

**PROPOSED REGULATION OF THE
COMMISSION ON ETHICS**

LCB File No. R136-23

February 21, 2024

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-7, 10, 12-15 and 17, NRS 281A.290; §§ 8 and 9, NRS 281A.290 and 281A.675; § 11, NRS 291A.290, 281A.710 and 281A.715; § 16, NRS 281A.290 and 281A.745.

A REGULATION relating to ethics in government; revising provisions governing the functions and duties of the Chair, Vice Chair and Executive Director of the Commission on Ethics and the Commission Counsel; revising provisions governing advisory opinions and ethics complaints; revising provisions governing administration of the Nevada Ethics in Government Law and practice before the Commission; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under the Nevada Ethics in Government Law (Ethics Law), the Commission on Ethics administers and enforces the Ethics Law and is authorized to issue opinions interpreting the statutory ethical standards established by the Ethics Law and applying those standards to a given set of facts and circumstances. (Chapter 281A of NRS) The Commission issues: (1) advisory opinions requested by a public officer or employee who is seeking guidance on matters which directly relate to the propriety of his or her own past, present or future conduct under the statutory ethical standards or who is requesting relief from certain provisions of the Ethics Law that allow the Commission to grant such relief; and (2) opinions issued in response to an ethics complaint which has been filed with the Commission or initiated by the Commission on its own motion regarding the propriety of the conduct of a public officer or employee under the statutory ethical standards. (NRS 281A.675, 281A.710) The Ethics Law also establishes various procedures that the Commission and its staff must follow when processing, handling, investigating, reviewing, evaluating and adjudicating requests for advisory opinions and ethics complaints. (NRS 281A.670-281A.790) Under the Ethics Law, the Commission is required to adopt any necessary procedural regulations to carry out its duties, including regulations: (1) for the filing or withdrawal of an ethics complaint or a request for an advisory opinion with the Commission; (2) to facilitate the prompt rendition of opinions by the Commission; and (3) related to proceedings concerning an ethics complaint, to facilitate written discovery requests and the disclosure of evidence. (NRS 281A.290)

Existing regulations define the term “presiding officer” to mean either the Chair of the Commission or a member of the Commission appointed by the Chair to preside over a hearing,

review panel or meeting of the Commission. (NAC 281A.065) **Section 1** of this regulation clarifies that the Vice Chair of the Commission may take the place of the Chair if the Chair is not participating due to abstention, recusal, disqualification or absence. **Section 6** of this regulation clarifies that the presiding officer or a court reporter may administer oaths.

Section 3 of this regulation clarifies the circumstances under which the Chair is required to fill vacancies that occur on a review panel.

Existing regulations require the Executive Director of the Commission to make an annual report to the Commission, not later than the second meeting of the Commission of each new fiscal year, regarding its state of affairs for the prior fiscal year and its goals for the new fiscal year. (NAC 281A.180) **Section 4** of this regulation changes the deadline to make the annual report due not later than October 31 of each year.

Existing regulations require each written communication or document that is filed with the Commission to be: (1) on a form provided by the Commission or in a format authorized or directed by an order issued by the Commission, a review panel, the Chair, the Executive Director or the Commission Counsel; and (2) submitted in the manner prescribed on the form or in such an order. (NAC 281A.255) **Section 5** of this regulation removes the requirements as to a specific form and the format of communication and documents. **Section 12** of this regulation makes a conforming change by removing a requirement for the Commission to include specific forms with certain notifications that the Commission is required to provide. **Section 17** of this regulation makes a related change by repealing a requirement that a specific form prescribed by the Commission be made available at the office of the Commission and on the Internet website of the Commission. (NAC 281A.615) **Section 17** also repeals a requirement that the Executive Director and Commission Counsel provide certain information to the Commission at least 1 week before a meeting of the Commission.

Existing law provides ethical standards that, in general, prohibit public officers and employees from engaging in certain conduct that might affect a person related to the public officer or employee within the third degree of consanguinity or affinity. (NRS 281A.065, 281A.400, 281A.420) **Section 7** of this regulation replaces a chart used to assist in determining consanguinity or affinity with a table that contains the same information and which does not change the methodology used to determine consanguinity or affinity.

Existing regulations require the Executive Director and the Commission Counsel to review each request for an advisory opinion that has been filed with the Commission by a public officer or employee and determine whether: (1) the Commission has jurisdiction in the matter; and (2) the request was properly filed with the necessary information for the Commission to render an advisory opinion. (NAC 281A.350) **Section 8** of this regulation provides that, for the purpose of determining jurisdiction, a person may be considered a public officer or employee if he or she has been elected to public office or accepted an appointment to public office or public employment but has not yet begun to serve in that role. **Section 2** of this regulation makes a conforming change by revising the definition of a “subject” with respect to whom an ethics complaint has been filed or who files a request for an advisory opinion.

If the Executive Director and Commission Counsel determine that the Commission does not have jurisdiction in the matter or that the request for an advisory opinion was not properly filed with the necessary information, existing regulations: (1) require the Executive Director or Commission Counsel to provide notice of that fact to the subject who filed the request; (2) if applicable, require the Executive Director and Commission Counsel to provide an opportunity within a specified period set forth in the notice for the subject to submit supplemental

information; and (3) require dismissal of the request for an advisory opinion if the subject does not provide supplemental information within the period of time specified by the Executive Director and Commission Counsel. (NAC 281A.351) **Section 9** of this regulation: (1) provides that the specified period set forth in the notice for the subject to submit supplemental information must be at least 14 days; and (2) authorizes the Executive Director or Commission Counsel to waive or extend the deadline set forth in the notice.

