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State of Nevada  
**COMMISSION ON ETHICS**

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August 4, 2004

Rick R. Hsu, Esq.  
*Chairman*  
Caren Jenkins, Esq.  
*Vice Chairman*

*Members:*  
Merle Berman  
Timothy Cushman  
William Flangas, P.E.  
Mark A. Hutchison, Esq.  
George Keele, Esq.  
James Kosinski, Esq.

Members of the Nevada Commission on Ethics:

*Nevada Administrative Code* 281.053(2) requires the Executive Director to report on the state of the affairs of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year. This report is presented to meet the requirements therein.

The last fiscal year has seen the Commission staff, much like most of Nevada government, struggle with issues created by the tremendous population growth in our state. The current biennial budget was built on a two-year base planning period in which the Commission received 66 written requests for opinion. With six months to go in the current two-year base planning period the Commission has already seen 119 written complaints filed – an increase of 81 percent in the Commission caseload with six months remaining in the two-year planning period.

The Commission staff has finally stabilized from the frequent turnover of the early 2000s, but with only three full-time employees the staff simply can no longer bear the full burden of the burgeoning caseload. Though we remain committed to working as a team to pursue the Commission's goals and serve the citizens of Nevada, it has become necessary to ask the Nevada Legislature for additional human resources to accomplish these goals. Additional staff resources and a satellite office in Las Vegas are the main focus of a supplemental funding request which will be presented to the Nevada Legislature in September, 2004. The FY 2006 and 2007 Commission budget request, which will be presented to the Nevada Legislature in February 2005, will also include a request for a full-time investigator. Without these additional resources, the staff will continue to fall further behind in processing cases for the Commission.

It has been my pleasure to serve as your Executive Director for more than two years. This period of changes and challenges has provided many opportunities for growth. With this report, remain confident your staff continues its commitment to preserving the integrity of ethics law in the State of Nevada.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stacy M. Jennings".

Stacy M. Jennings, MPA  
Executive Director

# **ANNUAL REPORT FISCAL YEAR 2004**

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## **Nevada Commission on Ethics**

*as of June 30, 2004*

### **Chairman**

Rick R. Hsu, Esq., (R) \*  
Reno  
Term: 07/01/04 – 06/30/08

### **Vice Chairman**

Caren Jenkins, Esq. (D) \*\*  
Carson City  
Term: 10/01/03 – 09/30/07

### **Members**

Merle Berman (R) \*\*  
Las Vegas  
Term: 11/06/02 – 09/05/05

Timothy Cashman (D) \*  
Las Vegas  
Term: 06/11/04 – 10/31/07

William Flangas, P.E. (D) \*  
Las Vegas  
Term: 10/01/03 – 09/30/07

Mark A. Hutchison, Esq. (I) \*  
Las Vegas  
Term: 01/06/04 – 06/30/07

George Keele, Esq. (R) \*\*  
Minden  
Term: 10/01/03 – 09/30/07

Jim Kosinski, Esq. (D) \*\*  
Reno  
Term: 07/01/04 – 06/30/08

- \* Appointed by Governor  
\*\* Appointed by Legislative Commission

### **Staff**

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## **Commission Mission:**

The mission of the Nevada Commission on Ethics is to enhance the faith and confidence that the people of the State of Nevada have in the integrity and impartiality of public officers and employees by:

- enforcing guidelines set forth by the Legislature to separate the roles of persons who are both public servants and private citizens; and
- ensuring that public officers and public employees retain the public trust by exercising their powers and duties for the sole benefit of the people of the State of Nevada.

## **Commission Description:**

The Commission on Ethics was established by the Nevada Legislature in 1975, and is charged with ensuring the public trust in elected and appointed public officers and employees. The Commission performs five main functions in this role:

1. Interpreting and providing guidance to public officers and employees on the provisions of Nevada Revised Statutes 281.411 through 281.581 (Ethics in Government Law), as well as NRS 281.210 through 281.236;
2. Investigating and adjudicating third-party ethics complaints against public officers and employees for violating the provisions of NRS 281.411 through 281.581 and NRS 281.210 through 281.236;
3. Administering NRS 294A.345 and 294A.346, which prohibit impeding the success of a campaign;
4. Educating public officers and employees regarding ethical provisions and prohibitions under Nevada law; and
5. Accepting financial disclosure statements of certain public officers.

