



**STATE OF NEVADA**  
**BEFORE THE NEVADA COMMISSION ON ETHICS**

In the Matter of the Third-Party Request  
for Opinion Concerning the Conduct of  
**DENNIS STARK**, Former County Manager,  
Lyon County,  
State of Nevada,

**Request for Opinion No. 10-48C**

Former Public Officer

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**OPINION**

**I. STATEMENT OF THE CASE**

On June 8, 2010, a private citizen filed a Third-Party Request for Opinion ("RFO") with the Commission pursuant to NRS 281A.440(2) alleging that Dennis Stark, Lyon County Manager, violated various provisions of the Ethics in Government Law set forth in NRS 281A by using his position as the County Manager to influence matters affecting his wife's employment status with the County.

Pursuant to NRS 281A.440, the Commission conducted an investigation and an investigatory panel of two commissioners<sup>1</sup> determined that just and sufficient cause existed for the Commission to hold a hearing and render an opinion regarding the allegations.

This matter came before a quorum<sup>2</sup> of the Nevada Commission on Ethics (Commission) during a public hearing on November 10, 2010 and continued on January 12, 2011, in consideration of the RFO.

Stark was present at the hearings and provided sworn testimony. Brent L. Kolvet, Esq., of Thorndal, Armstrong, Delk, Balkenbush & Eisinger law firm, represented Stark in this matter.

At the conclusion of the hearing on January 12, 2011, and after fully considering and analyzing the facts and circumstances presented and evidence including witness testimony and documents, the Commission deliberated and orally provided Stark with its decision that, based on a

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<sup>1</sup> Commissioners Erik Beyer and Gregory Gale served on the Investigatory Panel. Pursuant to NRS 281A.220(4), they did not participate in the hearings or opinion in this matter.

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<sup>2</sup> The quorum consisted of Chairman J. T. Moran III, Esq. and Commissioners George M. Keele, Esq., Paul H. Lamboley, Esq., John W. Marvel and James Shaw.

preponderance of the evidence, Stark willfully violated a provision of the Ethics Law. The Commission deemed a second violation not to be willful. The Commission also dismissed several allegations for a lack of sufficient evidence. The Commission now renders this written Opinion outlining its findings of fact and conclusions of law.

## II. PROCEDURAL HISTORY

The Commission was presented with various assertions that Stark, as County Manager, was improperly involved in matters affecting his wife's employment status as an employee of the County between early 2009 and 2010. Under the County organizational structure, the Library System operates independently from the County Manager. While Stark was employed as the County Manager, the County Library Director hired Stark's wife to serve as the manager of one of the Library branches. Soon thereafter, a new Library Director was appointed by the County Library Board and tensions arose between that Director and Mrs. Stark.

These tensions grew particularly high during the 2009 County budget cycle which anticipated significant cuts and lay-offs within the County, including the Library System. As a result of the budgetary constraints, Mrs. Stark's position with the Library had been slated for potential lay-off. During the same time frame, significant disciplinary actions were taken or proposed against Mrs. Stark by the Library Director.

The RFO alleged that Stark used his position as the County Manager to influence matters affecting the Library System's budget to save his wife's

position from elimination. Further, the allegations suggested improper involvement in personnel matters involving the disciplinary issues affecting his wife's employment.

After a thorough investigation, the Commission's Executive Director presented a total of 13 allegations to the Commission's Investigatory Panel pursuant to NRS 281A.440(4) as follows:

1. On or around 2008, Stark violated NRS 281A.400(2) by using his position as County Manager to get his wife hired by the Library System.
2. On February 26, 2009, Stark violated NRS 281A.400(1) when he sought favors from Library Board member Mike Florio to preserve Mrs. Stark's employment status.
3. On February 26, 2009, Stark violated NRS 281A.400(5) when he used his knowledge of the Library budget, non-public information, to preserve Mrs. Stark's employment.
4. Between February 27, 2009 and March 5, 2009, Stark violated NRS 281A.400(2) by securing an unwarranted privilege, preference or exemption by approving and making changes to the Library budget which resulted in preserving his spouse's employment although her position was proposed to be eliminated.
5. Between February 27, 2009 and March 5, 2009, Stark violated NRS 281A.400(5) when he used his knowledge of the Library budget, non-public information, to preserve Mrs. Stark's employment.

