
NEVADA COMMISSION ON ETHICS



ANNUAL REPORT FISCAL YEAR 2021

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Commission and Commissioner Information

Nevada Commission on Ethics

Commissioners

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

Vice Chair - Brian Duffrin (NP)*
(1st Term: 10/01/16 – 10/31/19)
(2nd Term: 11/01/19 – 10/31/23)

Barbara Gruenewald, Esq. (D)**
(1st Term: 11/01/15 - 10/31/19)
(2nd Term: 11/01/19 - 10/31/23)

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

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

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

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

Amanda Yen, Esq. (R)**
(1st Term: 12/21/16 – 12/20/20)
(2nd Term: 04/14/21 – 12/20/24)

***Appointed by Governor**

****Appointed by Legislative Commission**

Staff

Vacant
Executive Director

Tracy L. Chase, Esq.
Acting Executive Director
Commission Counsel

Elizabeth J. Bassett, Esq.
Associate Counsel

Darci L. Hayden
Senior Legal Researcher

Kari Pedroza
Executive Assistant

Erron Terry
Investigator

ANNUAL REPORT TO THE COMMISSION ON ETHICS REGARDING FISCAL YEAR 2021

Pursuant to Nevada Administrative Code 281A.180(2), the Executive Director provides an Annual Report to the Commission on Ethics (“Commission”) regarding the fiscal, legislative, regulatory, and other business processed by and on behalf of the Commission in the past fiscal year. This report details the Commission’s actions and accomplishments between July 1, 2020 and June 30, 2021 (FY21) and includes goals for the coming fiscal year.

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

Dear Commissioners:

This Annual Report summarizes the Commission's activities and accomplishments during FY21 and its goals for the next fiscal year. FY21 was a year of considerable change for the Commission. Nearly all Nevada State Offices, including the Commission's, were closed to direct public access for eleven of the twelve months due to the global Pandemic. Nevertheless, the Commission deftly maintained its continuity of operations during these turbulent times by increasing its virtual presence and instituting measures to assure the public's accessibility to educational resources through the website, telephone, electronic mail, Zoom, and other virtual training opportunities. In addition, the Commission received and processed many requests for advisory opinions from public officers and employees and issued preventative guidance on applying the Nevada Ethics in Government Law to their circumstances. The advisory opinion process is an essential part of the Commission's mission because it educates and increases compliance with the Ethics Law by public officers and employees.

In FY21, the number of complaints decreased by 23%, yet the Commission initiated investigations on 38% of the cases, up over the previous fiscal years by 4% and 7%, respectively. Complaint matters were processed virtually for the most part to assure the safety of those appearing before the Commission. The Commission reviews every complaint filed to determine whether it should be investigated. The investigation and processing of Ethics complaints traverse fiscal years.

Despite the altered working conditions, the Commission was able to resolve 62% more cases over FY19. Total active investigations in FY21 were 44, of which 21 complaints were resolved. During the FY21 Pandemic, many subjects requested additional time to respond to their complaints based upon good cause considerations. The accommodation of these requests resulted in a backlog of complaint cases to be processed, which the Commission is addressing through prioritizing staff resources to focus on Ethics complaints, including holding multiple hearings each month to resolve cases and issue opinions related to violations of the Ethics Law. Focused resources will

continue to serve as a platform to bring complaint cases current during the next fiscal year.

The Commission began the fiscal year by appointing prior Vice-Chair Wallin to serve as its Chair and Commissioner Duffrin to serve as its Vice-Chair. As the former Nevada State Controller, Chair Wallin brought her fiscal and leadership experience to establish the Commission's vision into the future. Vice-Chair Duffrin's experience as the former Chief of the Administrative Division of the Nevada Gaming Control Board and his mediation talents assisted the Commission in navigating the changing environment. Their combined leadership sustained services during the Pandemic and introduced improvements to the Commission's education, outreach, and internal procedures.

Further, a team of Commissioners and staff led by the Chair and Vice-Chair prepared Assembly Bill 65 ("AB 65") and presented the bill's purpose and context to the public and legislative committees throughout the 81st (2021) Session of the Nevada Legislature. All serving Commission members supported AB 65. Special recognition is provided to the following current and former Commissioners for their outreach and support during the Legislative Session: Chair Wallin, Vice-Chair Duffrin, Commissioners Gruenewald, Lowry and Oscarson, and former Commissioner O'Neill.

AB 65 was a culmination of several years of extensive planning by the Commission who sought to amend the Ethics Law by streamlining and improving the processes for complaint cases and advisory opinions and adding additional identity protection for complainants. Although the procedural and regulatory aspects of AB 65, as presented by the Commission, received the Governor's full support, he vetoed it because of a late-session committee amendment. The Commission anticipates revisiting the bill's critical procedural components during the next legislative session.

At the end of the fiscal year, the Commission completed its planning and vision for the biennium. The Commission's biennium budget was approved by the Legislature as presented. In addition, a Personnel Subcommittee was formed to update the job duties and priorities for the leadership positions of Executive Director and Commission Counsel to better reflect the Commission's mission and guiding principles. This will place the Commission in a prime position to maintain the successful navigation of educating and

enforcing the Ethics Law in an ever-changing environment. The Subcommittee members were Chair Wallin, Vice Chair Duffrin, and Commissioner Oscarson.