Existing regulations: (1) require the Commission to direct the Commission Counsel to prepare a written advisory opinion for certain opinions rendered by the Commission; (2) authorize the Commission to direct the Commission Counsel to prepare an abstract if the materials in the matter are confidential; and (3) require the Commission to publish a copy of each written advisory opinion which is not confidential and each abstract on the Internet website of the Commission. (NAC 281A.375) **Section 10** of this regulation clarifies that the Commission will publish an abstract on the Internet website of the Commission if the abstract is prepared by the Commission Counsel at the direction of the Commission.

Existing law and regulations prescribe procedural requirements for initiating or filing an ethics complaint, and prohibit the Commission from initiating an ethics complaint based solely on an anonymous complaint. (NRS 281A.710; NAC 281A.405) Existing law and regulations require the Commission to determine, based on the evidence submitted with an ethics complaint, whether it has jurisdiction in the matter and whether an investigation is warranted in the matter. (NRS 281A.715; NAC 281A.405) Existing regulations require the Executive Director and Commission Counsel, upon receipt of an ethics complaint and before the Commission makes such determinations, to make recommendations to the Commission regarding jurisdiction and whether the evidence submitted is sufficient to warrant investigation. (NAC 281A.405) **Section 11** of this regulation provides that if an anonymous complaint is filed or an ethics complaint does not name a person as the subject: (1) the Executive Director shall reject the complaint; and (2) the Executive Director and Commission Counsel shall not make any determination regarding the complaint. For the purpose of preparing such recommendations for the Commission, **section 11** authorizes the Executive Director or Commission Counsel to obtain additional information not included in the ethics complaint through any method available to the general public.

Existing regulations: (1) authorize a party to file a written motion with the Commission under certain circumstances relating to an ethics complaint; and (2) if oral arguments are authorized on the motion, require the Commission Counsel to prepare and serve on the parties a notice of hearing that identifies the date, time and location of the hearing on the motion. (NAC 281A.442) **Section 13** of this regulation requires the notice of hearing to also include the time limit for oral arguments.

Existing regulations: (1) provide that the provisions for civil discovery set forth in the Nevada Rules of Civil Procedure do not apply to ethics complaints; and (2) authorize a party to file a motion with the Commission under certain circumstances relating to requests for discovery. (NAC 281A.444) **Section 14** of this regulation requires the Commission Counsel to consider and issue an order regarding any such discovery motion in accordance with the procedures set forth in existing regulations for other written motions relating to ethics complaints.

Existing law and regulations authorize the Executive Director or the subject of an ethics complaint to request that a subpoena be issued by the Commission relating to the ethics complaint by filing a written request for a subpoena at the office of the Commission. (NRS 281A.300; NAC 281A.448) **Section 15** of this regulation replaces the requirement that the

written request be filed at the office of the Commission with a requirement that the written request be filed with the Commission.

If a review panel refers an ethics complaint to the Commission for further proceedings or if the Commission vacates an agreement with the subject of the ethics complaint to defer further proceedings in the matter, existing law requires the Commission to hold an adjudicatory hearing and render an opinion on the ethics complaint within 60 days. Existing law also authorizes the subject of the ethics complaint to waive the 60-day requirement. (NRS 281A.745) **Section 16** of this regulation removes duplicative language in existing regulations that is identical to these requirements in existing law.

Section 1. NAC 281A.065 is hereby amended to read as follows:

281A.065 “Presiding officer” means ~~{the}~~ :

1. *The Chair ;*
2. *The Vice Chair in matters where the Chair does not participate due to abstention, recusal, disqualification or absence; or {a}*
3. *A* member of the Commission appointed by the Chair to preside over a hearing, review panel or meeting of the Commission.

Sec. 2. NAC 281A.100 is hereby amended to read as follows:

281A.100 “Subject” means a ~~{public officer or public employee:}~~ *person:*

1. With respect to whom an ethics complaint has been filed; or
2. Who files a request for an advisory opinion.

Sec. 3. NAC 281A.177 is hereby amended to read as follows:

281A.177 1. The Chair shall appoint a member of a review panel to serve as the presiding officer of the review panel.

2. Except as otherwise provided in subsection 4, if a single vacancy occurs in the membership of a review panel after the Executive Director has presented his or her written recommendation in a matter to the review panel pursuant to NRS 281A.725 but before the review panel has ~~{approved}~~ *made* a ~~{deferral agreement in the matter or referred the ethics~~

~~complaint to the Commission,]~~ *determination*, the remaining panel members shall continue to serve on the review panel and act upon any pending issues in the matter before the review panel.

3. Except as otherwise provided in subsection 4, if a vacancy occurs in a majority of the membership of a review panel after the Executive Director has presented his or her written recommendation in a matter to the review panel pursuant to NRS 281A.725 but before the review panel has ~~[approved]~~ *made* a ~~[deferral agreement in the matter or referred the ethics complaint to the Commission,]~~ *determination*, the Chair shall appoint an additional member of the Commission to serve as a member of the review panel to establish a majority of the membership of the review panel.

4. If ~~[only two members remain on a review panel after a vacancy or as a result of only one member being appointed to fill a vacancy pursuant to subsection 3 and the two members take a vote on a proposed action in a matter pending before the]~~ *any* review panel ~~[but the]~~ vote results in a tie, the Chair shall appoint an additional member of the Commission to serve as a member of the review panel, and the review panel shall reconsider the proposed action.

