition to post-pandemic operations in FY 2023. Two Commission staff retired in the past fiscal year:

- Tracy L. Chase, Esq (Commission Counsel) & Darci Hayden (Senior Legal Researcher)

The Commission had the opportunity to thank both team members for their dedication to public service on behalf of the State of Nevada and in particular, the Nevada Commission on Ethics.

## Cases Filed with the Commission



## Campaign Cases from the 2022 Election Season

The Commission received or initiated approximately twenty cases regarding public employee or officer conduct related to the 2022 election. Those cases included allegations of improperly using government equipment, resources, technology, or social media. In particular, a Review Panel of the Commission had the opportunity to examine the proper or improper use of social media accounts and provided analysis in its review panel determination dismissing the Complaint in *In re Mayberry*, Ethics Case No. 22-050C.

“The best ethical practice for public officers or employees who are also candidates for office is to maintain separate official and campaign social media presences in order to make it crystal clear that communications from any official account are not related to promotion of a candidacy.”

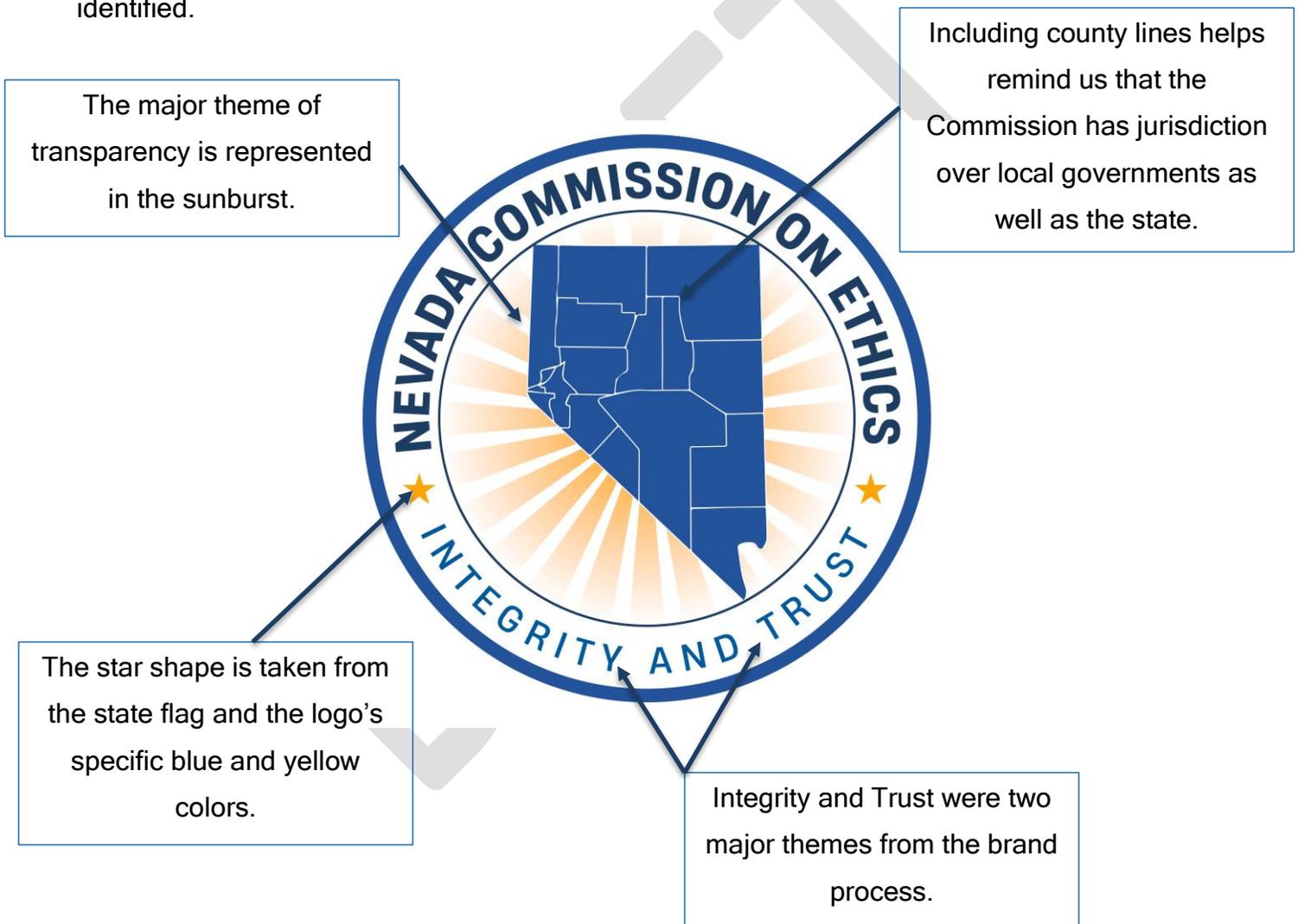
Review Panel in *In re Mayberry*, Ethics Case No. 22-050C

## Brand Development and Adoption

During FY 2023, the Commission completed a journey to adopt a brand for the Commission. To start the process, the Commission received feedback about feelings and other words associated with the Commission. The major themes that emerged included:

- Integrity
- Trust
- Transparency

With those themes in mind, the Commission solicited and reviewed different logo concepts. After final revisions, the Commission adopted the logo below with specific elements in mind as identified.



# FISCAL UPDATE

Fiscal Year 2023 was marked by two substantial staff vacancies resulting in larger than normal amounts of unspent funds in Category 1 - Personnel. While operationally challenging to being short-staffed, the vacancy savings were used to cover end-of-service one-time expenses for each retiring employee. In addition, at the end of the fiscal year we converted some vacancy savings to contract funding and had contract staff assist with an overdue document retention project. Some additional highlights:

- Spending federally awarded funds on the development of our new Nevada Ethics Online training program.
- Receipt of \$23,995 in penalty fines collected for deposit into the general fund.
- Approval of the Commission’s budgetary priorities by the Governor and Legislature during the 2023 Legislative Session.