The Commission maintained its presence on Social Media via its Twitter account to post news of its meetings, training, and case/opinion determinations. Ethics Commissions throughout the Country share data on Twitter and reflect on the issues and decisions made by similar agencies. Many state and local government agencies, public officers, and employees follow the Commission on Twitter and receive additional outreach and education. Our social media focus is to increase the general public's awareness and involvement in the coming year. Other media outreach in the next fiscal year will be through traditional media platforms via press releases, public statements, and interviews. The Commission continued its formal training and education programs with 13 in-person or virtual training sessions throughout Nevada to educate public officers and employees. The Commission also had 1,376 "views" of its website training. The number trained could be higher because the number of views does not take into account a group watching the video.

This report would not be complete without appreciating the incredible contributions of the members of the Commission. They volunteer their time, experience, and expertise to the interpretation and enforcement of the Ethics Law. Likewise, the endeavors of the full Commission are so appreciated, including their willingness to hold additional meetings to process complaints, availability for prompt consideration and issuance of advisory opinions, promotion of education on ethics, and their efforts in establishing and presenting AB 65.

Chair Wallin is recognized for being an energetic ambassador to promote governmental ethics and accountability. Vice-Chair Duffrin is greatly appreciated for his mentorship, knowledgeable advice, and always volunteering to support the endeavors of the Commission. Commissioner Gruenewald continues to raise the bar with her legal preparation of complaint and advisory cases before the Commission and her insightful questions to address the legal implications of the Ethics Law. Commissioner Lowry demonstrates her legal expertise by challenging and applying evidence at various stages

of complaint proceedings and analyzing legal precedent in advisory and complaint matters. Commissioner Sheets provided significant experience and contributions to Review Panels and Commission meetings, resolving complaints with well-reasoned opinions. Despite her private legal practice demands, Commissioner Yen continues to provide the Commission with her expert legal analysis and insightful questions on applying the Ethics Law. Finally, the Commission's newest members, Commissioners Oscarson and Towler, brought new policy perspectives to the Commission.

The fiscal year brought change to the Commission's membership and staff. Chair Cheryl Lau completed two terms of public service for the Commission, serving as the Chair for the last five years of her term with distinction. Chair Lau's intelligence, kindness, and professionalism in promoting the public trust in government and her skills in presiding over meetings set the bar for the Commission for future years. Commissioner O'Neill was elected to the Nevada State Assembly, which meant that he could no longer serve as a member of the Commission. Commissioner O'Neill's sense of humor, practical approach to applying the Ethics Law, and commitment to doing what is right will be greatly missed.

The Commission welcomed two new members, Thoran Towler and James Oscarson. Commissioner Towler is the CEO for the Nevada Associate of Employees and former State of Nevada Labor Commissioner, who contributed his legal expertise and emphasis on public service integrity to the Commission. Commissioner Oscarson served three terms with the Nevada Legislature and brought to the Commission his legislative experience and private business and marketing skills as Senior Vice President of the Ready Responders and former Director of Community Relations for the Desert View Hospital.

A transition occurred in two of the six staff positions. Executive Director Yvonne Nevarez-Goodson, Esq. left after 12 years of exceptional service. This position will be filled in the next fiscal year. The Commission also welcomed Elizabeth "Liz" Bassett, Esq., formerly with the private law firm of Fenmore Craig, to serve as Associate Counsel in May 2021. It has been my distinct pleasure to serve with the Commission's excellent former and current staff, including former Executive Director Nevarez-Goodson, Associate Counsel Liz Bassett, Investigator Erron Terry, Senior Legal Researcher Darci

Hayden, and Executive Assistant Kari Pedroza. The individual talents, incredible dedication, and positive attitudes of each staff member are invaluable in supporting the mission of the Commission.

In reflection, throughout the changes and associated challenges of FY21, the Commission skillfully navigated the Pandemic by focusing its efforts on education and accountability. It was highly successful in maintaining its mission, educational endeavors, and overall services provided to the public. I am exceedingly proud of the accomplishments of the Commission and staff. They serve as a committed team to increase public awareness for Nevada's Ethics in Government Law, at a time during which Ethics continues to be a part of the critical issues faced by all governmental entities.

Sincerely,

[/s/ Tracy L. Chase](#)

Tracy L. Chase, Esq.
Acting Executive Director/
Commission Counsel

MISSION STATEMENT

By the authority granted under Chapter 281A of NRS, the Commission 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 their public duties.

GUIDING PRINCIPLES

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

I. About the Nevada Commission on Ethics

A. Nevada Commission on Ethics - Ethics in Government Law

The Commission is an independent public body appointed by the Governor and Legislative Commission to interpret and enforce the provisions of Nevada's Ethics in Government Law set forth in NRS Chapter 281A ("Ethics Law"). The Ethics Law preserves the public's trust in government. It ensures that elected and appointed public officers and employees avoid conflicts between their private interests and the interests of the public in carrying out their public duties. The Ethics Law sets forth various standards of conduct to guide public officers and employees to avoid such conflicts and maintain integrity in public service. The Commission's primary mission includes:

- Providing outreach and training to Nevada's public officers, employees, and attorneys regarding conflicts of interest and the provisions of the Ethics Law.
- Providing advisory opinions to public officers and employees to guide them in compliance with the Ethics Law.
- Enforcing the provisions of the Ethics Law by investigating and adjudicating alleged misconduct of public officers and employees that violates the Ethics Law ("Ethics Complaints").

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

B. Membership

The Commission consists of eight members, appointed equally (four each) by the Governor and the Nevada Legislative Commission. The Governor and Legislative Commission must appoint at least two former public officers or employees and one attorney licensed in Nevada each. No members may be actively involved in any political activity or campaign or conduct lobbying activities for compensation on behalf of private parties. Finally, no more than half of the total Commissioners may be members of the same political party or residents of the same county in the State. The appointment criteria

help to ensure independence and objectivity in addressing Requests for Advisory Opinions and Ethics Complaints as applicable to all State and local government elected and appointed public officers and employees.