Sec. 4. NAC 281A.180 is hereby amended to read as follows:

281A.180 In addition to any other duties of the Executive Director required by this chapter or chapter 281A of NRS, or as otherwise imposed by the Commission, the Executive Director shall:

1. Pursuant to paragraph (f) of subsection 1 of NRS 281A.240, create a curriculum for training and conduct training for public officers and public employees on the requirements of this chapter, chapter 281A of NRS and previous opinions of the Commission that have been determined by the Commission to have broad educational value.

2. Not later than ~~[the second meeting of the Commission]~~ *October 31* of each ~~[new fiscal]~~ year, report to the Commission on the state of the fiscal, regulatory and legislative matters and any other business matters of the Commission for the prior fiscal year and on the goals for the Commission for the ~~[new]~~ *current* fiscal year.

3. Adhere to the policies and procedures adopted ~~[by]~~ *for* the Commission . ~~[for its internal governance and external dealings.]~~

4. Recommend to the Chair the appointment of members of the Commission to review panels and to serve as presiding officers of such review panels.

Sec. 5. NAC 281A.255 is hereby amended to read as follows:

281A.255 ~~[1.—Each written communication or document filed with the Commission must:~~
~~—(a) Be on the form provided by the Commission or be in a form or format authorized or directed by an order issued by the Commission, a review panel, the Chair, the Executive Director or the Commission Counsel, as applicable;~~
~~—(b) Be submitted in the manner prescribed on the form or in such an order; and~~
~~—(c) Include any:~~
~~——(1) Duplicate copy required to be included with the form, as specified on the form;~~
~~——(2) Document specified on the form or in the order; and~~
~~——(3) Necessary exhibits in the form and format specified on the form or in the order.~~
~~—2.]~~ Except as otherwise provided in NRS 281A.500, the Commission will consider a written communication or document which is required to be filed with the Commission to have been filed with the Commission on the date on which the communication or document is received ~~[at the office of]~~ *by* the Commission.

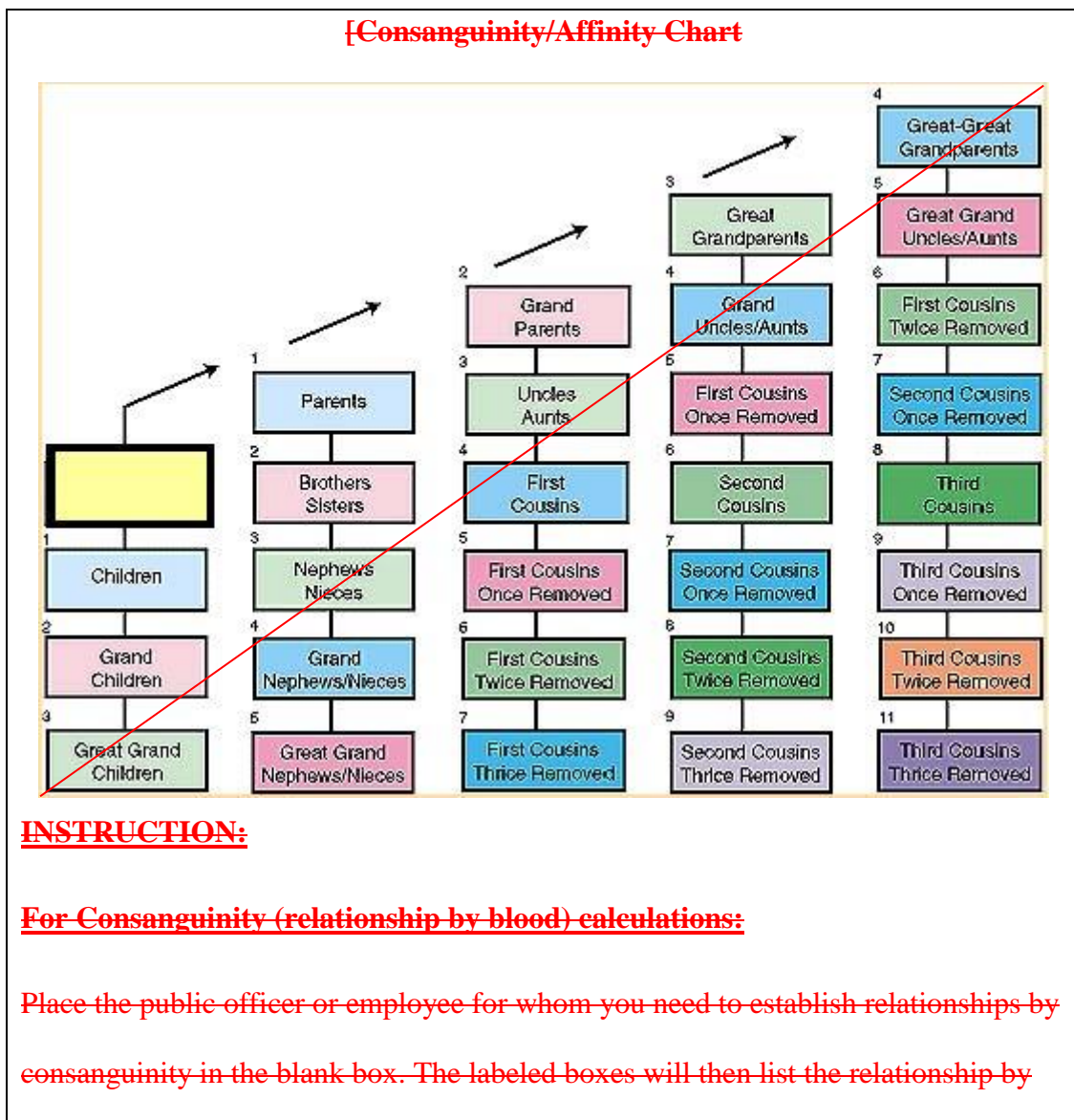
Sec. 6. NAC 281A.280 is hereby amended to read as follows:

281A.280 ~~[1.]~~ The presiding officer *or a court reporter* may administer oaths.