6. In March 2009, Stark violated NRS 281A.400(6) when he used his position as County Manager to suppress information and interfere with proposed disciplinary actions against his spouse.
7. On May 5, 2009, Stark violated NRS 281A.400(1) when he sought a favor from Library Director Kenneston to preserve his spouse's employment.
8. On May 5, 2009, Stark violated NRS 281A.400(9) when he attempted to influence Library Director Kenneston to preserve his spouse's employment.
9. On June 2, 2009, Stark violated NRS 281A.420(1) when he failed to disclose his relationship with his spouse during a "leadership meeting" which included discussion regarding his spouse's employment.
10. On June 2, 2009, Stark violated NRS 281A.420(3) when he failed to abstain from acting during a "leadership meeting" which included discussion regarding his spouse's employment.
11. In January 2010, Stark violated NRS 281A.400(9) when he attempted to influence Library Director Kenneston to preserve his spouse's employment.
12. On December 10, 2008, Stark violated NRS 281A.620 when he failed to disclose Lyon County as the source of income of a member of his household (his spouse) on his 2008 Financial Disclosure Statement ("FDS").

13. On January 16, 2010, Stark violated NRS 281A.620 when he failed to file his 2009 FDS on or before January 15, 2010.

The Panel determined that there was just and sufficient cause (sufficient credible evidence)<sup>3</sup> to forward 12 of the allegations to the Commission (allegations 2-13) to render an opinion pursuant to NRS 281A.440(5). The Panel found that there was sufficient credible evidence suggesting a continuous course of conduct by Stark to improperly involve himself in matters affecting his wife's employment status which constituted conflicts of interest implicating various provisions of NRS 281A.

Upon the Executive Director's recommendation, the Panel dismissed allegation (1) finding that the act occurred, if at all, beyond the Commission's two-year statute of limitations pursuant to NRS 281A.280 and therefore the Commission lacked jurisdiction to consider the allegation. Evidence admitted during the course of the hearings in this matter otherwise confirmed that Stark had no involvement in the decision to hire Mrs. Stark to serve as a County employee for the Library System.

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<sup>3</sup> NAC 281A.435 defines "credible evidence" as "the minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion."

### III. STATEMENT OF ISSUES

Of the twelve allegations considered, Stark violated the Ethics Law set forth in NRS 281A in two respects, one willful violation and one non-willful violation. The Commission must find a preponderance of the evidence to support a finding of a violation of the Ethics Law pursuant to NRS 281A.480(9). The Commission lacked sufficient evidence to find a violation with respect to the remaining allegations.

Although the Commission provided Stark with a specific list of allegations which tended to be date, conduct and statute specific, the intent and effect of the panel determination was to provide notice to Stark that his pattern of involvement in Library business implicated various provisions of the Ethics in Government Law. However, in an effort to ensure Stark had fair notice of the allegations, the Commission ruled on the specific allegations as identified above. Nevertheless, the Commission takes this opportunity to express how such conduct may otherwise have been found to implicate various provisions of NRS 281A had they been noticed with less specificity.

For future matters, the Commission notes that the Subject of an administrative proceeding has sufficient notice of the allegations if he is provided with “[a] reference to the particular sections of the statutes and regulations involved . . . [and] [a] short and plain statement of the matters asserted.” NRS 233B.121(c) and (d). The Nevada Supreme Court has upheld this level of notice as sufficient under the due process requirements. See *Dutchess*

*Business Services, Inc. v. Nevada State Bd of Pharmacy*, 124 Nev. 701, 712; 191 P.3d 1159, 1167 (2008) (quoting *Nevada St. Apprenticeship Council v. Joint Apprenticeship and Training Committee for the Electrical Industry*, 94 Nev. 763, 765; 587 P.2d 1315, 1317 (1978) (“[I]n the context of administrative proceedings, ‘due process requirements of notice are satisfied where the parties are sufficiently apprised of the nature of the proceedings so that there is no unfair surprise.’”).

Stark willfully violated NRS 281A.400(1) (allegation 2) and non-willfully violated NRS 281A.400(1) (allegation 7). Stark departed from the faithful and impartial discharge of his public duties and preservation of the public trust by seeking favors and/or economic opportunities from the Library Board Chair and Library Director to preserve his spouse’s employment status.