C. Requests for Advisory Opinions and Ethics Complaints

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

1. Confidential Requests for Advisory Opinions

A public officer or employee may request a confidential advisory opinion from the Commission regarding their compliance obligations under the Ethics Law by utilizing the Commission's online forms and filing system or sending the request to the Commission's offices. All advisory proceedings are confidential unless the requester waives confidentiality. In addition, the Commission may consider issuing advisory opinions to the public officer or public employee either by submission or by holding a closed hearing.

To assist the Commission in this process, the Commission Counsel and staff work directly with the requester to identify the supporting facts and circumstances. Commission Counsel researches the Commission's opinion precedent, prepares proposed findings of

fact, and presents a legal recommendation to the Commission for its review. Once the Commission renders its decision, it is delivered to the requester. If the requester waives confidentiality of the written opinion, it will be published on the Commission's website, the Legislative Law Library, and LexisNexis. If the requester retains the confidentiality of the opinion, the Commission may publish an abstract opinion, which redacts or sanitizes information that could reveal the requester's identity. The Commission's advice is binding with respect to future conduct. Certain advice related to present or future conduct may be subject to judicial review for errors of law or abuses of discretion.

2. Ethics Complaints

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

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

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

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

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

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II. Fiscal Report – FY21

The Commission's biennial funding is divided between the State General Fund and certain of Nevada's local governments (cities and counties). The proportions for the State Fund and local governments are based on the number of public officers and employees who serve the State compared to local governments. Labor data from the Nevada Department of Employment, Training and Rehabilitation provides that 28 percent of Nevada's public officers and employees serve the State and 72 percent serve local governments for FY21.

A. Commission Budget

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

III. Legislative and Regulatory Matters

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

Through Chair Wallin, Vice-Chair Duffrin, and staff, the Commission presented and provided to the Legislature detailed background and reasons why the passage of AB 65 would improve Commission operations to the benefit of those subject to its jurisdiction or who otherwise utilize its services. Towards the end of the session, the Committee on Ways and Means sponsored an amendment to the bill (Amendment 777) that sought to establish three new legislative committees to address ethics violations by members of the Legislature and staff of the Legislative Counsel Bureau. The bill, as amended, passed the Assembly on May 29, 2021, with a vote of 31 yeas, 9 nays, and 2 excused. The bill, as amended, passed the Senate on May 31, 2021, with a vote of 17 yeas and 4 nays.

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

IV. Case Statistics – FY21 (7/2020 – 6/20/21)

A. Advisory Opinions

During the Pandemic that spanned FY21, the Commission continued to timely render advisory opinions and preventative advice to public officers and employees. The Commission in the prior fiscal year generated a record number of advisory opinions (41 opinions). However, FY21 requests had a downward trend. The Commission received 15 Requests for Advisory Opinion, 8 were withdrawn or dismissed before issuing a written

opinion, 7 written opinions were issued, and 5 abstracts of opinion were issued for opinions that did not receive a waiver of confidentiality to protect the identity of the requester.

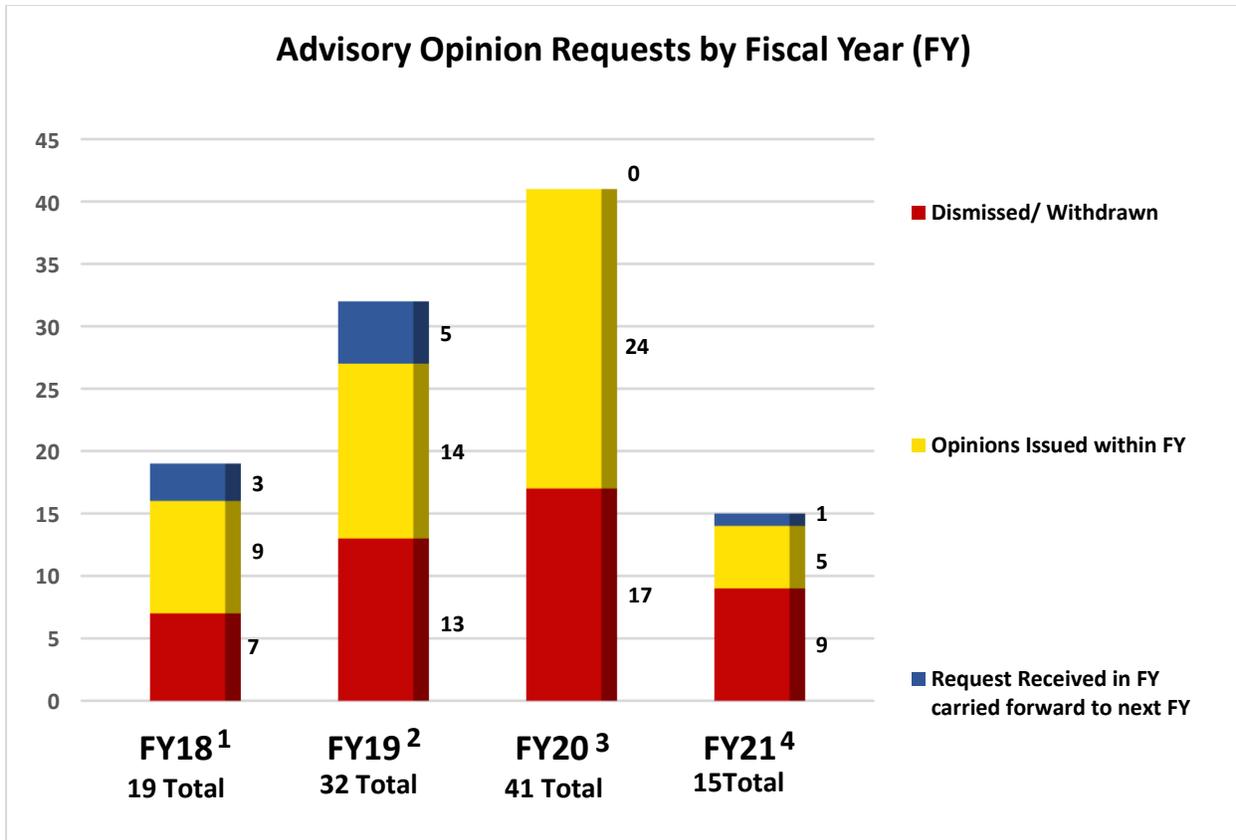
The substantive issues presented in the advisory opinions issued during FY21 primarily dealt with proper use of public position in conflict situations, disclosure and abstention and cooling-off requirements of the Ethics Law. The cooling-off provisions of the Ethics Law prohibit former public officers and employees from seeking or accepting employment with private persons/entities who were awarded contracts worth more than \$25,000 from their agencies within the immediately preceding year, and regarding which they had influence or control in the awarding of the contract. These opinions served to provide meaningful guidance on the compliance aspects of the Ethics Law to assist public officers and employees with the performance of their public duties.