~~[2.—A court reporter present at meetings and hearings may administer oaths.]~~

Sec. 7. NAC 281A.310 is hereby amended to read as follows:

281A.310 1. For the purposes of NRS 281A.065, the Commission will determine the relationships of a public officer or employee, or the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity pursuant to the following ~~[chart and instructions:]~~ *table*:



~~title to the public officer or employee and the degree of distance from the public officer or employee.~~

~~Any person whose relationship to the public officer or employee is listed in a box numbered 1, 2, or 3 is within the third degree of consanguinity to the public officer or employee, and if that person has a spouse or domestic partner, that spouse or domestic partner will be deemed to be within the same degree of relationship for the purposes of NRS 281A.065.~~

~~**For Affinity (relationship by adoption, marriage or domestic partnership)**~~

~~**calculations:**~~

~~Place the spouse or domestic partner of the public officer or employee for whom you need to establish relationships by affinity in the blank box. The labeled boxes will then list the relationship by title to the spouse or domestic partner and the degree of distance from the public officer or employee by affinity. Any person whose relationship to the spouse or domestic partner of the public officer or employee is listed in a box numbered 1, 2, or 3 is within the third degree of affinity to the public officer or employee, and if that person has a spouse or domestic partner, that spouse or domestic partner will be deemed to be within the same degree of relationship for the purposes of NRS 281A.065.~~

~~Spouses of public officers or employees are related in the first degree of affinity by marriage, and domestic partners of public officers or employees are related in the first degree of affinity by domestic partnership. For adoption and other relationships by marriage or domestic partnership, the degree of relationship is the same as the degree of underlying relationship by blood.]~~

<u>Consanguinity Table</u>			
<i>First Degree</i>	<i>Second Degree</i>	<i>Third Degree</i>	<i>Fourth Degree</i>
<i>Children</i> <i>Parents</i>	<i>Grandparents</i> <i>Brothers</i> <i>Sisters</i> <i>Grandchildren</i>	<i>Great-Grandparents</i> <i>Uncles</i> <i>Aunts</i> <i>Nephews</i> <i>Nieces</i> <i>Great-Grandchildren</i>	<i>Great-Great-Grandparents</i> <i>Great Uncles</i> <i>Great Aunts</i> <i>First Cousins</i> <i>Great Nephews</i> <i>Great Nieces</i>
<p><u>Relationship by affinity:</u> Any person whose relationship to the spouse or domestic partner of the public officer or employee is listed in the columns for the first, second, or third degree of consanguinity is within the third degree of affinity to the public officer or employee, and if that person has a spouse or domestic partner, that spouse or domestic partner will be deemed to be within the same degree of affinity for the purposes of NRS 281A.065.</p> <p>Spouses of public officers or employees are related in the first degree of affinity by marriage, and domestic partners of public officers or employees are related in the first degree of affinity by domestic partnership. For adoption and other relationships by marriage or domestic partnership, the degree of relationship is the same as the degree of underlying relationship by blood.</p>			

2. As used in this section:

(a) “Domestic partner” has the meaning ascribed to it in NRS 281A.085; and

(b) “Domestic partnership” has the meaning ascribed to it in NRS 281A.086.

Sec. 8. NAC 281A.350 is hereby amended to read as follows:

281A.350 1. A request for an advisory opinion must be filed on the form and with the information required pursuant to subsection 2 of NRS 281A.675.

2. Upon receipt of a request for an advisory opinion filed pursuant to NRS 281A.675, the Executive Director and the Commission Counsel shall review the matter and make a determination whether the Commission has jurisdiction in the matter and whether the request for an advisory opinion was properly filed with the necessary information for the Commission to render an advisory opinion in the matter.

3. For the purpose of determining jurisdiction pursuant to subsection 2, a person may be considered a public officer or employee if he or she:

(a) Has been duly elected to public office;

(b) Has accepted an appointment to public office; or

(c) Has accepted public employment,

↳ But has not yet begun to serve as a public officer or employee.

Sec. 9. NAC 281A.351 is hereby amended to read as follows:

281A.351 1. If the Executive Director and Commission Counsel determine that the Commission does not have jurisdiction over the request for an advisory opinion or that the request for an advisory opinion was not properly filed with the necessary information for the Commission to render an opinion in the matter, the Executive Director or Commission Counsel shall notify the subject who filed the request for an advisory opinion in writing of the

determination and, if applicable, provide an opportunity within a specified period set forth in the notice for the subject to submit sufficient supplemental information for the Commission to render an advisory opinion in the matter. *The period specified in the notice for the subject to submit sufficient supplemental information pursuant to this subsection must be at least 14 days.*

2. The subject may:

(a) If applicable, submit the supplemental information for the Commission to render an advisory opinion in the matter within the period specified in the notice sent pursuant to subsection 1.

(b) Within 5 business days after receiving the notice sent pursuant to subsection 1, file a motion with the Commission to review the determination of the Executive Director and Commission Counsel, which must include information establishing that the Commission has jurisdiction over the matter or that the request for an advisory opinion was properly filed with the necessary information for the Commission to render an advisory opinion in the matter, as applicable.