## FY 2023 Sources of Commission Revenue & Penalties Collected

Local Government Assessments \$637,096	State General Funds \$247,761	Penalties Collected for General Fund \$23,995
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*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. - Guiding Principle #7*



Fiscal Implementation after  
2023 Legislative Session

1. Public Information Officer onboarding
2. Expanded rollout of modernized training approach
3. Promotion of more competitive salaries for staff

# REGULATORY AND LEGISLATIVE STATUS

## Regulatory Status

During the fiscal year, the Commission did not initiate or adopt any regulatory changes to Nevada Administrative Code Chapter 281A. The Commission will review its regulations for any efficiencies or improvements in the coming months.

## 2023 Legislative Session

The Commission's policy bill was introduced as Assembly Bill 66. The policy changes proposed by the Commission were well received with some slight amendments to cooling off provisions requested by stakeholders and accepted.

Similar to the 2021 Legislative Session, the Legislature amended the Commission's bill to exempt Legislative Branch officers and employees the Nevada Commission on Ethics. The Assembly passed AB66 with said amendments by a 37-5 vote. Following information that the bill as amended likely would not receive gubernatorial approval, AB 66 did not receive a hearing in the Senate and in died the second house committee without a vote.

Over the next interim the Commission will need to consider policy options for the 2025 Legislative Session which may include:

- Narrower focused bill
- More aggressive work with Legislative stakeholders to assist them with their own bill regarding Ethics jurisdiction
- Foregoing policy change attempts

### Other Passed Legislation of Interest

#### **SB 431:**

Governor's Reorganization Bill

#### **AB 258:**

Confidential information related to non-profits.

#### **SB 328:**

Exempts one position on Cannabis Compliance Board from Cooling Off Rules

# EDUCATION & OUTREACH

## Setting a Foundation for Modernization

The Commission presented a modernization plan for education and outreach as part of its budget proposal before the 2023 Legislature. Funding for the plan was approved and will be implemented in the coming fiscal year.



1,484\*

Nevadans received  
Ethics Law Training



\*compared to just 453 in the previous year

### Modernization Plan

The modernization plan includes implementing of an online learning management system, an enhanced focus on social media and other non-traditional outreach approaches, and adding a Public Information Officer to the Ethics team to manage education and outreach.

### Leveraging Virtual Options

The Commission continued to promote and increase the number of the Commission's online training videos for general public use including several short-format single-subject training videos to provide easy access to ethics law refreshers online.

### Nevada Ethics Online

The Commission initiated and built part of the first phase of our new online training system, Nevada Ethics Online. The training system has a four-phase implementation plan with phase 1 (basic ethics topics) and phase 2 (specialized courses) set for launch in the first half of FY 2024.

*"We are committed to providing outreach and education...to enhance awareness and understanding of ethics requirements..."*

*Commission Guiding Principle #3*

# COMMISSION OPERATIONS

## Operations Focus

	<p><u>Top 3 Topics for Advisory Opinions</u></p> <ol style="list-style-type: none"> <li>1. Disclosure and Abstention</li> <li>2. Cooling Off</li> <li>3. Contracts</li> </ol>
	<p><u>Top 3 Agency Types for Advisory Opinions</u></p> <ol style="list-style-type: none"> <li>1. General Government</li> <li>2. Education</li> <li>3. Finance</li> </ol>
	<p><u>Top 3 Agency Types for Filed Complaints</u></p> <ol style="list-style-type: none"> <li>1. General Government</li> <li>2. Public Safety / Judiciary</li> <li>3. Education</li> </ol>
	<p><u>Top 3 Jurisdiction Types for Filed Complaints</u></p> <ol style="list-style-type: none"> <li>1. Urban County Government</li> <li>2. Rural County Government</li> <li>3. City Government</li> </ol>
	<p><u>Top 3 Resolution Types for Investigated Cases</u></p> <ol style="list-style-type: none"> <li>1. Stipulated Violation*</li> <li>1. Dismissed with a Letter of Caution/ Instruction*</li> <li>3. Deferral Agreement</li> </ol> <p style="text-align: right;">*tied at 10 each</p>
	<p><u>Open Pending Litigation</u></p> <ul style="list-style-type: none"> <li>• Rodriguez v. NCOE - petition for judicial review</li> </ul>

## Status of Goals from Fiscal Year 2023

1. Continue to develop and finalize a Commission on Ethics Brand
  - a. Successful - brand adopted and implemented
2. Successfully persuade the 2023 Legislative Session to approve the Commission's budgetary and policy goals
  - a. Partially Completed
    - i. Successful with budgetary goals
    - ii. Not successful with policy change goals
3. Increase the number of public officers and employees who receive ethics training from the number trained in FY 2022
  - a. Successful - increased number of individuals trained by 228% or 1,031 people
4. Promote awareness of the Ethics Law's jurisdiction and authority to the general public
  - a. Successful - widespread availability of jurisdiction educational video
5. Process cases promptly without creating a new case backlog
  - a. Successful - all complaint cases filed in calendar year 2022 had investigations completed before June 30, 2023.

## Goals for Fiscal Year 2024

### Update - Suggested Goals related to

- Ethics Manual
- Continued Increase of trained individuals
- Timeliness of investigations

# APPENDIX

## Appendix A Investigated Cases Resolved in FY 2023<sup>1</sup>

Case Name	Resolution
In re Bartolo Ramos, 19-088C/ 22-026C (Lander County)	Stipulated Agreement - 2 Willful Violations & 11 Non-willful Violations
In re Qiong Liu, 19-126C (City of North Las Vegas)	Stipulated Agreement - 2 Willful Violations
In re David Hart, 20-075C (Canyon General Improvement District)	Stipulated Agreement - 1 Non-willful Violation
In re Phillip A. Hilton, 20-076C (Canyon General Improvement District)	Stipulated Agreement - 1 Non-willful Violation
In re Larry Huddleson, 20-077C (Canyon General Improvement District)	Stipulated Agreement - 1 Willful Violation
In re Leonardo Blundo, 20-081C/ 20-085C (Nye County)	Stipulated Agreement - 1 Willful Violation & 1 Non-willful Violation
In re Olek Czyz, 21-100C (Washoe County School District)	Stipulated Agreement - 1 Non-willful Violation
In re John Wesley Prudhont, 22-033C/ 22-034C (Nye County)	Stipulated Agreement - 1 Non-willful Violation
In re Daniel J. Coverley, 22-055C (Douglas County)	Stipulated Agreement - 1 Non-willful Violation
In re Neoma Jardon, 22-098C (City of Reno)	Stipulated Agreement - 1 Non-willful Violation
In re David Cochran, 22-126C (City of Reno)	Stipulated Agreement - 1 Willful Violation

<sup>1</sup> Investigated case means that the Commission accepted jurisdiction and directed an investigation be conducted. This list only includes cases that were resolved in FY 2023 (regardless of year the complaint was submitted) and does not include the list of current open cases.