FY 2021: Requests for Advisory Opinions Received: 15

<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed by Commission</u>	<u>Written Opinions Issued</u>	<u>Written Opinions Issued (Confidentiality Waived)</u>	<u>Abstract Opinions Issued from Written Opinions (No Waiver of Confidentiality)</u>
9	6	5	1	4

FY 2020: Requests for Advisory Opinions Received: 41

<u>No Jurisdiction Withdrawn/Dismissed or Duplicate</u>	<u>Processed by Commission</u>	<u>Written Opinions Issued</u>	<u>Written Opinions Issued (Confidentiality Waived)</u>	<u>Abstract Opinions Issued from Written Opinions (No Waiver of Confidentiality)</u>
17	24	24	5	19



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

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

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

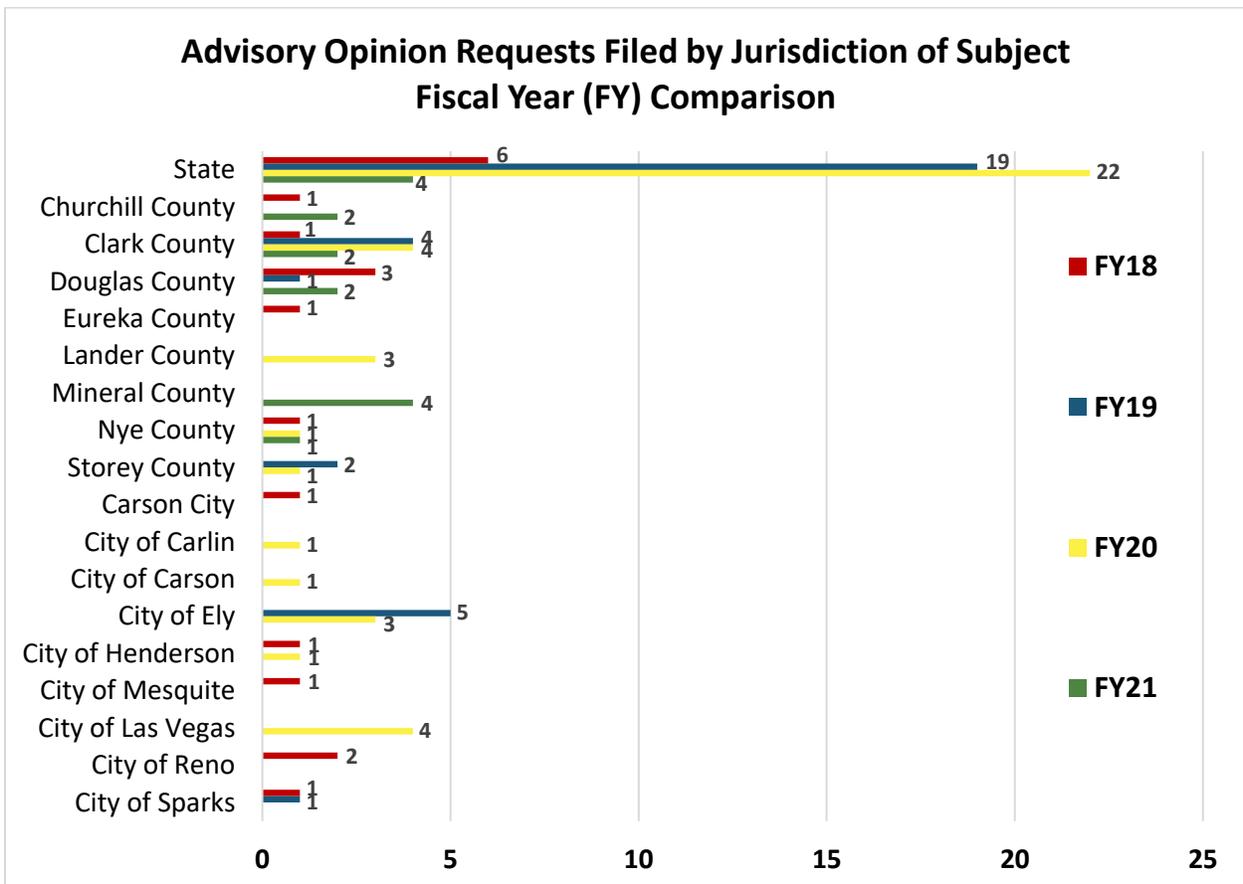
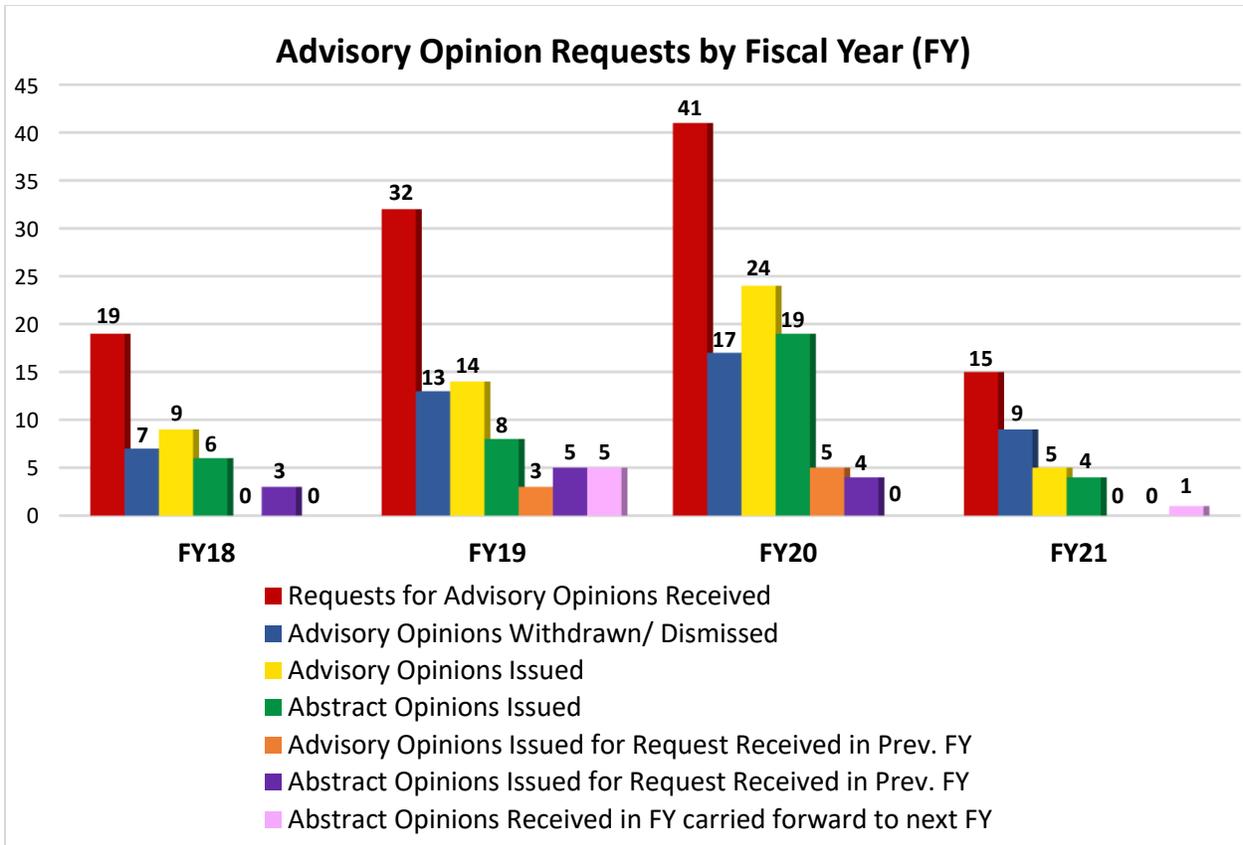
Abstract Opinions: Of the 19 cases, 12 remained confidential and required an additional 12 Abstract Opinions. The Commission completed 8 Abstract Opinions in FY19, and 4 Abstract Opinions in FY20.

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

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

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

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



B. Ethics Complaints

The Commission received 69 complaints in FY 21 compared to 89 in FY20. The COVID-19 Pandemic decreased the number of complaints filed between FY 20 and FY21, but the number of cases investigated and resolved in FY21 was only four less than FY20, even with fewer filings. In addition, most cases received waivers of statutory deadlines by the subjects of the complaints, which has resulted in a temporary case backlog. The Commission has proactively established operational priorities to focus available resources to reduce the backlog of complaint cases, which will continue to be implemented and reviewed by the Commission in the future. The subjects of complaints who did not waive the 70-day deadline for investigation were given investigatory priority.

The Commission does not control the number of ethics complaints that may be filed in any particular year. However, as people begin to return to the office, it is reasonable to assume we will see an increased number of complaints and public concerns regarding the ethical conduct of public officers and employees.

FY21 Cases - Ethics Complaints Received in FY21: 69

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

Ethics Complaints Received in FY21, Resolved in FY21: 8

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

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

FY20 Cases - Ethics Complaints Received in FY20 carried forward to FY21: 22¹

Ethics Complaints Received in FY20; Investigated/ Resolved in FY21: 9²

¹ Complaint No. 19-081C was consolidated with 19-082C & 19-105C, counted as 3 cases herein.