With regard to allegations (3) and (5) concerning NRS 281A.400(5) – use of non-public information to further pecuniary interests, the Commission found insufficient evidence that the budget information was non-public to constitute a violation of this provision. However, Stark’s interference in Library issues that involved budget matters affecting his wife’s employment otherwise constitute the improper use of his position that implicate the provisions of NRS 281A.400(1) and (2).

Concerning allegation (4) applying NRS 281A.400(2) – using position to grant/secure unwarranted preferences or privileges to himself or spouse by making changes to the Library budget, the Commission likewise determined

that insufficient evidence supported a finding that Stark made any changes to the Library budget.

The Commission further found insufficient evidence to support a finding that Stark suppressed any governmental document or information in violation of NRS 281A.400(6) (allegation (6) – suppressing governmental information to further a pecuniary interest).

The Commission interpreted a “subordinate” to require a direct chain of command to create improper influence of a subordinate as alleged in allegations (8) and (11) concerning NRS 281A.400(9) – attempting to influence a subordinate to further personal interests. Accordingly, these allegations were dismissed because the Library Director did not fall within Stark’s chain of command.

Finally, the Commission found insufficient evidence that the leadership meeting at issue was the type of meeting at which formal action was taken to implicate the disclosure or abstention requirements of NRS 281A. Accordingly, the facts did not support a violation of allegations (9) and (10) concerning NRS 281A.420.

In preparation for hearing, the Commission located Stark’s 2009 Financial Disclosure Statement and determined that both it and his 2008 form had been properly filed. Accordingly, allegations (12) and (13) concerning NRS 281A.620 were dismissed.

#### **IV. FINDINGS OF FACT**

1. In his public capacity, Stark was employed as the County Manager of Lyon County, Nevada between September 2007 and June 2010.
2. Stark’s wife, Sharon Stark, was also employed by Lyon County as a branch manager for the County Library System.
3. Under the Lyon County organizational structure, the Board of County Commissioners (“County Commission”) appoints a County Manager and a Library Board of Trustees (“Library Board”). The County Manager appoints and supervises the directors of all county departments other than the County Library Director (“Library Director”). Among the directors that the County Manager appoints are the Director of the Department of Human Resources (“HR Director”) and the County Comptroller (“Comptroller”). The Library Board appoints and supervises the Library Director.
4. Pursuant to NRS Chapter 379, the Library Board oversees the Lyon County Library which consists of library branches located in Dayton, Fernley, Smith Valley, Silver Springs and Yerington (hereafter referred to as the “Library System”).
5. The Library Board advises the County Commission on matters affecting the Library System and appoints a Library Director who is responsible for hiring and supervising all Library System employees and advising the Library Board on all matters involving the

Library System, including proposed budgets. The Library Director's office is located at the Yerington branch (central branch).

6. At all times relevant to this matter, Theresa Kenneston served as the Library Director under the direction of the Library Board, which was chaired by Michael Florio. Kenneston's predecessor hired Sharon Stark to serve as the central branch manager in Yerington. Prior to serving as Library Director, Kenneston was the manager of the Dayton branch. As such, Kenneston and Mrs. Stark had been peers.
7. The Library Board coordinates its budget through the County budgeting system which is directed by the County Manager and Comptroller. In and around January and February of each year, the County Manager and Comptroller meet and confer with all County department heads to determine the departments' projected budgets for that fiscal year. The department heads propose a budget for each department in accordance with projected allocations provided by the Comptroller. The County Manager, with the Comptroller's assistance, reviews and revises the departments' proposed budgets and makes a recommendation to the County Commission for approval.
8. The budget for the Library System is processed differently. The County Manager and Comptroller inform the Library Director of the projected County revenues or shortfalls that affect the Library System. Using those projections, the Library

Director establishes a proposed budget for review and approval by the Library Board. The Library Board then recommends its budget to the County Commission. The County Commission has final authority to approve the Library System budget. The County Manager's involvement in the Library's budget includes providing necessary information concerning budget allocations and ensuring compliance with the overall County budget.

9. For the 2009 budget cycle, Kenneston enlisted the assistance of a subcommittee of the Library Board to assist her with the process.
10. When Mrs. Stark began her employment with the Library System, County Manager Stark was reminded by various County department heads and the group that hired Mrs. Stark of potential conflicts of interest and was warned to avoid those conflicts. He was advised to delegate to appropriate County officials oversight and decisions regarding any matters affecting the Library System. Stark delegated budget issues affecting the Library System to the County Comptroller.
11. Soon after Kenneston's promotion to Library Director in the same branch Sharon Stark worked in Yerington, Kenneston and Mrs. Stark began to experience various personnel problems resulting in a difficult working relationship. Kenneston brought various informal (verbal) disciplinary actions against Mrs. Stark. Tensions between Kenneston and Mrs. Stark were particularly high

during the County's 2009 budget cycle, beginning in approximately January/February 2009 and continuing through May 2009.