The Commission is an independent legislative-executive commission of state government which serves in a quasi-judicial capacity. The Commission has eight members, four of which are appointed by the Legislative Commission and four of which are appointed by the Governor. The members serve four-year terms.

Of the four members named by each appointing authority, at least two must be former public officers and one must be an attorney. All Commissioners must be Nevada residents. Not more than four members of the commission may be members of the same political party, and not more than four members may be residents of the same county. In this way, the Commission was designed to provide a fair division between political parties, to avoid favoritism to any single party, and to provide an equitable balance between the urban and rural areas.

While serving on the commission, NRS 281.455 prohibits Commissioners from: 1) holding another political office; 2) being actively involved in the work of any political party or campaign; and 3) communicating directly with a member of the legislative branch on behalf of someone other than himself or the commission for compensation.



## **Statutory Authorization:**

The Commission on Ethics enforces the provisions of *Nevada Revised Statutes* Chapter 281 – known as the Ethics in Government Law (see NRS 281.411 through 281.581). The Commission also enforces state laws prohibiting certain campaign practices, as set forth in NRS 294A.345 and 294A.346. Commission regulations can be found in *Nevada Administrative Code* Chapter 281.

In establishing the Commission on Ethics, the Nevada Legislature declared its intent in NRS 281.421:

- “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 to avoid conflicts between his private interests and those of the general public whom he serves.
2. The legislature finds that:
  - (a) The increasing complexity of state and local government, more and more closely related to private life and enterprise, enlarges the potentiality for conflict of interests.
  - (b) To enhance the people’s faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.
  - (c) Members of the legislature serve as “citizen legislators” who have other occupations and business interests. Each legislator has particular philosophies and perspectives that are necessarily influenced by the life experiences of that legislator, including, without limitation, professional, family and business experiences. Our system assumes that legislators will contribute those philosophies and perspectives to the debate over issues with which the legislature is confronted. The law concerning ethics in government is not intended to require a member of the legislature to abstain on issues which might affect his interests, provided those interests are properly disclosed and that the benefit or detriment accruing to him is not greater than that accruing to any other member of the general business, profession, occupation or group.”

## **Request for Opinion Caseload:**

In 1999, the Nevada Legislature established three full-time positions under the Commission: Executive Director (see NRS 281.463 and 281.4635); Commission Counsel (see NRS 281.464 and 281.4645); and an Administrative Assistant III. Over the past four years, the request for opinion caseload has grown sufficiently that three full-time employees are no longer able to accomplish the statutory functions of the Commission.

Between January 2003 and June 30, 2004, the Commission received 237 inquiries related to complaints, resulting in 119 written requests for opinion filed with the Commission. For calendar years 2001 and 2002, only 66 written requests were received. Thus, only half-way through calendar year 2004, the Commission has already experienced an 81 percent increase in incoming complaints over the previous two calendar year period on which the agency budget was based.

Approximately 32 percent of the written requests for opinion originate from local governments within the Clark County region (38 of 119 written complaints). Additionally, 37 of the 44 written complaints submitted against public officers in the executive and legislative branches were against public officers residing and working in the Clark County area. Overall, 75 of the 119 written complaints (or 63 percent of all written complaints) submitted to the agency originate from Clark County.

Additionally, the number of frivolous complaints filed appears to have declined. In Fiscal Year 2003, only 26 percent of complaints filed met the threshold for investigation by the agency. In Fiscal Year 2004, not only did the number of complaints filed increase, but the percentage of complaints meeting the threshold for investigation rose to 48 percent of all complaints filed.

	Actual FY 2004	Projected FY 2005	Projected FY 2006	Projected FY 2007
Opinion requests received	67	90	95	100
Percent of requests for opinion filed which are investigated	48%	50%	53%	55%
Percent of investigations completed in 45 days	18%	5%	25%	50%
Percent of Commission opinions under judicial review	13%	10%	8%	6%
First-party advisory opinion requests	15	20	25	25
Third-party opinion requests (ethics complaints)	51	68	70	73
Campaign practices opinion requests	1	2	0	2
Requests for opinion pending	18	-	-	-

A significant part of the Commission's increased caseload involves jurisdictional determinations. Each incoming complaint must be reviewed by Commission Counsel to determine whether the person is in fact a public officer or employee, and to evaluate the essence of the complaint prior to accepting jurisdiction. Many complaints must be returned to the requestor because the Commission lacks jurisdiction to investigate. The reasons for this could be varied – the subject does not meet the definition of a public officer or employee, the complaint does not have sufficient credible evidence to open an investigation, or the complaint does not allege a violation of the ethics in government law (rather, it might allege an open meeting law violation or an elections law violation). However, it takes significant staff time (both the Commission Counsel and the Executive Director) to review each incoming complaint and to either accept jurisdiction or to officially decline jurisdiction. The Commission has seen a 81 percent increase in the number of requests for opinion submitted since January of 2003, and the jurisdictional evaluation must be performed on each incoming case.