3. The Commission may hold a hearing on the motion filed pursuant to paragraph (b) of subsection 2 or take the motion under submission without holding a hearing. If the Commission determines that it will hold a hearing on the motion, the Executive Director or Commission Counsel shall prepare and serve on the subject a notice of hearing that identifies the date, time and location of the hearing on the motion.

4. The Commission will deliberate and issue an order on a motion filed pursuant to paragraph (b) of subsection 2.

5. If the Executive Director or Commission Counsel provides an opportunity to the subject to supplement the request for an advisory opinion and the subject submits the supplemental information, the time limit set forth in NRS 281A.680 for the Commission to render an advisory opinion in the matter commences on the date on which the Commission receives the supplemental information from the subject.

6. ~~HH~~ *Except as otherwise provided in this subsection, if* the subject does not submit supplemental information for the request for an advisory opinion *within the period specified in the notice for the subject to submit sufficient supplemental information pursuant to subsection 1* or file a motion *within 5 business days* pursuant to ~~[this section,]~~ *subsection 2*, as applicable, the Executive Director or Commission Counsel shall issue an order dismissing the request for an advisory opinion. *The Executive Director or Commission Counsel may waive or extend the deadline set forth in the notice for the subject to submit sufficient supplemental information pursuant to subsection 1.*

Sec. 10. NAC 281A.375 is hereby amended to read as follows:

281A.375 1. The Commission:

(a) Will direct the Commission Counsel to prepare a written advisory opinion for an ~~oral~~ opinion rendered by the Commission pursuant to NAC 281A.370 in a matter that constitutes a contested case under chapter 233B of NRS or for which the Commission deems a written advisory opinion is necessary or appropriate. A written advisory opinion prepared and issued in a matter that constitutes a contested case under chapter 233B of NRS is a final decision for the purposes of judicial review.

(b) May direct the Commission Counsel to prepare a written advisory opinion for an ~~oral~~ opinion rendered by the Commission pursuant to NAC 281A.370 upon the written request of the subject who filed the request for an advisory opinion.

(c) May direct the Commission Counsel to prepare an abstract if the materials in the matter are confidential pursuant to subsection 1 of NRS 281A.685.

2. A written advisory opinion or abstract prepared pursuant to this section must:

(a) State each question for which the subject sought guidance concerning the interpretation of a statutory ethical standard or any relevant circumstances in the matter that did or did not justify relief from the strict application of NRS 281A.410, 281A.430 or 281A.550, as applicable, and the determination of the Commission relating thereto;

(b) Include a reference to any published opinions issued by the Commission, including, without limitation, any published abstract, that the Commission deems relevant to the request for an advisory opinion; and

(c) Include findings of fact, conclusions of law and specific guidance provided by the Commission to the subject who filed the request for an advisory opinion concerning the interpretation of the statutory ethical standard or any circumstances regarding which the Commission determined did or did not justify relief from the strict application of NRS 281A.410, 281A.430 or 281A.550, as applicable.

3. The Commission will review any written advisory opinion prepared by the Commission Counsel pursuant to this section and, upon its approval of the written advisory opinion, direct the Commission Counsel to issue the written advisory opinion to the subject who filed the request for an advisory opinion.

4. Each written advisory opinion and abstract must be:

- (a) Numbered and dated; and
- (b) Signed by the Commission.

5. The Commission will publish a copy of each written advisory opinion which is not confidential and each abstract *which is prepared by the Commission Counsel at the direction of the Commission* on the Internet website of the Commission at <http://ethics.nv.gov>.

6. As used in this section, “abstract” means a version of a confidential written advisory opinion that has been redacted or amended to keep the identity of the subject who filed the request for an advisory opinion confidential.

Sec. 11. NAC 281A.405 is hereby amended to read as follows:

281A.405 1. An ethics complaint filed pursuant to paragraph (a) or (b) of subsection 1 of NRS 281A.710 must be filed on the form and with the evidence required pursuant to subsection 2 of NRS 281A.710. *If an anonymous complaint is filed or an ethics complaint does not name a person as the subject:*

(a) The Executive Director shall reject the complaint; and

(b) The Executive Director and Commission Counsel shall not make any determination regarding the complaint pursuant to subsection 2.

2. ~~Upon~~ *Except as otherwise provided in subsection 1, upon* receipt of an ethics complaint filed pursuant to paragraph (a) or (b) of subsection 1 of NRS 281A.710, the Executive Director and Commission Counsel shall make a determination regarding whether to recommend that the Commission accept jurisdiction in the matter and whether the evidence submitted with the ethics complaint is sufficient to warrant an investigation in the matter. *For the purpose of making such a determination, the Executive Director or Commission Counsel may obtain additional information not included in the complaint through any method available to the*

general public, including, without limitation, requests for public records or conversations with witnesses. The Executive Director shall submit the recommendation, in writing, to the Commission.

3. Except as otherwise provided in NAC 281A.407 or unless the subject waives the time limit set forth in NRS 281A.715, within 45 days after the Commission has received an ethics complaint pursuant to paragraph (a) or (b) of subsection 1 of NRS 281A.710, the Commission will:

(a) Review the written recommendation submitted by the Executive Director pursuant to subsection ~~1~~ 2; and

(b) Make a determination regarding:

(1) Whether it has jurisdiction in the matter;

(2) Whether the matter is submitted with evidence that is sufficient to warrant an investigation in the matter; and

(3) If the requester asked the Commission to keep his or her identity confidential pursuant to NRS 281A.750, whether it will keep the identity of the requester confidential.

4. After making the determinations pursuant to subsection 3, the Commission will, by order:

(a) If the Commission determines that it does not have jurisdiction in the matter, dismiss the ethics complaint.