12. At all times relevant in this matter, Steven Englert served as the County's Human Resources ("HR") Director and Josh Foli served as the County's Comptroller. Both positions functioned under Stark's direction and supervision.
13. During all times relevant to this matter, Stark regularly complained to Englert and Foli (his subordinates) concerning Kenneston's management of the Library System and discussed problems between Kenneston and his wife. Englert and Foli felt uncomfortable with these discussions and continuously reminded Stark that he had a conflict of interest with the Library Director and should not get involved in any matters involving the Library System.
14. On or about February 15, 2009, the County received tentative budget projections from the State concerning funds available to the County. After receiving the early projections, Foli recommended that all county departments including the Library System would be required to cut their Fiscal Year 2009 budgets. The Library System was required to cut its budget by approximately \$100,000.
15. On or about February 22 to February 25, 2009, Stark and Foli met with Kenneston and a budget subcommittee of the Library Board consisting of then-member Florio to discuss budget issues affecting the Library System. During that discussion, Kenneston represented that personnel cuts (lay-offs) would be required to accommodate the requested budget reduction.
16. On the afternoon of February 23, 2009, Kenneston informed Mrs. Stark that her position was slated for potential lay-off due to the budget considerations. Mrs. Stark reported the same to Mr. Stark either that night or the following day.
17. On or about February 25 or February 26, 2009, Kenneston informed the Library Board Chair (Florio) of her plan to eliminate the public services manager and central branch manager positions in the Library to meet the budgetary constraints. Mrs. Stark held the position of central branch manager. Being located at the same branch, Kenneston felt she could perform the duties of Library Director and fulfill the duties of branch manager simultaneously. Florio approved her plan.
18. During the same time period (and following multiple incidents of verbal reprimands and counseling for insubordination), Kenneston had issued a written reprimand to Mrs. Stark alleging, among other matters, that Mrs. Stark had been insubordinate. Mrs. Stark engaged the representation of the County employee labor union to address the written reprimand. In accordance with the County's regular practice, HR Director Englert set a meeting with the union representative, Mrs. Kenneston and Mrs. Stark to address the proposed disciplinary

action. On March 5, 2009, the group met and the disciplinary action was reduced from a written reprimand to an oral reprimand and requirement to engage in training/counseling. Prior to the meeting and as a courtesy to his supervisor, Englert informed Stark of the pending disciplinary action and meeting regarding Stark's wife.

19. On or about the morning of February 26, 2009, Stark telephoned Florio requesting that they meet privately at a local restaurant to discuss issues affecting the Library System. They met during the afternoon of February 26, 2009 at a local restaurant in Yerington. Stark called the meeting to try to encourage Florio to intervene in Kenneston's decisions regarding the proposed disciplinary action against Mrs. Stark and the proposed elimination of Mrs. Stark's position.

20. On the early morning of February 27, 2009, Florio met with Kenneston to inform her of his meeting with Stark the previous day. That afternoon, Kenneston submitted a memo to Comptroller Foli listing the positions that had been identified for possible staff reduction (lay-offs) to accommodate the estimated budget cuts.

21. Between late February and March 4, 2009, Comptroller Foli learned that the budget deficit was not as grim as was originally expected and that money was available to reallocate to certain departments. Foli intended to use the savings to preserve positions slated for lay-off and informed Kenneston that

approximately \$60,000 would be available to her budget for this purpose. Foli asked Kenneston to accept the money and inform him of her proposed application of the funds before he printed the budget that day. Kenneston refused the reallocation because she did not have time to bring the matter before the Library Board (or her budget subcommittee) to determine how to reallocate the funds before Foli's deadline. Rather than accept Kenneston's refusal of the funds, Foli reallocated them to the Library System budget leaving the description blank with a note that the Library Board would determine the use at a later date. Foli made this decision without input or influence from Stark and intended the funds to be used to save a position from lay-off.