Once the Commission accepts jurisdiction, the Executive Director has 45 days to complete an investigation and convene a panel proceeding to evaluate her recommendations regarding just and sufficient cause. If the Commission does not accept jurisdiction, notification must be sent back to the requester that the Commission will not accept jurisdiction over the complaint and informing them of their right to appeal the jurisdictional determination.

The Commission is currently experiencing its 'backlog' in both of these areas: the Commission is not meeting its 45 day statutory timeframe for investigations, nor is it able to timely return letters regarding 'no jurisdiction' determinations to requesters.

Jurisdiction Backlog	Number of No Jurisdiction Determinations	Range of Days Between Filing Date and Notification of No Jurisdiction Mailed	Average Number of Days to Send No Jurisdiction Letters
Calendar Year 2002	20	1 to 3 days	Less than 2 days
Calendar Year 2003	49	1 to 25 days	14.5 days
CY 2004 (to June 30)	29	1 to 36 days	14 days
Projected CY 2004	Greater than 90	1 to 45 days	20 days

Investigations Backlog	Average Days Between Filing Date and Panel Proceeding	Range of Days Between Filing Date and Panel Proceeding	Percent of Investigations Taking Greater Than 45 Days
Calendar Year 2002	60 days	26 to 95 days	40 percent
Calendar Year 2003	71 days	28 to 157 days	42 percent
CY 2004 (to June 30)	*	46 to 190 days	100 percent
Projected CY 2004	Greater than 90 days	46 to 190 days	100 percent

\* Presently, the Commission has more than 20 open investigation files. It is projected that few of these cases will be investigated within 45 days.

## Public Education and Information Activities:

The Commission strongly believes that compliance with Nevada ethics law begins with the provision of effective educational programs and adequate public information efforts for public officers, employees, and the general public. The Commission effectuates these goals through the provision of:

- 1) proactive educational programs to increase understanding and compliance with Nevada law among public officers and employees in state, county, and city government;

- 2) the continued expansion of the Commission web site and the development of electronic publications to educate and inform the public about Nevada Ethics in Government law; and
- 3) the maintenance of a public officer database to facilitate better compliance with the requirement to file annual financial disclosure statements.

	Actual FY 2004	Projected FY 2005	Projected FY 2006	Projected FY 2007
Educational programs held	20	15	20	15
Percent of education programs evaluated as relevant, useful, and well-prepared	94%	95%	96%	97%
Average web site home page Hits per month	1,681	1,800	1,900	2,000
Annual web hits	127,511	130,000	133,000	136,000
Average web site hits per day	346	450	550	650
Average web site session length	14 min	15 min	14 min	15 min
Average number of web site users Per day	104	115	125	135
Average percentage of repeat web site users per month	26%	28%	30%	32%

## Litigation and Legal Issues:

The Commission has three significant legal challenges pending in courts within Nevada.

### American Press Association, et al. v. NCOE

Challenges the constitutionality of NRS 294A.345 and NRS 281.477 (campaign practices complaints). Counsel for both parties have filed their respective motions for summary judgment and are in the process of filing responses to each other's motion.

### Hansen, et al. v. NCOE

Appeal to the Nevada Supreme Court of the First Judicial District Court Order prohibiting the NCOE from requiring substantial compliance with the requirements of the Financial Disclosure Statement statutes. Counsel for both parties presented argument before the Nevada Supreme Court June 22, 2004. Awaiting Nevada Supreme Court Opinion.

### Michael Mack v. NCOE

Petition for Judicial Review of NCOE Opinion No. 03-40. The Notice of Intent to Participate, pursuant to NRS 233B.130(3) has been filed on behalf of the NCOE. Commission Counsel has also filed a Motion to Dismiss the petition on the basis that Michael Mack is not "aggrieved" by



the Commission's opinion as required by NRS 233B.130(1). Commission Counsel will file the record of the proceedings being reviewed in accordance with NRS 233B.131.