² 7 of the 20 cases carried forward from FY20 were resolved in FY21: Complaint Nos. **1**) 19-065C - panel dismissal with letter of instruction, **2**) 19-067C - panel dismissal, **3**) 19-081C - stipulation (consolidated with

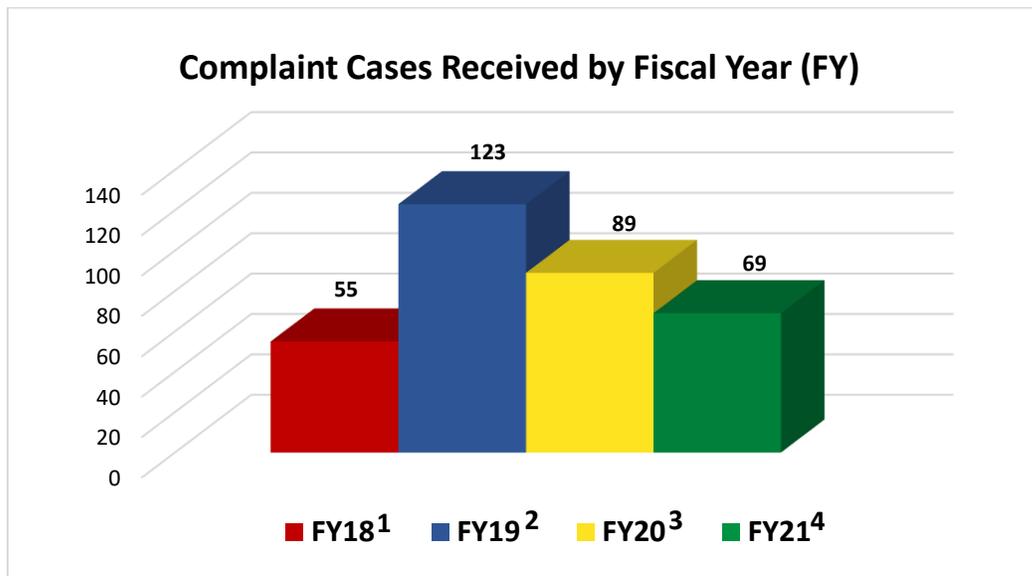
<u>Dismissed by Panel without a Letter</u>	<u>Dismissed by Panel with a Letter of Instruction</u>	<u>Dismissed by Panel with a Letter of Caution</u>	<u>Panel Deferral Agreements</u>	<u>Stipulations/Opinions</u>
4	2	0	0	3

Ethics Complaints Received in FY20; Pending Resolution in FY22: 13³

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

FY19 Cases - Ethics Complaints Received in FY19; Investigated/Resolved in FY21: 4⁴

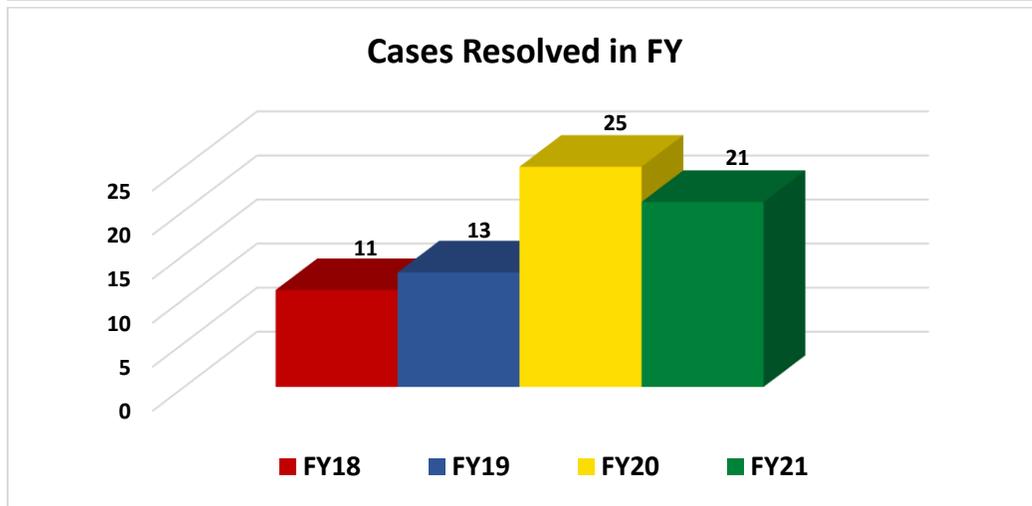
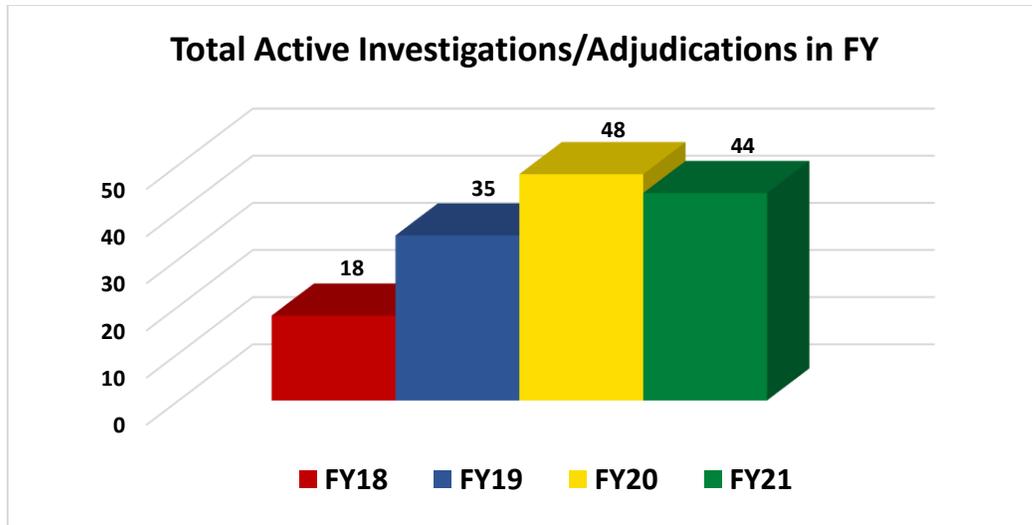
<u>Dismissed, with or without a Letter of Caution or Instruction</u>	<u>Panel Deferral Agreements</u>	<u>Commission Motion Hearings/Adjudicatory Hearings</u>	<u>Stipulations/Opinions</u>
1	0	0	3