(b) If the Commission determines that it has jurisdiction in the matter but the evidence submitted with the ethics complaint is not sufficient to warrant an investigation in the matter, dismiss the matter, with or without issuing a letter of caution or instruction to the subject of the ethics complaint.

(c) If the Commission determines that it has jurisdiction in the matter and the evidence submitted with the ethics complaint is sufficient to warrant an investigation in the matter:

(1) Dismiss the matter, with or without issuing a letter of caution or instruction to the subject; or

(2) Direct the Executive Director to investigate all or a portion of the ethics complaint pursuant to NRS 281A.720.

(d) If the requester asked the Commission to keep his or her identity confidential pursuant to NRS 281A.750, state whether it will keep the identity of the requester confidential.

5. The Executive Director or Commission Counsel shall notify the requester of the determinations of the Commission pursuant to this section.

6. If the Commission determines that it has jurisdiction in the matter and it will issue a letter of caution or instruction, the Executive Director or Commission Counsel shall serve the order on the subject of the ethics complaint with a copy of the ethics complaint and the letter of caution or instruction.

7. If the Commission determines that it has jurisdiction in the matter and it directs the Executive Director to investigate all or a portion of the ethics complaint, the Executive Director shall provide notification and documentation to the subject of the ethics complaint in the manner required pursuant to NAC 281A.410.

8. If the Commission determines that it does not have jurisdiction in the matter or determines that it has jurisdiction in the matter but dismisses the matter without a letter of caution or instruction, the Executive Director or Commission Counsel may provide to the subject, upon written request, a copy of the ethics complaint.

9. If the Commission determines that the identity of the requester will be kept confidential pursuant to NRS 281A.750, the Executive Director shall redact any identifying information from any document provided to the subject pursuant to this section.

Sec. 12. NAC 281A.410 is hereby amended to read as follows:

281A.410 1. If the Executive Director has been directed to investigate a matter pursuant to NAC 281A.403 or 281A.405, the Executive Director shall:

(a) Notify the subject of the ethics complaint of the investigation and of the opportunity to respond to the allegations contained in the ethics complaint regarding which the Commission has directed an investigation, as required pursuant to NRS 281A.720; and

(b) Except as otherwise provided in this paragraph, provide the subject with a copy of the ethics complaint or the information upon which the Commission based its motion to initiate an ethics complaint, as applicable. If the Commission determines that the identity of the requester will be kept confidential pursuant to NRS 281A.750, the Executive Director shall redact any identifying information from any document provided to the subject pursuant to this paragraph.

2. A notification made pursuant to subsection 1 must:

(a) Be in writing and provided to the subject in any manner in which receipt by the subject can be confirmed by the Executive Director, including, without limitation, by:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested;
- (3) Overnight delivery service in which proof of delivery is documented;
- (4) Regular mail delivery with tracking receipt; or
- (5) If authorized by the subject, electronic delivery via electronic mail or facsimile.

(b) Include, without limitation:

(1) Except as otherwise provided in NRS 281A.750, all information filed by the requester or information upon which the Commission based its motion to initiate the ethics complaint, as appropriate; *and*

(2) An outline of the process used by the Commission to resolve ethics complaints . ~~;~~ ~~and~~

~~— (3) A form prescribed by the Commission for waiving:~~

~~— (I) The right to a determination by a review panel pursuant to NRS 281A.730 whether there is just and sufficient cause for the Commission to render an opinion in the matter; and~~

~~— (II) The time limits set forth in NRS 281A.725 and 281A.730.]~~

3. The subject may file with the Commission:

(a) A waiver of the right to a determination by a review panel pursuant to NRS 281A.730 whether there is just and sufficient cause for the Commission to render an opinion in the matter;

(b) A waiver of the time limits set forth in NRS 281A.725 and 281A.730; or

(c) Within the time limit set forth in NRS 281A.730, a written response to the allegations contained in the ethics complaint regarding which the Commission has directed an investigation.

4. If the subject files with the Commission a waiver of the right to a determination by a review panel pursuant to paragraph (a) of subsection 3, the subject is deemed to consent that the allegations set forth in the ethics complaint and any notice of additional issues and facts served by the Executive Director pursuant to NAC 281A.415 are supported by credible evidence to establish just and sufficient cause for the Commission to render an opinion in the matter.

5. If the subject files with the Commission a waiver of the time limits set forth in NRS 281A.725 and 281A.730 pursuant to paragraph (b) of subsection 3, the Executive Director may, for good cause shown, authorize one or more extensions, of not more than 30 days each, of the

time limit set forth in NRS 281A.720 for the subject to file a written response to the allegations contained in the ethics complaint regarding which the Commission has directed an investigation.

6. Except as otherwise provided in NAC 281A.407 or unless the subject waives the time limit set forth in NRS 281A.725, not later than 70 days after the Commission directs the Executive Director to investigate the ethics complaint, the Executive Director shall complete the investigation of the ethics complaint and present a written recommendation to the review panel that complies with the requirements of NRS 281A.725.

Sec. 13. NAC 281A.442 is hereby amended to read as follows:

281A.442 1. Except as otherwise provided in subsection 7 and NAC 281A.263 and 281A.444, a party may file a written motion with the Commission relating to an ethics complaint:

(a) If a scheduling order has been issued in the matter , ~~[by the Commission or the Chair or, in the absence of the Chair, the Vice Chair or by the Commission Counsel,]~~ not later than the close of business on the date set in the order, unless leave is otherwise granted.