## Appendix B Investigated Cases Resolved by Review Panels in FY 2023<sup>2</sup>

Case Name	Resolution
In re Robert Sweetin, 20-048C (City of Mesquite)	Deferral Agreement & Letter of Caution
In re Karyn Smith, 22-031C/ 22-032C (Nye County)	Deferral Agreement
In re Patrick R. Carter, 22-074C (Nevada System of Higher Education)	Deferral Agreement & Letter of Caution
In re Cathy McAdoo, 22-076C (Nevada System of Higher Education)	Deferral Agreement & Letter of Caution
In re Jason Soto, 22-103C (City of Reno)	Dismissed - Letter of Caution
In re Devon Reese, 22-104C (City of Reno)	Deferral Agreement
In re Jeffrey A. Murawsky, M.D., 22-106C (Department of Health & Human Services)	Deferral Agreement & Letter of Caution
In re Joseph Lombardo, 22-107C (Clark County)	Dismissed - Letter of Caution
In re Susan Enfield, 22-112C (Washoe County School District)	Dismissed - Letter of Instruction
In re Rebecca Saxe, 22-117C (Clark County)	Dismissed - Letter of Caution
In re Jerry Allen, 22-123C (Pershing County)	Dismissed - Letter of Caution

<sup>2</sup> Investigated case means that the Commission accepted jurisdiction and directed an investigation be conducted. This list only includes cases that were resolved in FY 2023 (regardless of year the complaint was submitted) and does not include the list of current open cases or those in which the determination of the review panel was to refer to the full Commission.

### Appendix C Advisory Opinions Issued

Date Published	Case Number	Main Topic(s)
3/22/2023	23-004A	Contracts
3/29/2023	23-009A	Contracts
5/4/2023	23-032A	Contracts
5/4/2023	23-033A	Contracts
5/22/2023	23-047A	Contracts
2/6/2023	22-141A	Cooling Off
2/7/2023	22-143A	Cooling Off
3/10/2023	22-149A	Cooling Off
5/15/2023	23-038A	Cooling Off
5/25/2023	23-045A	Cooling Off
5/30/2023	23-046A	Cooling Off
10/20/2022	22-105A	Disclosure and Abstention
11/17/2022	22-109A	Disclosure and Abstention
11/17/2022	22-118A	Disclosure and Abstention
3/9/2023	23-006A	Disclosure and Abstention
4/10/2023	23-008A	Disclosure and Abstention
3/20/2023	23-011A	Disclosure and Abstention
5/25/2023	23-018A	Disclosure and Abstention
4/3/2023	23-039A	Disclosure and Abstention
6/15/2023	23-060A	Disclosure and Abstention
6/12/2023	23-066A	Disclosure and Abstention
5/15/2023	23-036A	Gifts or Benefits
4/27/2023	23-050A	Gifts or Benefits
6/29/2023	23-062A	Gifts or Benefits

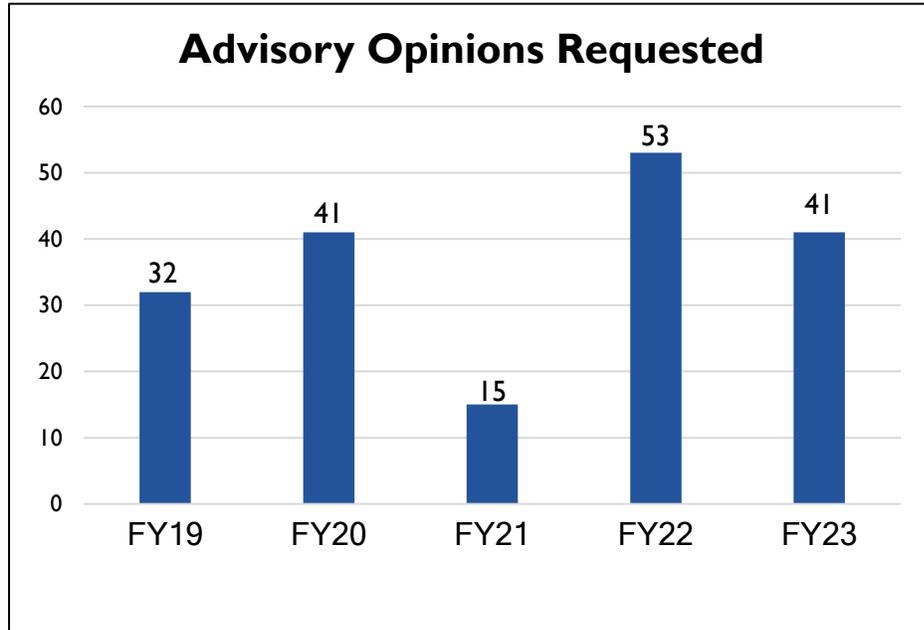
**Appendix D Count of Open Complaint Cases as of June 30, 2023**

Proceeding to Adjudicatory Hearing	Under Investigation	Pending Jurisdictional Determination
2	7	7