19-082C & 19-105C, counts as 3 cases and 3 stipulations herein), **4)** 19-093C - panel dismissal, **5)** 19-113C - panel dismissal, **6)** 19-128C - panel dismissal with letter of instruction, and **7)** 19-129C - panel dismissal.

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

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



Complaint Case Statistics by Fiscal Year (FY) Footnotes

¹ FY18

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

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

² FY19

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

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

³ FY20

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

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

⁴ FY21

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

-Total Active Investigations = 44

-Total Investigations Resolved = 21

Dismissed/ Withdrawn Cases – No Investigation

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

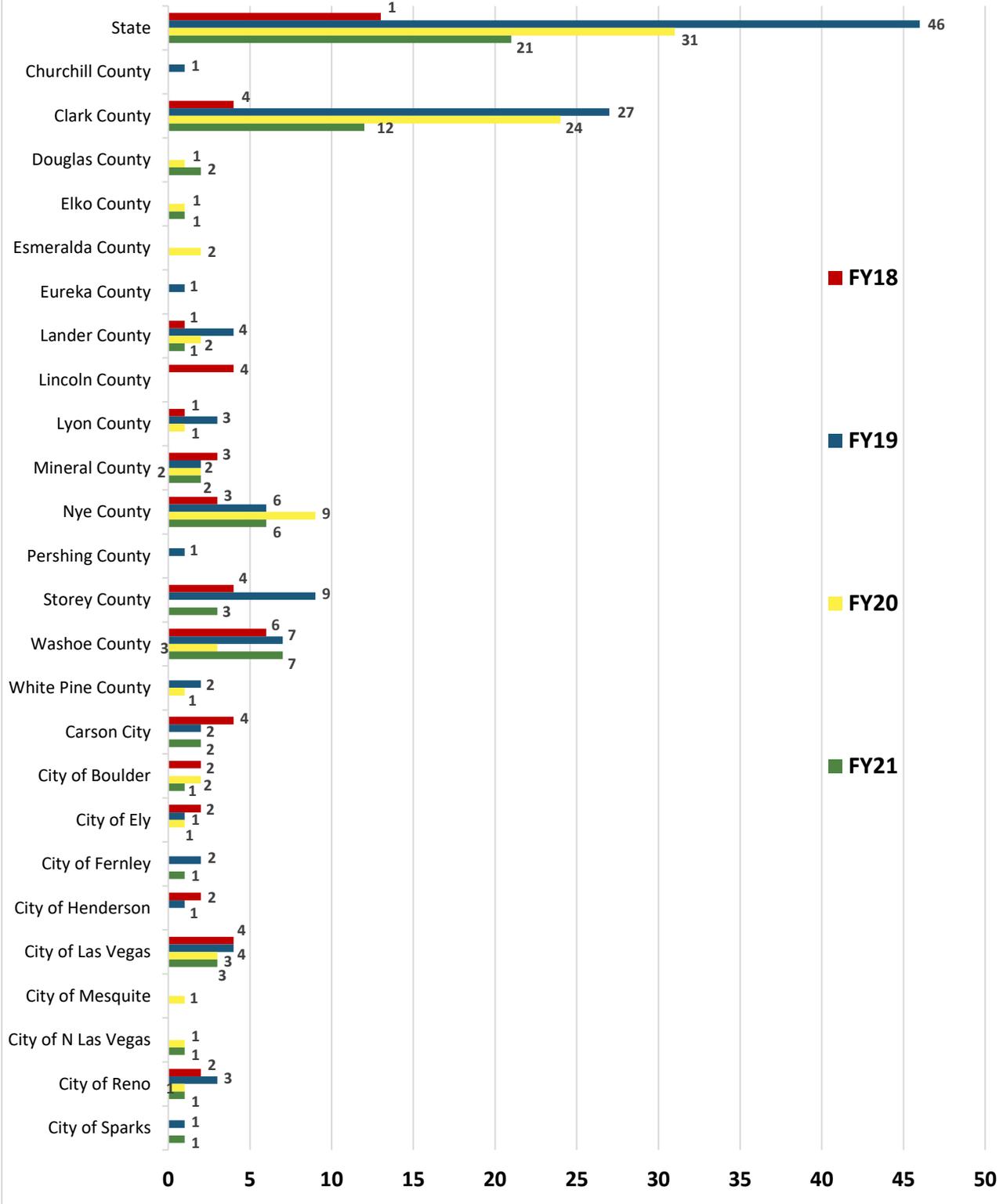
In FY19, 81 of the 123 Complaints were dismissed/ withdrawn.

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

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

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

Complaints Filed by Jurisdiction of Subject Fiscal Year (FY) Comparison



C. Penalties/Sanctions Imposed

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

In FY21, the Commission imposed \$44,788 in civil penalties, representing a significant upward trend from the previous year's \$5,000. As a result, total collections during FY21 amount to \$36,999, and the remaining receivables are on payment plans.

