



**STATE OF NEVADA
COMMISSION ON ETHICS**

BEFORE THE NEVADA COMMISSION ON ETHICS

**IN THE MATTER OF THE REQUEST FOR OPINION
CONCERNING THE CONDUCT OF
DONNA BAILEY, Commissioner,
Board of Eureka County Commissioners**

Opinion No. 07-07C

STIPULATION

1. **PURPOSE:** The purpose of this stipulation is to resolve Request for Opinion No. 07-07C (ethics complaint) concerning Donna Bailey that is before the Nevada Commission on Ethics (hereinafter the "Commission") and render an opinion as stipulated in lieu of holding a hearing.
2. **JURISDICTION:** At all material times, Donna Bailey was a Eureka County Commissioner, a public officer subject to the jurisdiction of the Commission pursuant to NRS 281.4365.
3. **STIPULATED FACTS:**
 - a. On February 6, 2007, an ethics complaint was filed with the Commission alleging that Donna Bailey violated the Ethics in Government Law (NRS 281.411-NRS 281.581).
 - b. During the Eureka Board of County Commissioners meeting held on April 6, 2006, Donna Bailey participated and voted in a decision to award a contract for cricket abatement. One of the two bidders was her nephew, Reese Marshall. The contract was not awarded to Mr. Marshall. Donna Bailey did not make a public disclosure as required by NRS 281.501(4) prior to participating in the cricket abatement matter.

- c. During the Eureka Board of County Commissioners meeting held on July 20, 2006, Donna Bailey participated in board action to award a contract for fence replacement. The contract was awarded to her nephew, Reese Marshall. Ms. Bailey voted to award the contract to Mr. Marshall, disclosed her relationship to him and then replaced her vote with an abstention.
- d. Mr. Marshall is a person to whom Donna Bailey has a commitment in a private capacity as defined in NRS 281.501(8)(b). The consanguinity and affinity chart approved by the Eureka Board of County Commissioners prior to April, 2006 as part of the County's personnel manual, depicts Mr. Marshall, as Donna Bailey's nephew-in-law, within the 4th degree of affinity, while the Commission's consanguinity chart depicts this relationship within the 3rd degree of affinity.
- e. Donna Bailey acknowledges that the Commission has provided her with notice of the allegations against her and an opportunity to file a written response and that she is fully advised as to the allegations asserted against her in the Complaint.
- f. Donna Bailey filed with the Commission her written responses to the allegations against her.
- g. Pursuant to NRS 281.511, the Commission's Executive Director investigated the complaint and rendered a written recommendation on just and sufficient cause.
- h. On May 15, 2007, pursuant to NRS 281.462, a Commission panel reviewed the Executive Director's report and recommendation regarding just and sufficient cause, Ms. Bailey's response and all related documents and determined that just and sufficient cause exists for the Commission to conduct a public hearing and render an opinion on the matter.
- i. Donna Bailey has retained legal counsel in this matter and is fully aware of her right to a hearing before the Commission on the allegations against her and any and all rights she

may be accorded pursuant to the Ethics in Government Law, the regulations of the Commission (NAC Chapter 281), the Nevada Administrative Procedures Act (NRS 233B), and the laws of the State of Nevada and she freely and voluntarily waives these rights.

4. **RELEVANT STATUTES:** The following Nevada Revised Statutes are relevant to the allegations which give rise to this stipulation:

NRS 281.4375 provides:

“Willful violation” defined. “Willful violation” means the public officer or employee knew or reasonably should have known that his conduct violated this chapter.

NRS 281.501(2) provides:

Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

NRS 281.501(4) provides:

A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential

effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

NRS 281.501(8) provides:

As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

5. OPINION: The actions of Donna Bailey as described in paragraphs 3(b) and 3(c) above constituted willful violations of the disclosure and abstention provisions of the Ethics in Government Law, specifically, NRS 281.501(2) and NRS 281.501(4), in that she knew or reasonably should have known that her conduct violated those provisions of law.

6. TERMS: Donna Bailey and the Commission agree as follows:

- a. Donna Bailey will pay to the Commission the total sum of Three Hundred Dollars (\$300) for two willful violations of the Ethics in Government Law in order to settle this matter. Donna Bailey will pay said amount within 30 days from the date this stipulation is signed by the Vice Chairman of the Commission.
- b. Donna Bailey waives her right to any judicial review of this matter as provided in NRS 233B.130 or any other provision of Nevada state law.
- c. This agreement is not to be generally applied. This stipulation applies only to the

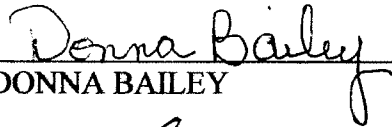
specific facts, circumstances and law related to this complaint. Any facts and circumstances that differ from those contained in this agreement may create an entirely different resolution of this matter.

7. CONTINGENCY:


- a. This agreement is subject to final approval by the Commission in an open public meeting. Once approved, this agreement shall be adopted as the Opinion of the Commission. This stipulation will be the final disposition of this matter and shall be binding upon all parties.
- b. Should this stipulation not be approved by the Commission, this matter will proceed to a full hearing before the Commission. This stipulation shall be of no force or effect nor will it be admissible, in part or whole, in such hearing.

8. ACCEPTANCE: I have read the above stipulation, understand each and every provision therein, and agree to be bound thereby.

DATED this 2 day of Aug, 2007.


DONNA BAILEY

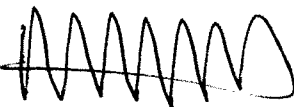
DATED this 19 day of SEPTEMBER, 2007.

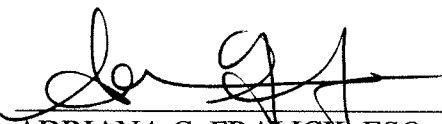

MARK HUTCHISON, VICE CHAIRMAN
Nevada Commission on Ethics

The above stipulation has been reviewed by:

EUREKA COUNTY DISTRICT ATTORNEY

NEVADA COMMISSION ON ETHICS


THEODORE BEUTEL, ESQ.
Eureka County District Attorney


ADRIANA G. FRALICK, ESQ.
Commission Counsel