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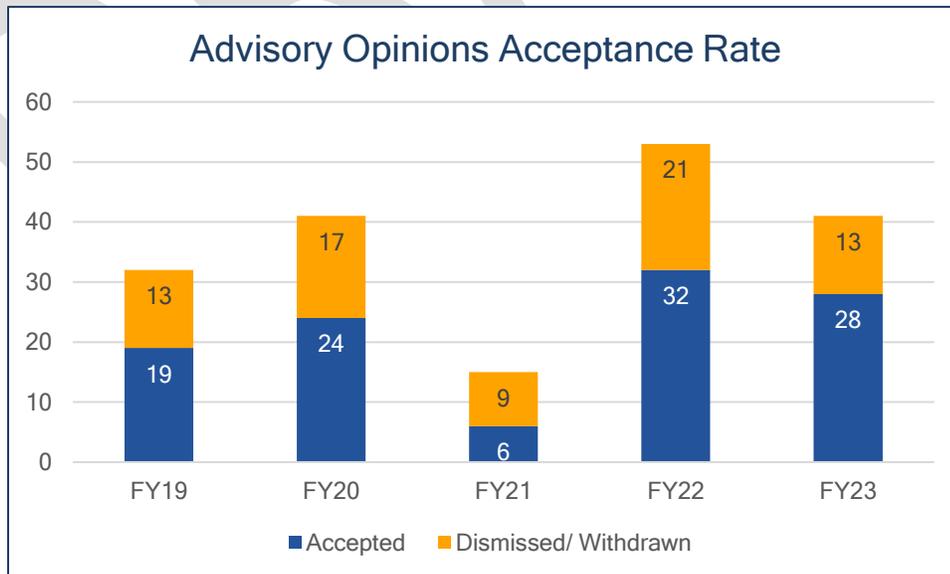
Appendix E Data Graphs

Figure 1



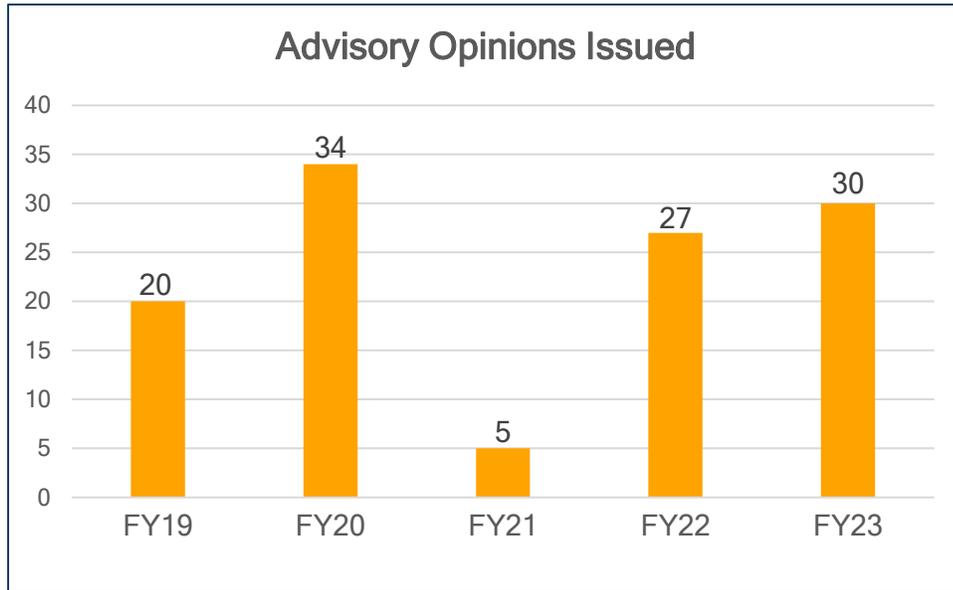
- Advisory Opinion Requests had a slight decrease, but the acceptance rate of requests increased as seen in Figure 2.
- The average number of advisory opinions requested for the five years prior to FY19 was 13 per year.

Figure 2



- Rate of Advisory Opinion requests was the highest in five years at 68% of requests accepted. The previous four-year average acceptance rate was 54%.