<u>FY 2020 Sanctions Imposed</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Received</u>
Joel Dunn, Former Executive Director, Carson City Culture & Tourism Authority	11/13/2019	<u>NRS 281A.420(1)</u>	\$5,000	\$5,000
<u>FY 2021 Sanctions Imposed</u>	<u>Date Imposed</u>	<u>Statute(s) Violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Received</u>
Donald Smith, Clinical Social Worker II, Department of Health & Human Services	8/19/2020	<u>NRS 281A.400(1), (2), and (7)</u>	\$6,500	\$4,567
Rossi Ralenkotter, Former Chief Executive Officer, Las Vegas Convention & Visitors Authority	8/19/2020	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$24,407	\$24,407
John Brig Lawson, Former Senior Director of Business Partnerships, Las Vegas Convention & Visitors Authority	11/18/2020	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$13,881	\$2,239
<u>FY 2022 Outstanding Sanctions Owed</u>	<u>Date Imposed</u>	<u>Statute(s) violated</u>	<u>Civil Penalty Amount Imposed</u>	<u>Civil Penalty Amount Owed in FY22</u>
Cathy Tull, Chief Marketing Director, Las Vegas Convention & Visitors Authority	6/17/2019	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$8,700	\$643
Donald Smith, Clinical Social Worker II, Department of Health & Human Services	8/19/2020	<u>NRS 281A.400(1), (2), and (7)</u>	\$6,500	\$1,933
John Brig Lawson, Former Senior Director of Business Partnerships, Las Vegas Convention & Visitors Authority	11/18/2020	<u>NRS 281A.400(1), (2), (7) and (9)</u>	\$13,881	\$11,642

D. Acknowledgment of Ethical Standards Forms

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

V. Outreach and Education Program

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

In FY21, the Commission provided 13 in-person or virtual trainings. The number of attendees at these trainings is challenging to compile based upon the virtual environment and technology issues. The Commission's website training is available for viewing at any time and could include multiple viewers. The Commission receives data on the number of "views" received, confirming 1,376 views during FY21.

Virtual and alternative training methods that are easily accessible are the trend of the future. In addition to the Commission's training programs, the Commission engages in other outreach efforts via staff communications and correspondence with the public. The Commission staff provides regular, often daily, feedback for the general public, public officers and employees, and government attorneys regarding the provisions of Nevada's Ethics in Government Law set forth in NRS Chapter 281A, the ability for public officers and employees to obtain guidance on their compliance obligations and processes to file ethics complaints, including the statutory requirement that the requester provide sufficient evidence to support the alleged violation of the Ethics Law.

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

Ethics Training – FY21

Training Provided to:	Number of Ethics in Government Law Trainings Presented:
State Government Entities	5
Local Government Entities	8
Private Entities	0
Total	13

VI. Litigation and Appellate Review

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

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

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

On April 22, 2020, the Review Panel filed a motion to dismiss, asserting the District Court lacked jurisdiction to consider the petition due to non-compliance with the mandatory requirements of Nevada’s Administrative Procedures Act set forth in NRS Chapter 233B and provisions of NRS Chapter 281A that asserted the Review Panel’s determination was not a final decision, but is an interlocutory order. Therefore, the Commission’s final decision and related rights of judicial review provide the petitioner with an adequate remedy at law. Further, the motion asserted that the petitioner did not properly name all parties and comply with other statutory requirements.

On April 22, 2020, the Review Panel also filed an opposition to the petitioner’s Application for Stay and a Motion to Stay the briefing schedule related to the merits of the judicial review until the Court ruled upon the motion to dismiss and whether it had jurisdiction to consider the petition. The parties after that stipulated to the Review Panel’s requested stay of proceedings, which stipulation was confirmed by a court order issued on June 3, 2020.

The issues set forth in the motion to dismiss were fully briefed, and oral arguments were presented to the District Court on June 10, 2020. The District Court issued a minute

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

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

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

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

The records related to an advisory opinion are confidential under the Ethics Law unless the requester waives confidentiality, with the exception of an Abstract Opinion that removes identifying characteristics of the requester. The federal subpoena sought confidential information protected by the Ethics Law and privileged information protected by the Nevada Revised Statutes.

The Commission prepared a privilege log and objected to the subpoena asserting challenges of relevance under Federal Rule of Civil Procedure 26(b), NRS Chapter 281A confidentiality protections established by the Nevada Legislature to protect the confidential advisory opinions process and records, qualified (deliberative process)

privilege, attorney-client privilege, and attorney work-product privilege. Upon review of a motion for a protective order filed by a party in the adversary proceeding seeking protection of the records of the Commission, the Court determined that certain records were relevant to the adversary proceeding based upon a finding that requester, by his own conduct, had waived the right to confidentiality.

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

VII. Closing Remarks

In summary, FY21 was a year of telecommuting, finding new ways to do the work, and adding virtual training opportunities to increase education about Nevada's Ethics in Government Law. Despite the many challenges the Commission faced during the year, it continued to carry out the mission of the Commission. The Commission and its staff were available to assist the public, provided timely advice to public officers and employees, and switched to working in a virtual environment to process ethics complaints in a timely manner while protecting the health and safety of everyone involved.

The Commission remained steadfast in its commitments to improve its educational programs and advisory opinion and ethics complaint processes by preparing and presenting AB 65 to the 81st Legislative session. The Commission is effectively poised to consider the available avenues to address the essential procedural changes covered by AB 65 in the upcoming biennium through a future bill draft request or regulations.

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