(b) If a scheduling order has not been issued in the matter ~~[by the Commission or the Chair or, in the absence of the Chair, the Vice Chair or by the Commission Counsel]~~ or if the circumstances are outside the scope of the scheduling order, upon approval by the Chair or, in the absence of the Chair, the Vice Chair of a written request by the party to file the motion.

2. The Commission or the Chair or, in the absence of the Chair, the Vice Chair may authorize the parties to argue a motion before the Commission. If oral arguments are so authorized, the Commission Counsel shall prepare and serve on the parties a notice of hearing that identifies the date, time and location of the hearing on the motion ~~[.]~~ *and the time limit for oral arguments.*

3. If a party files a motion in accordance with the requirements set forth in this section, any other party in the matter may file a response in opposition to the motion. The Chair or, in the absence of the Chair, the Vice Chair may authorize the moving party to file a reply to a response.

4. A motion, response or reply filed pursuant to this section must contain:

(a) A brief statement of the facts and the points and authorities upon which the motion, response or reply is based, including, without limitation, any relevant opinions published by the Commission;

(b) A description of the relief sought; and

(c) A certificate of service which indicates that the motion, response or reply was served on all other parties to the matter.

5. The Chair or, in the absence of the Chair, the Vice Chair may rule on a motion, except a motion for disposition of the matter, at any time before, during or after an adjudicatory hearing by the Commission on the matter:

(a) Based solely on the written motion and any opposition or reply filed with the Commission; or

(b) After the presentation of oral argument by the parties, if authorized pursuant to subsection 2.

6. The Commission may rule on a motion, including a motion for disposition of the matter, at any time before, during or after an adjudicatory hearing by the Commission on the matter:

(a) Based solely on the written motion and any opposition or reply filed with the Commission; or

(b) After the presentation of oral argument by the parties, if authorized pursuant to subsection 2.

7. A party may file a written motion for rehearing or for the reconsideration of a written opinion of the Commission relating to an ethics complaint if the motion is filed with the Commission before the party files a petition for judicial review, if applicable, and not later than 15 days after the date on which the written opinion of the Commission is issued pursuant to NAC 281A.473.

Sec. 14. NAC 281A.444 is hereby amended to read as follows:

281A.444 1. The provisions for civil discovery set forth in N.R.C.P. 26 to 37, inclusive, do not apply to ethics complaints. Upon the request of a party, for good cause shown, the Commission Counsel, on behalf of the Commission, may allow discovery relating to an ethics complaint to the extent which he or she deems appropriate.

2. The Commission Counsel shall set forth any requirements for discovery relating to an ethics complaint in a scheduling order of the Commission. A party must comply with the requirements for discovery set forth in this section and any scheduling order issued pursuant to this subsection.

3. Any requests for discovery that are not addressed in a scheduling order must be filed with the Commission by means of a motion. The Commission Counsel shall consider and issue an order regarding any such motion in accordance with the ~~provisions of~~ *procedures set forth in* NAC 281A.442.

4. Except as otherwise provided in NRS 281A.750 and 281A.755, upon the completion of discovery, the Executive Director shall disclose to the subject any evidence obtained during the course of the investigation, including, without limitation, during discovery conducted pursuant to this section, that the Executive Director intends to present as evidence for consideration by the Commission at the adjudicatory hearing or in rendering an opinion in the matter.

5. The Executive Director shall disclose to the subject any evidence obtained by or on behalf of the Executive Director that the Executive Director determines affirmatively and substantively disproves any alleged violation of chapter 281A of NRS related to the ethics complaint by the subject. Such disclosure must be made as soon as is reasonably practicable after the determination.

6. As used in this section, “affirmatively and substantively disproves any alleged violation of chapter 281A of NRS” means indisputably, dispositively and definitively establishes that the subject did not engage in conduct or otherwise fail to act in a manner required by the provisions of chapter 281A of NRS as alleged in the ethics complaint or the notice of additional issues and facts provided by the Executive Director pursuant to NAC 281A.415, or that such conduct or failure to act could not, under any circumstances, establish a violation of chapter 281A of NRS.

Sec. 15. NAC 281A.448 is hereby amended to read as follows:

281A.448 1. In accordance with NRS 281A.300, the Commission may issue a subpoena to compel the attendance of a witness and the production of any books and papers for any hearing before the Commission to consider any matter relating to an ethics complaint.

2. The Executive Director or the subject of an ethics complaint may request that a subpoena be issued relating to the ethics complaint by filing a written request for a subpoena ~~at the office of~~ *with* the Commission. The Executive Director or the subject, as applicable, must show good cause for the issuance of the subpoena, including, the purported relevance of the testimony of the witness or documentary evidence. If the Commission or the Chair or, in the absence of the Chair, the Vice Chair issues the subpoena pursuant to the request, the Executive Director or the subject shall serve the subpoena in accordance with NRS 281A.300 and pay the costs related to the service of the subpoena.

3. Except as otherwise provided in subsection 4, the Executive Director may submit a request to the Chair or, in the absence of the Chair, the Vice Chair for the issuance of a subpoena to compel:

(a) The participation of a potential witness and the production of any books and papers during the course of any investigation.

(b) The attendance of any witness and the production of any books and papers in the possession of the witness for any hearing before the Commission.