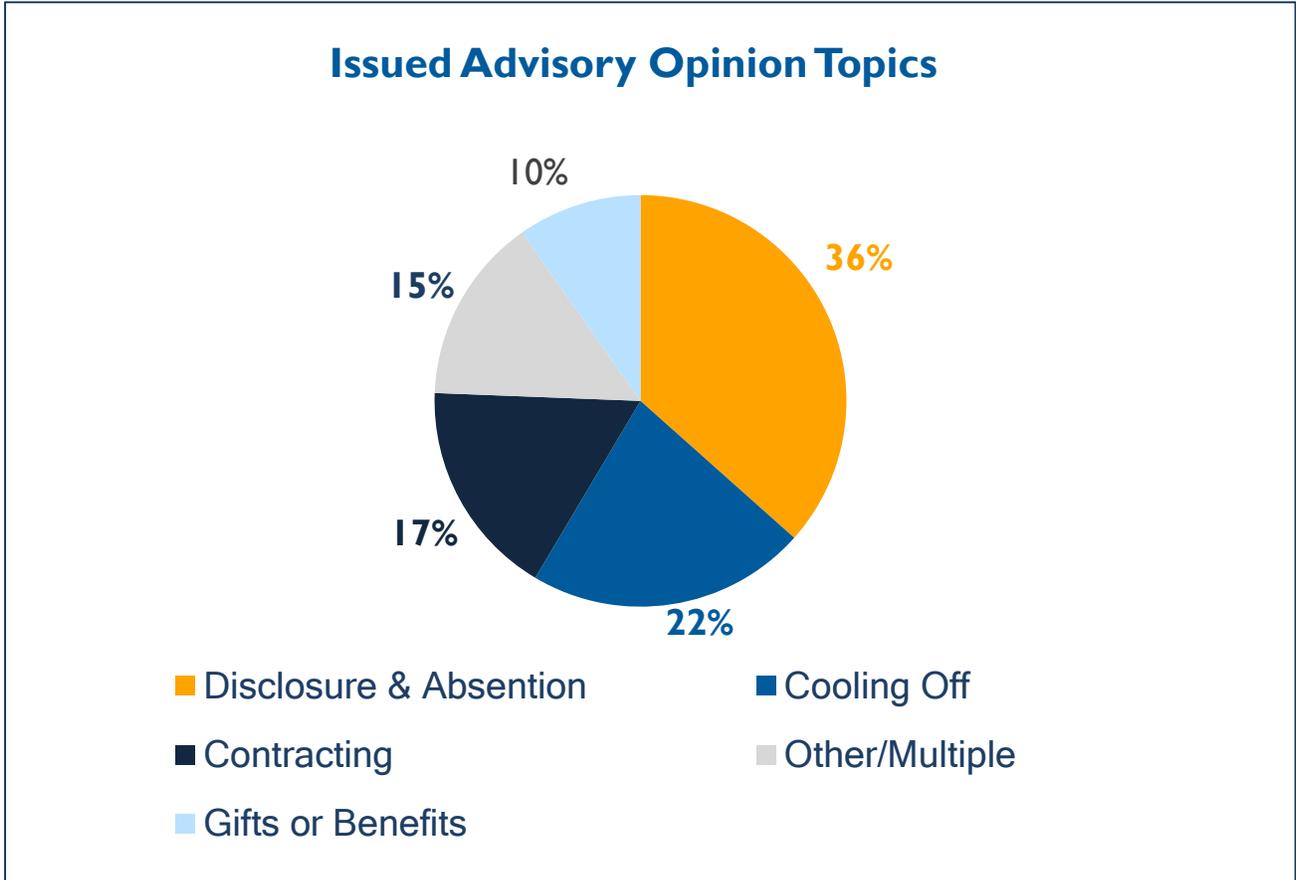
Figure 3



- The Commission issued 30 Advisory Opinion (regardless of year requested) in FY23.

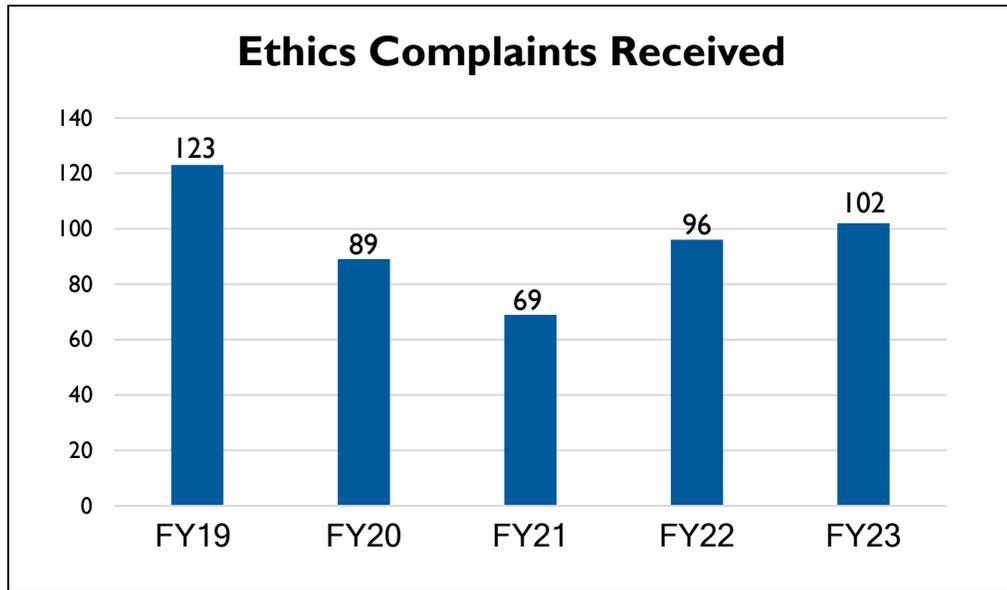
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Figure 4



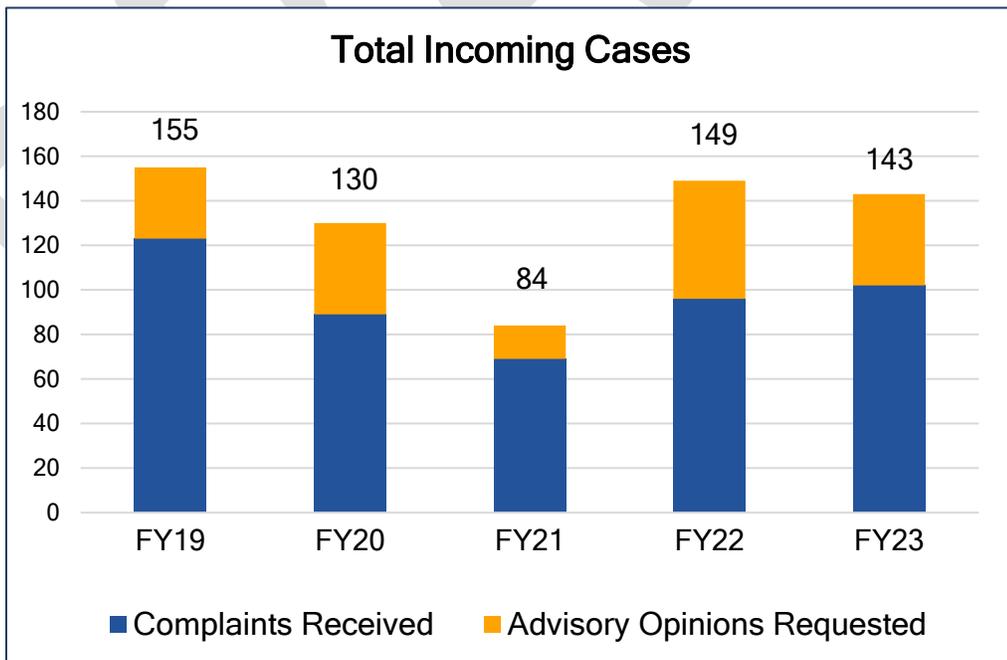
- This year saw an increase in questions related to disclosure and abstention versus other topics while questions about cooling off as individuals leave public service also remained significant.

Figure 5



- Complaints continued to trend upward with 6 additional complaints filed in FY23 compared to FY22.
- The average number of complaints received for the five years prior to FY19 was 61 per year.

