



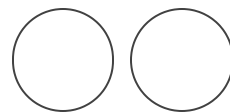
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# Shining a Light – Disclosing Conflicts of Interest



Nevada Commission on Ethics

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Government ought to be outside and not inside...Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety

– President Woodrow Wilson.

Nevada's Ethics Law requires public officers and employees to disclose certain conflicts of interests when those interests collide with their public duties. Specifically, NRS 281A.420(1) states

1. Except as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has **accepted a gift or loan**;

(b) In which the public officer or employee has a **significant pecuniary interest**;

(c) Which would reasonably be affected by the public officer's or employee's **commitment in a private capacity** to the interests of another person; or

(d) Which would reasonably be related to the nature of any **representation or counseling** that the public officer or employee provided to a private person for compensation before another agency within the immediately preceding year, provided such representation or counseling is permitted by NRS 281A.410, without disclosing information concerning the gift or loan, the significant pecuniary interest, the commitment in a private capacity to the interests of the other person or the nature of the representation or counseling of the private person that is sufficient to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the public officer's or employee's significant pecuniary interest, upon the person to whom the public officer or employee has a commitment in a private capacity or upon the private person who was represented or counseled by the public officer or employee. Such a disclosure must be made at the time the matter is considered.

The disclosure requirement applies to both public officers and employees and helps shine an important light on conflicts of interests.

### **"Commitment in a Private Capacity"**

Most public officers and employees have a good understanding that they can't be using their public position to make decisions that directly enhance their pocketbooks. However, remembering to identify conflicts arising from "commitments in a private capacity" can be trickier and where we often see public officials making ethics missteps.

## COMMITMENT IN A PRIVATE CAPACITY - NRS 281A.065



Spouse / Domestic Partner



Member of Household



3<sup>rd</sup> Degree of  
Consanguinity / Affinity



Employer



Substantial and Continuing  
Business Relationship



Substantially Similar

The six relationships that trigger a commitment in a private capacity

The Ethics Law establishes six relationships that make up the definition of a “commitment of a private capacity.” Those relationships are:

1. Spouse or domestic partner
2. Member of your household
3. Related to you or spouse/domestic partner within the third degree of consanguinity
4. Your or your spouse’s or member of your household’s employer
5. Someone you have a substantial and continuing business relationship with
6. Relationship substantially similar to any of the five relationships above.

These commitments can trigger a duty to disclose under the Ethics Law when those commitments may leave a reasonable person to believe the public official may depart from how they would normally handle a situation because of that commitment.

### Completing a Disclosure Analysis

If you stand to benefit from your public action or if one of the above relationships collides with your public duties, it is time to conduct a complete disclosure analysis with your supervisor or agency attorney. Some questions to ask yourself in that analysis include:

- What is the nature of my relationship with this person or entity?

- What government action am I taking?
- What is the nature of the collision between my commitment and my government action?
- Would a reasonable person think I may be influenced by my commitment?

When in doubt, make proper and sufficient disclosure to protect yourself from accusations of failing to disclose after your public action is complete.

### **Who do you disclose to and when?**

For decision making bodies like city councils, county commissions, boards, or other public bodies that meet to discuss and make decisions, the disclosure must be made to the chair of the group and the members of the body.

If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure in public to the chair and other members of the body. NRS 281A.420(1)(d)

For individuals who are serving an agency or in a role that does not sit and meet to discuss and make decisions in public votes, the disclosure must be made to the agency head or to the general public in certain circumstances.

If the public officer or employee is not a member of such a body and holds an appointive office, the public officer or employee shall make the disclosure to the supervisory head of the public officer's or employee's organization or, if the public officer holds an elective office, to the general public in the area from which the public officer is elected. NRS 281A.420(1)(d)

### **What makes a "sufficient" disclosure?**

To be a valid disclosure, the disclosure must include details "to inform the public of the potential effect of the action or abstention" and must be made "at the time the matter is considered" NRS 281A.420(1)(d).

The whole point of the disclosure requirement in the Nevada Ethics Law is to provide transparent information on conflicts of interest so that the general public may judge a public

officials conduct with full knowledge of any of their private interests which may be affected by the government actions. It therefore makes sense that the disclosure must have enough detail for either the agency heads or the general public to understand the nature of the collision between the government action and private interests.

*Example of an Insufficient Disclosure* – Madam Chair, I have a conflict of interest on a matter somewhere on the agenda today, thank you.

*Example of a Sufficient Example* – Madam Chair, before we hear agenda item 4 today, I need to disclose that agenda item includes a discussion and potential vote on raising business licenses fees. I own and operate a business with my husband, and we are required to pay the business licenses fees in question.

When crafting a disclosure ask yourself if someone hearing it that has no context or knowledge of your relationship or interest in the matter would be able to understand how your interests is affected by the potential action item.



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## Asking for Help

Questions about disclosures requirements can likely be answered by your agency attorney. There are specific safe harbor provisions of the Ethics Law help protect individuals who ask for, receive, and follow the advice of their legal counsel. An essential part of getting the best legal

advice is to ask your legal counsel as early as possible or with as much time before your upcoming meeting as possible to allow them time to research your issue.

If you foresee reoccurring conflicts of interest being an issue in your new or current roles, asking the Commission for an Advisory Opinion can also be a helpful tool to ensure that you are able to maintain compliance with the disclosure requirements of the Nevada Ethics Law.

### **Helpful Cases Related to Disclosure Requirements**

In re Public Officer, Comm'n Op No 23-006A

(2003): [https://nvethics.pdi.online/cm/viewerJS/#../pubdocs/Published%20Opinion/2023/4/45956\\_In%20re%20Public%20Officer,%20Commn%20Op%20No.%2023-006A.pdf](https://nvethics.pdi.online/cm/viewerJS/#../pubdocs/Published%20Opinion/2023/4/45956_In%20re%20Public%20Officer,%20Commn%20Op%20No.%2023-006A.pdf)

In re Ramos, Comm'n Op Nos 19-088C 22-026C

(2022): [https://nvethics.pdi.online/cm/pubdocs/Stipulated%20Agreement/2022/10/41785\\_In%20re%20Ramos,%20StipAgrmnt%20No.%2019-088C,22-026C%20\(2022\).pdf](https://nvethics.pdi.online/cm/pubdocs/Stipulated%20Agreement/2022/10/41785_In%20re%20Ramos,%20StipAgrmnt%20No.%2019-088C,22-026C%20(2022).pdf)

In re Public Officer, Comm'n Op No 21-053C

(2021): [https://ethics.nv.gov/uploadedFiles/ethicsnv.gov/content/News/AbstractOpinion\\_21-053A%20\(Public%20Officer\).pdf](https://ethics.nv.gov/uploadedFiles/ethicsnv.gov/content/News/AbstractOpinion_21-053A%20(Public%20Officer).pdf)