



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Michelle Gorelow**, Assemblymember,
Nevada State Legislature,
State of Nevada,

Ethics Complaint
Case No. 23-114C
Confidential

Subject. /

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

The Nevada Commission on Ethics (“Commission”) received this Ethics Complaint on August 31, 2023, regarding the alleged conduct of Michelle Gorelow (“Gorelow” or “Subject”). The Complaint alleged violations of NRS 281A.400(1), (2), (3), (4), and (5). During the jurisdictional determination process, the Commission evaluated the facts presented and limitations placed on the Commission’s jurisdiction.

I. Limits on the Commission’s Ability to Investigate Legislator Conduct

The Supreme Court of Nevada has determined that there are limits on the Commission’s constitutional ability to investigate legislator behavior or to enforce some Ethics Law requirements against members of the Legislature. During the 2007 Legislative Session, the Commission pursued an ethics investigation against Senator Warren Hardy (“Hardy”) alleging that he failed to properly disclose and abstain while voting for matters that benefited his private interests.

Hardy made a motion to dismiss the proceedings which the Commission rejected; Hardy then sought a petition for judicial review and an emergency motion for a preliminary injunction against the Commission on the basis that the separation of powers doctrine prohibits an executive branch agency from questioning a legislator’s vote. The Nevada Supreme Court made the following relevant holdings:

- A. The Nevada Commission on Ethics is an agency of the Executive Branch;
- B. The Legislature may not delegate disciplinary authority for “disorderly conduct” to the Commission;
- C. Voting on measures in the Legislature is a core legislative function and discipline for disorderly conduct while voting may not be delegated to the Commission.

See Commission on Ethics v. Hardy, 125 Nev. 285, 212 P.3d 1098 (2009). While the Hardy matter was being litigated, the Legislature adopted clarifying statutes establishing statutory Legislative immunity.

In pertinent part, NRS 41.071 provides:

1. The Legislature hereby finds and declares that:

...

(h) Therefore, the purpose and effect of this section is to implement the constitutional doctrines of separation of powers and legislative privilege and immunity by codifying in statutory form the constitutional right of State Legislators to be protected from having to defend themselves, from being held liable and from being questioned or sanctioned in administrative or judicial proceedings for speech, debate, deliberation and other actions performed within the sphere of legitimate legislative activity.

2. For any speech or debate in either House, a State Legislator shall not be questioned in any other place.

...

5. This section applies to any actions, in any form, taken or performed within the sphere of legitimate legislative activity, whether or not the Legislature is in a regular or special session, and such actions include, without limitation:

(a) Any actions, in any form, taken or performed with regard to any legislative measure or other matter within the jurisdiction of the Legislature, including, without limitation, conceiving, formulating, investigating, developing, requesting, drafting, introducing, sponsoring, processing, reviewing, revising, amending, communicating, discussing, debating, negotiating, allying, caucusing, meeting, considering, supporting, advocating, approving, opposing, blocking, disapproving or voting in any form.

(b) Any actions, in any form, taken or performed with regard to any legislative investigation, study, inquiry or information-gathering concerning any legislative measure or other matter within the jurisdiction of the Legislature, including, without limitation, chairing or serving on a committee, preparing committee reports or other documents, issuing subpoenas or conducting disciplinary or impeachment proceedings.

(c) Any actions, in any form, taken or performed with regard to requesting, seeking or obtaining any form of aid, assistance, counsel or services from any officer or employee of the Legislature concerning any legislative measure or other matter within the jurisdiction of the Legislature, including, without limitation, any communications, information, answers, advice, opinions, recommendations, drafts, documents, records, questions, inquiries or requests in any form.

The *Hardy* decision along with the subsequent statutes related to legislator immunity place some restrictions on the Commission's ability to investigate and enforce the Ethics Law when the subject of a complaint is a legislator. However, these restrictions are not absolute. For example, the Supreme Court in *Hardy* specifically stated that "the Legislature may delegate the power to discipline with respect to conduct related to noncore legislative functions" and pointed to NRS 281A.400(8), 281A.430, and 281A.510 as examples of provisions that do not relate to core legislative functions. Further, the legislative immunity established in NRS Chapter 41 only applies to "legitimate legislative activity".

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II. Jurisdictional Determination

The Commission determined Subject 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 Subject's conduct as a public officer and have associated implications under the Ethics Law.

On October 9, 2023, the Commission instructed the Executive Director to investigate the alleged violations of NRS 281A.400(1) from the Complaint and to add NRS 281A.400(8) and (10) to the scope of the investigation. The Commission determined there was insufficient evidence to proceed on NRS 281A.400(2), (3), (4), and (5).

The Commission was precluded by *Hardy* and by NRS 281A.420(7) from investigating or otherwise taking action in relation to Subject's vote to fund her then-future employer.

III. Panel Determination Following Review of the Investigation

From October 9, 2023 to February 7, 2024, the Executive Director investigated the matter including witness interviews and document reviews.

On February 14, 2024, a Review Panel consisting of Commissioner Amanda Yen, Esq. (Presiding Officer), Vice Chair Thoran Towler, Esq. and Commissioner John Moran, Esq. considered the following: (1) Ethics Complaint; (2) Order on Jurisdiction and Investigation and Notice of Additional Facts and Issues; and (3) Executive Director's Recommendation to the Review Panel with Summary of Investigatory Findings and Relevant Evidentiary Exhibits.¹

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 violations of NRS 281A.400(1), (8) and (10).

Specifically, the Panel determines that the Executive Director's investigation found no evidence that:

- A. The specific circumstances of Subject's acceptance of employment with The Arc of Nevada would tend to improperly influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties;
- B. Subject used governmental time, property, equipment, or other facility to obtain private employment; or
- C. Subject sought employment through the use of her official position.

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¹ 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.

The allegations regarding NRS 281A.400(1), (8) and (10) against Subject are therefore dismissed.

Dated this 14th day of February, 2024.

REVIEW PANEL OF THE NEVADA COMMISSION ON ETHICS

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

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

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

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 foregoing **REVIEW PANEL DETERMINATION** via USPS and electronic mail to the Subject addressed as follows:

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Dated: February 14, 2024

Isl Wendy Pfaff

Employee, Nevada Commission on Ethics