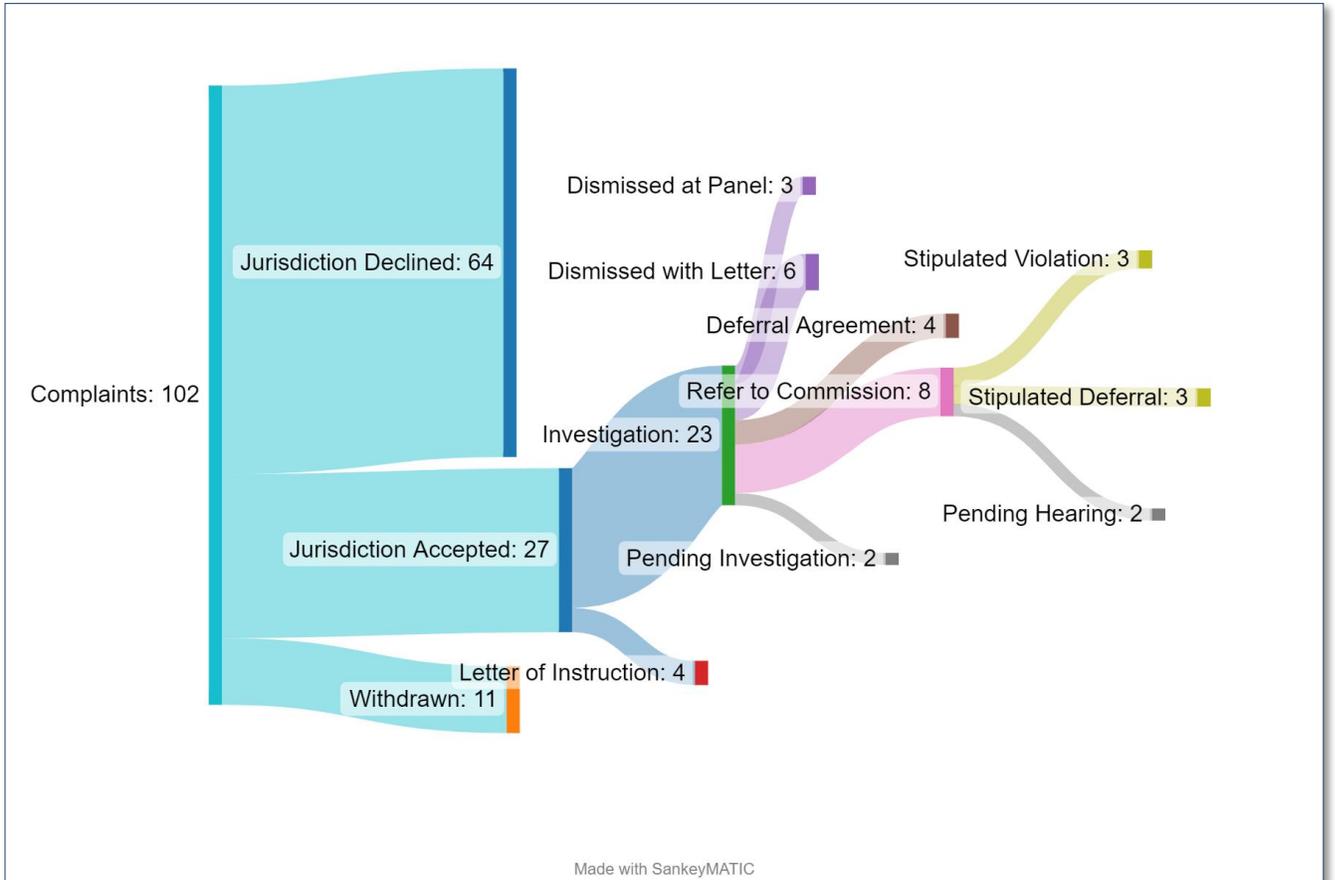
Figure 6



- Overall the Commission saw a slight decrease in overall cases filed in FY23.
- 5-year average of total incoming cases for FY14-FY18: 74 cases per year.