## **Public Officer Financial Disclosure:**

The Commission staff worked closely with the Elections Division of the Nevada Secretary of State's office to ensure an orderly transition of authority for the collection of civil penalties for late filings of financial disclosure statements by appointed public officers required to file annual financial disclosure statements with the Commission pursuant to NRS 281.559.

Pursuant to the provisions of SB 147 and AB 529 of the 2003 Nevada Legislature, the Secretary of State now accepts the financial disclosure statements of elected public officers and candidates for public office pursuant to NRS 281.561, as well administering the enforcement authority for assessing civil penalties for late filing of all financial disclosure statements filed pursuant to NRS 281.559 and 281.561.

## **Commission Funding:**

Effective July 1, 2003, Assembly Bill 551 of the 2003 Nevada Legislature provided for a local government cost-share of the NCOE budget. Prior to July 1, 2003, the agency was funded 100 percent by the state General Fund. AB 551 (codified as NRS 281.4647) provided that cities and counties with more than 10,000 in population are required to proportionally share in the NCOE funding.

The NCOE is responsible for billing cities and counties on August 1 and February 1 of each year of the biennium. If a city or county fails to pay the assessment, the Commission's Executive Director is authorized to submit a billing claim to the Department of Taxation, and the Department of Taxation is authorized to deduct the funds from that city or county's share of the Local Government Tax Distribution Account. The Commission staff experienced no difficulties in collecting the local government cost-share of the NCOE budget during FY 2004.

NRS 281.4647 further requires the NCOE to consult with the Budget Division and the Legislative Counsel Bureau Fiscal Division to determine the local government cost share of the agency budget for each future biennium. The cost share is based on the source of the NCOE request for opinion caseload from the previous biennium.

The funds collected from local government pursuant to NRS 281.4647 are restricted for the enforcement of the ethics in government law, and do not revert to the General Fund at the end of any fiscal year.

Any civil penalties assessed by the Commission for violations of state law are deposited into the State General Fund. The Commission imposed \$5,000 in civil penalties during FY 2004.

## Commission Operating Budget:

The Commission budget is approved by the Nevada Legislature each biennium. The current biennium began July 1, 2003 and ends June 30, 2005. The following represents the appropriated amounts by the Legislature for the biennium.

	FY 2004		FY 2005	
Personnel	\$ 261,218	72%	\$ 261,443	72%
Out-of-State Travel	\$ 3,714	1%	\$ 2,556	1%
In-State Travel	\$ 13,878	4%	\$ 13,878	4%
Operating	\$ 45,466	13%	\$ 46,230	13%
Equipment	\$ 1,137	0%	\$ 1,137	0%
Investigations & Paralegal	\$ 15,000	4%	\$ 15,000	4%
Court Reporting	\$ 13,361	4%	\$ 13,361	4%
Information Technology	\$ 5,942	2%	\$ 6,474	2%
Training	\$ 1,704	0%	\$ 1,704	0%
Reversion to General Fund	-	-	-	-
Purchasing Assessment	\$ 273	0%	\$ 273	0%
	\$ 361,693	100%	\$ 362,056	100%

## Commission Internal/External Issues Assessment:

An assessment of both internal and external issues impacting the Commission were identified in January, 2003 as part of the agency strategic planning process. The following issues were identified as strategic issues, threats, opportunities, and planning assumptions. These issues are presently under re-evaluation due to the varied changes to ethics law by the 2003 Nevada Legislature.

### **Commission Strategic Issues**

1. The Commission on Ethics struggles with a public misperception of the Commission mission, jurisdiction, and duties.
2. High turnover in elected and appointive public office creates an on-going need to educate public officers and employees on the provisions of the Ethics in Government Law, as well as the public officer requirement to file annual financial disclosure statements.
3. The 120-day biennial Legislative Session limits the amount of time the Commission has to provide necessary information to educate legislators regarding Commission functions, making it difficult to effect changes in state law.