4. The Executive Director shall not submit a request for the issuance of a subpoena pursuant to subsection 3 to the subject of an ethics complaint unless:

(a) The Executive Director submitted to the subject the written request required pursuant to subsection 5 of NRS 281A.300 requesting the subject to voluntarily participate, voluntarily attend as a potential witness or witness or voluntarily produce any books and papers in the possession of the subject relating to the ethics complaint during the course of an investigation or for a hearing of the Commission; and

(b) Except as otherwise provided in this paragraph, the subject failed or refused to respond to the written request within 5 business days after receipt of the written request or failed to comply with the written request on or before the time specified in the written request. The subject may submit a written application to the Executive Director for additional time or other reasonable accommodation to comply with the written request. The Executive Director may grant such additional time or other reasonable accommodation within the time limit set forth for the investigation in NRS 281A.725 or the time limit for the hearing before the Commission, as applicable. If the subject fails to comply with the written request of the Executive Director within the additional time or with any reasonable accommodation granted by the Executive Director

pursuant to this paragraph, the Executive Director may request a subpoena pursuant to subsection 3, and the subject is deemed to have waived the time limits set forth in NRS 281A.710 to 281A.760, inclusive.

5. If the subject or any other witness fails or refuses to comply with the provisions of a subpoena issued pursuant to this section relating to an ethics complaint, the Executive Director or the subject, as applicable, may submit a request to the Chair or, in the absence of the Chair, the Vice Chair to petition the district court for an ex parte order compelling the subject or other witness to comply with the subpoena. The Chair or Vice Chair may petition the district court for such an order in accordance with the applicable requirements set forth in subsection 8 of NRS 281A.300.

6. If the district court enters an order that the subject or other witness comply with the subpoena issued pursuant to this section, the Commission Counsel, on behalf of the Chair or, in the absence of the Chair, the Vice Chair, must serve the court order on the subject or other witness. If the subject or other witness does not comply with the court order, the Executive Director or subject, as applicable, may submit a request to the Chair or, in the absence of the Chair, the Vice Chair to petition the district court for an order of contempt of court pursuant to subsection 10 of NRS 281A.300.

Sec. 16. NAC 281A.457 is hereby amended to read as follows:

281A.457 1. If a review panel refers the ethics complaint to the Commission pursuant to NRS 281A.730 or the Commission vacates a deferral agreement pursuant to NRS 281A.740, the Commission Counsel, on behalf of the Commission, shall issue and serve on the parties:

(a) A written notice of an adjudicatory hearing in the matter which ~~must be held not later than 60 days after the date on which the review panel refers the ethics complaint to the~~

~~Commission pursuant to NRS 281A.730 or the Commission vacates the deferral agreement pursuant to NRS 281A.740, as applicable, unless the subject of an ethics complaint waives the time limit set forth in NRS 281A.745. The written notice]~~ must meet the requirements of NRS 281A.745. Service of the notice on the subject will be deemed complete upon delivery to the last known address of the subject in any manner in which receipt by the subject can be confirmed by the Commission.

(b) A scheduling order regarding the time limits and requirements for the submission and service of documents related to the adjudicatory hearing.

2. If the subject waives the time limit set forth in NRS 281A.745:

(a) Not later than 10 business days before the adjudicatory hearing, unless a scheduling order directs otherwise or leave is otherwise granted, a party may submit a written request to the Commission Counsel to stay or continue the adjudicatory hearing in the matter for good cause shown, including, without limitation, to accommodate a scheduling conflict or otherwise provide additional time for the parties to engage in discovery, file a motion or negotiate and present a proposed stipulation of fact or stipulated agreement to the Commission regarding the ethics complaint.

(b) Not later than 5 business days after a party submits a request to the Commission Counsel pursuant to paragraph (a), unless a scheduling order directs otherwise or leave is otherwise granted, any other party may submit:

(1) A written consent to the Commission Counsel for a stay or continuance of the adjudicatory hearing; or

(2) A written response to the Commission Counsel opposing the request for a stay or continuance of the adjudicatory hearing if the party can show that the stay or continuance:

(I) Is being requested merely for delay or because of inexcusable neglect by the Executive Director or the subject, as applicable;

(II) Would create an unjust or undue delay in the final resolution of the ethics complaint; or

(III) Would otherwise unfairly prejudice the interests of the party before the Commission.

3. Except as otherwise provided in subsection 4, if the Commission Counsel receives a request from a party to stay or continue an adjudicatory hearing or any response to such a request pursuant to subsection 2, the Commission Counsel may, after consulting with the parties regarding scheduling, issue a stay or continuance of the adjudicatory hearing and a revised notice of hearing or scheduling order, as appropriate.

4. The Commission Counsel shall deny a request pursuant to subsection 2 if the Commission Counsel determines that the stay or continuance:

(a) Is being requested merely for delay or because of inexcusable neglect by the Executive Director or the subject, as applicable;

(b) Would create an unjust or undue delay in the final resolution of an ethics complaint; or

(c) Would otherwise unfairly prejudice the interests of the party before the Commission.

Sec. 17. NAC 281A.210 and 281A.615 are hereby repealed.

TEXT OF REPEALED SECTIONS

281A.210 Meetings of Commission: Executive Director and Commission Counsel to provide information or materials. (NRS 281A.290) Unless otherwise directed or authorized by the Chair, at least 1 week before the date on which the Commission is scheduled to hold a meeting, the Executive Director and Commission Counsel shall provide to the Commission any information or materials which the Executive Director or Commission Counsel deems necessary to assist the Commission in conducting the meeting.

281A.615 Availability of form for filing acknowledgment of statutory ethical standards. (NRS 281A.290, 281A.500) The form prescribed by the Commission for filing an acknowledgment of the statutory ethical standards required by NRS 281A.500 is available at the office of the Commission and on the Internet website of the Commission at <http://ethics.nv.gov>.