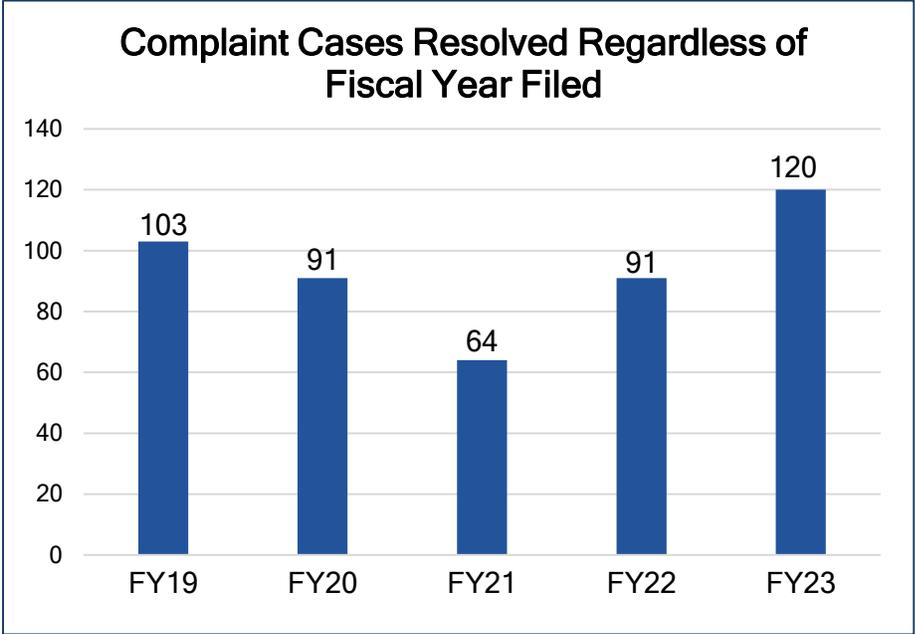
Figure 7

Jurisdictional Review Determinations for Cases Received in FY23



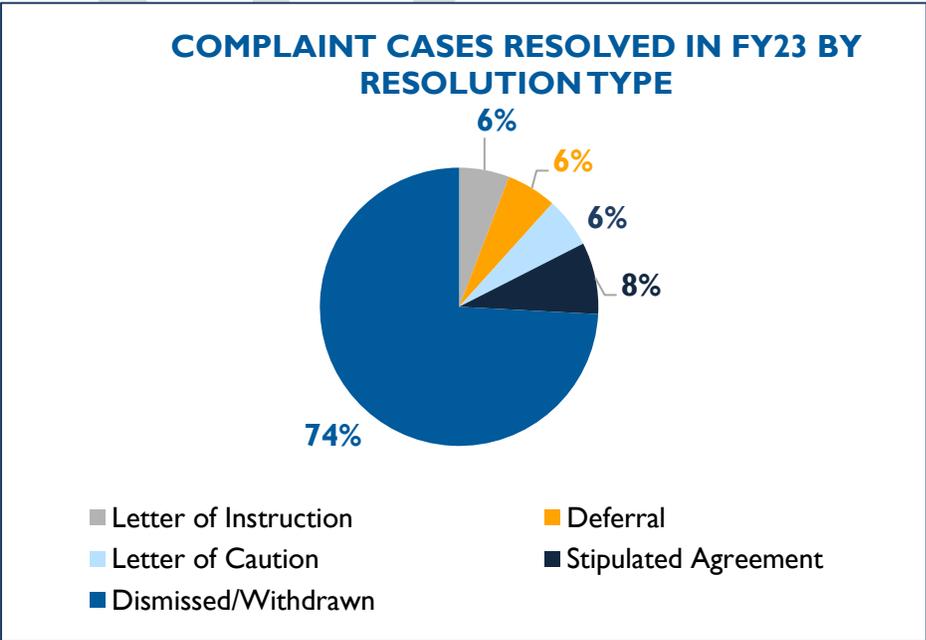
- Reasons for rejection of jurisdiction may include insufficient evidence, individual not a public officer or employee, or conduct outside the statute of limitations.
- This graph assumes Commission agreement with pending stipulated agreements and deferral recommendations during the early part of FY24.

Figure 8



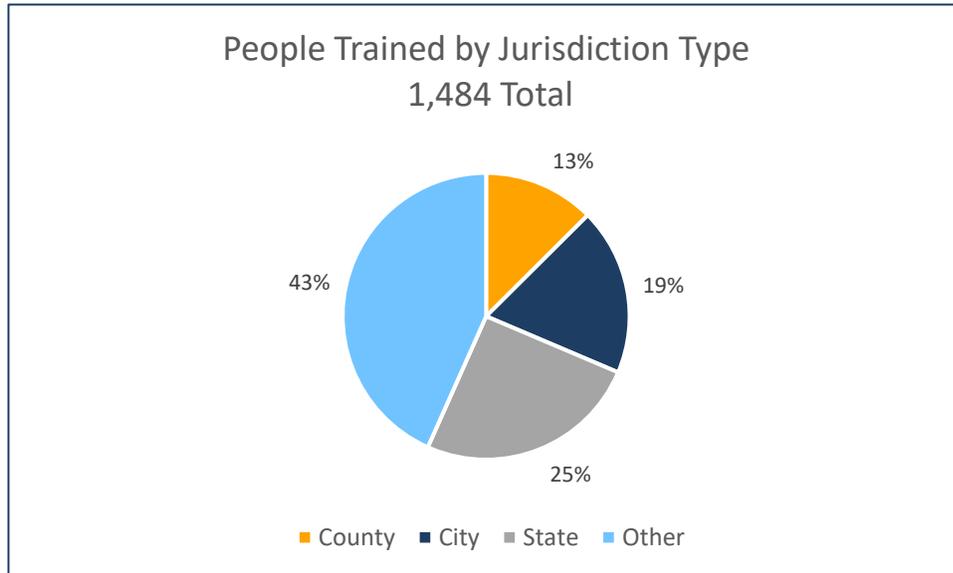
- Complaint case resolution saw a large increase in FY23 as the Investigations team worked diligently to resolve old cases while at the same time ensuring new incoming cases were investigated and processed in a more timely manner.

Figure 9



- Cases dismissed and letters issued include both at the jurisdictional determination phase and at the review panel phase combined.