4. Limited Commission staff coupled with strict timeframes set forth in statute for processing third-party requests for opinion (ethics complaints) stretches the ability of the staff to timely complete investigations and issue reports regarding just and sufficient cause to panels as required under statute.
5. Four-year Commissioner terms may result in frequent turnover on the Commission, and can result in varying policy interpretations of state law.
6. The Commission is one of only a few state Commissions statutorily located between the Legislative and Executive Branches, which causes confusion as to whom the Commission reports.
7. The Commission must balance its role as a part of the Executive Branch (for budget purposes) with its statutory mandate to investigate and adjudicate ethics complaints against public officers and employees in the Executive Branch.

### **Commission Threats**

1. Budget constraints continue to threaten Commission program and operation funding.
2. The Commission has a limited staff of three, which may make it difficult to respond to fluctuations in workload caused by a large influx of complaints, financial disclosure statement filings, or major litigation.
3. The abolishment of the City of Las Vegas Ethics Commission in December, 2002 places an additional, unfunded caseload on the Commission.
4. Public misperceptions about the role of the Commission may cause public relations issues with the Legislature, state and local governments, and the media.
5. Budget constraints, both within the Commission and at the local government level, make a proactive educational program regarding the Nevada Ethics in Government law difficult to fund and sustain.

### **Commission Opportunities**

1. Continuation of a proactive educational program regarding the Nevada Ethics in Government law will assist in better compliance with Nevada law and eliminate public misperception about the Commission's mission, jurisdiction, and duties.
2. The biennial session of the Nevada Legislature provides an opportunity to tighten loopholes in Commission statutes and educate legislators about the Commission.
3. Using communications tools such as the Commission web site to promote the Commission's activities provides opportunities to educate public officers, public employees, and the general public regarding the importance of the Commission's functions. We will continue to be on the government forefront of making more information available on-line.

### **Planning Assumptions:**

1. Administrative workloads continue to increase with state and legislative reporting mandates. Administrative caseloads will also increase as requests for opinion are absorbed from the City of Las Vegas. With additional staff unlikely, the Commission must prioritize and focus on essential tasks and efficiently and effectively utilize its limited staff.
2. Budget constraints make utilizing new technology such as videoconferencing, web site publications, and e-mail distribution important to achieve cost savings so that the Commission stays within its legislatively appropriated budget.

3. Implementing new technologies to further streamline Commission workload and develop and maintain a public officer database means more funding will be needed for computer equipment, software upgrades, and employee training.
4. Funding and administering a proactive educational program regarding the Nevada Ethics in Government law is essential to ensure better compliance with Nevada law and eliminate public misperception about the Commission's mission, jurisdiction, and duties.
5. Closely monitoring the agency budget is a critical component of ensuring that the Commission uses its monetary resources in the most efficient and effective manner possible to meet the statutory requirements placed on the agency.
6. Compiling a comprehensive, well-justified budget and preparing an informative and concise budget presentation is essential in ensuring the Commission receives funding sufficient to support the Commission goals and programs.

## **Commission Goals:**

Goals, objectives, and performance measures were developed in January, 2003 as part of the agency strategic planning process. The goals and objectives are listed below, and are presently under re-evaluation due to the varied changes to ethics law during the 2003 Nevada Legislature. Commission performance measures have been previously reported in this publication.

◆ **Goal 1** - To investigate and adjudicate all requests for opinion filed by public officers, public employees, candidates, and the general public in accordance with the provisions of NRS Chapter 281.

Objective 1: To timely investigate third-party requests for opinion and issue recommendations regarding just and sufficient cause to a Commission panel.

Objective 2: To expedite first-party requests for opinion and campaign practices complaints as provided for in NRS to ensure timely consideration and rendering of opinions by the Commission.

Objective 3: To timely issue opinions after the Commission renders its decisions, and make such opinions publicly accessible.

Objective 4: To facilitate automation of workflow and streamline Commission operations by providing staff with up-to-date computer equipment, software, and training.

◆ **Goal 2** – To effectively administer Nevada law by providing educational programs and public information necessary for public officers and employees to be informed regarding compliance.

Objective 1: To provide proactive educational programs to increase understanding and compliance with Nevada law among public officers and employees in state, county, and city government.



Objective 2: To expand the Commission web site and develop electronic publications to educate and inform the public about Nevada Ethics in Government law.

Objective 3: To develop and maintain a public officer database to disseminate information about the requirement to file annual financial disclosure statements, and facilitate better compliance with the filing requirement.

## **Appendix A**

### **Organization Chart**

## NEVADA COMMISSION ON ETHICS