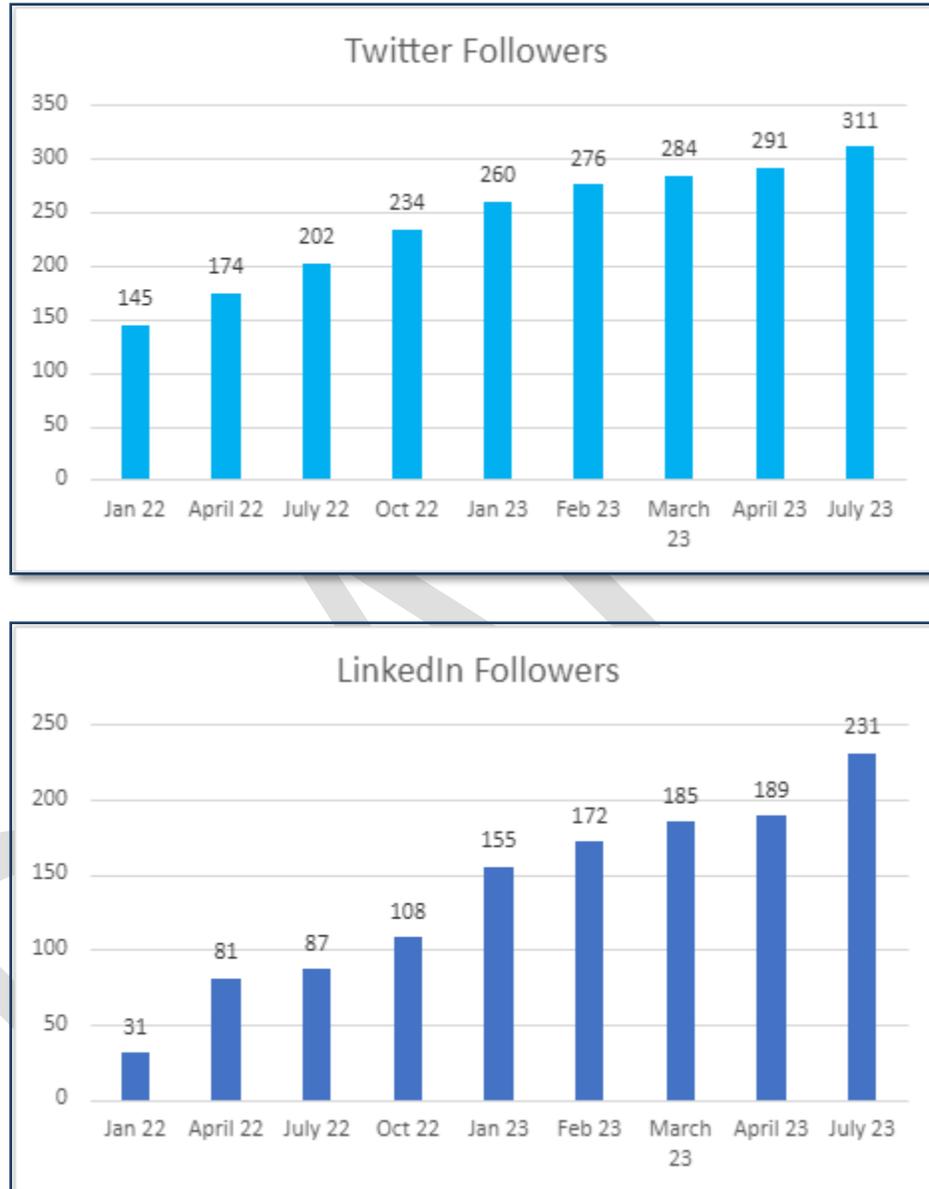
Figure 10



- The Nevada Civil Government Attorneys Conference and the Southern Nevada Housing Authority account for 68% of the “other” category.
- The Commission saw an increase of over 1,000 more individuals trained in FY23 compared to FY22.

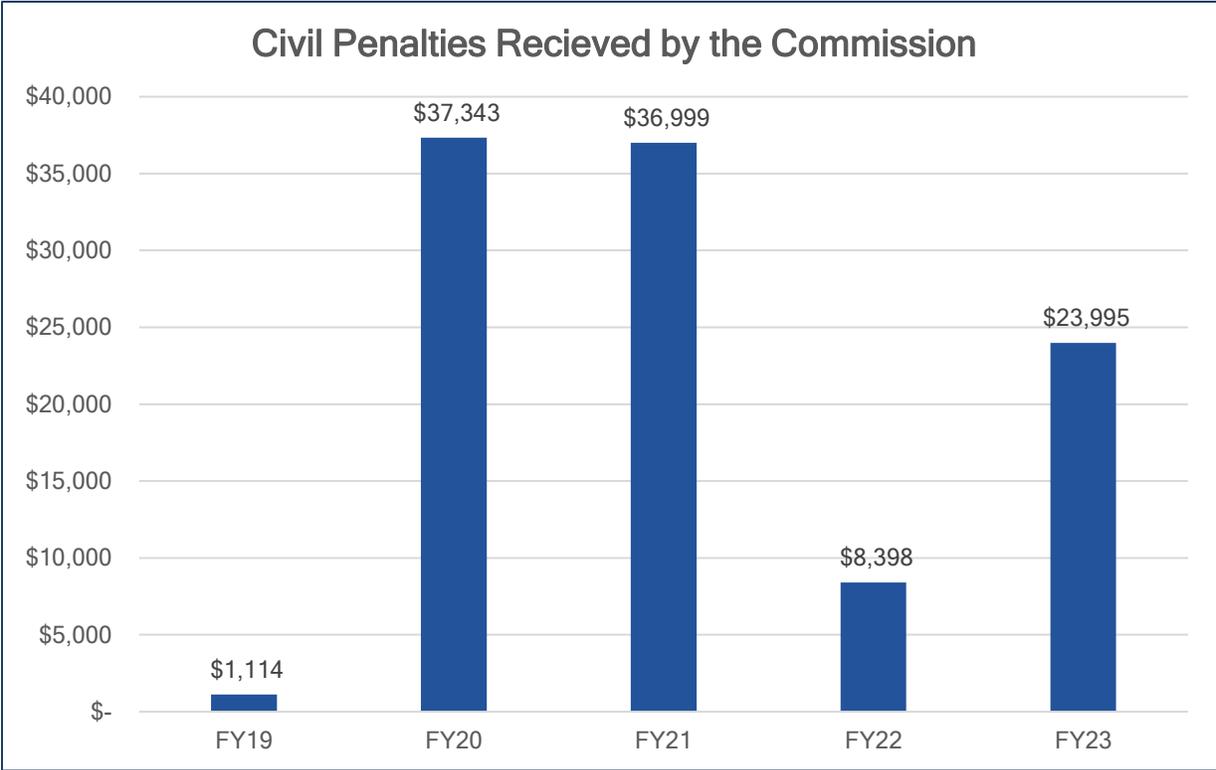
Figure 11

## Education - Social Media Follower Data



- The Commission began providing educational material to followers via Twitter and LinkedIn starting in January of 2022. Both platforms have had healthy follower growth since that time with especially robust growth in LinkedIn followers.
- Follower data for these graphs pulled on the first day of the new quarter.

Figure 11



- Complaint cases involving the Las Vegas Convention Visitors Authority processed in FY20 and FY21 resulted in the issuance and collection of historic penalties.
- The Commission issued \$23,810 in penalties in FY 23 some of which were paid in FY23 while others will be paid in FY24.

# **Agenda Item 10**



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## *Executive Director Report – August 2023*

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### **Education and Outreach**

- Nevada Ethics Online testing and adjustments continue, ready to expand users
- Over 1,400 people trained in FY23
- Fall Training scheduled so far
  - Public Relations Society of America – Sierra Nevada Chapter (September)
  - International Code Compliance organization (October)
  - Outreach to NACO and League of Cities

### **Budget Update**

- Final closing out FY 2023
  - Largest reversion will be in Cat 01 - Personnel
- Budget implementation for FY 2024
  - Public Information Officer
  - Computer Replacement
  - Base-year for budget building next session

### **Staffing & Recruitment**

- Finalizing announcement for Outreach and Education Specialist
  - Applications in early September
  - Mid-October target start date
- Current vacancy rate = 0%

### **Upcoming Meetings**

- October 18 – Las Vegas
- November 15 – Tonopah **Note:** do we want to move up a week to November 8?
- January 17- Reno
  - Potential Motion Hearing (Seebock 23-035C)
- March 20 – Las Vegas
  - Potential Adjudicatory Hearing (Seebock 23-035C)

Submitted: Ross E. Armstrong, Executive Director

Date: 8/16/23