22. Kenneston accepted the reallocation and recommended to the Library Board that it keep its plan to lay-off the two full-time positions, and instead use the reallocation to increase hours for part-time employees. At its March 5, 2009 meeting, the Library Board accepted Kenneston's recommendation.

23. Kenneston reported to Foli the intended use of the reallocated funds and Foli reported the same to the Lyon County Commission at its budget hearings on March 18 and March 19, 2009. In response, one of the county commissioners asked whether it was legal for the County to lay-off full-time positions while increasing part-time positions. Stark subsequently contacted the County's labor law attorney (via email) to



inquire about the issue. The attorney responded that it was not customary to increase part-time hours instead of retaining full-time positions. However, the lawyer stated he did not understand the question and he did not advise Stark regarding the legality of the proposal.

24. After the March 5, 2009 meeting with the HR Director and Labor Union representative to reduce Mrs. Stark's written disciplinary action to verbal counseling and training, but before final budget approval by the County Commission in May 2009, Kenneston and Mrs. Stark continued to have a tense communication and work environment in what Kenneston construed as continued insubordination.

25. On May 1, 2009 Stark emailed Kenneston inviting her to meet with him in his office to discuss a potential agenda item. In response to the invitation, Kenneston went to Stark's office on May 3, 2009. During the meeting, Stark handed Kenneston a letter he had written as a private citizen to express his dismay with a program conducted at one of the libraries and the conduct of one of the library employees<sup>4</sup>. Stark's letter indicated that he did not appreciate being pulled into controversies involving the Library System and he would take appropriate action to resolve issues if Kenneston failed take action. The letter also suggested that Stark and

Kenneston should meet to resolve such matters.

26. On May 3, 2009, Stark forwarded to Kenneston the email from the labor law attorney regarding the customary preference to retain full-time employees over increasing hours for part-time staff.

27. On May 4, 2009, Stark emailed Kenneston requesting another meeting. Kenneston met with Stark that afternoon and Stark presented Kenneston with a letter inviting her to attend the County's "Leadership Team Meeting" to discuss issues affecting the Library System. The Leadership Team consists of the County Manager and the directors and managers of the departments of the County. The Leadership Team meets informally every few weeks to discuss management and personnel issues affecting the departments in an effort to brainstorm ideas and receive feedback. No action is taken during these informal, internal meetings. Kenneston felt pressured by Stark to attend the Leadership Meeting and to discuss personnel issues affecting the Library, including matters affecting Mrs. Stark and another Library employee.

28. On May 5, 2009, Kenneston emailed Stark that she agreed to recommend to the Library Board that it accept the reallocated funds to retain the library manager position rather than increase hours of part-time employees.

29. On May 13, 2009, the Library Board met and accepted the reallocated funds to retain the library manager

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<sup>4</sup> One of the library branches hosted a community outreach program in which there was poor turn-out from the public. Mr. and Mrs. Stark attended the event. At the conclusion of the event, an employee of the branch sent an email to Kenneston complaining that Mr. and Mrs. Stark had acted unprofessionally at the event.

position but lay off the public services manager position due to lack of work.

30. On or about mid-May, 2009, the County Commission approved the County's proposed budget, which included the Library's recommended budget to retain the Library's central branch manager position (held by Mrs. Stark) and lay off the public services manager. Mrs. Stark was not laid-off as a result of the budget approval.
31. On or about May 26, 2009, Kenneston restructured the Library's manager positions and moved Mrs. Stark to serve as the Smith Valley Branch Manager. Kenneston continued to experience insubordination from Mrs. Stark while she was serving the Smith Valley Branch, including unauthorized overtime hours and insufficient staffing issues.
32. Between approximately May 29, 2009 and June 2, 2009, Kenneston reported additional concerns regarding insubordination of Ms. Stark to the HR Director, Englert. Englert responded that he would no longer be involved in disciplinary actions involving Mrs. Stark because of the conflicts of interest that arose in prior matters and because he was Stark's subordinate. Englert referred Kenneston to the County's limited liability insurance carrier for Human Resources assistance in the matter.
33. On June 2, 2009, Kenneston participated in the County's Leadership Team meeting. Library Board member Lu Weaver attended

the meeting with Kenneston to serve as support for matters affecting the Library System. At the meeting, personnel problems involving Mrs. Stark became a topic of conversation at which all members acknowledged the relationship to Stark and the HR Director indicated that Stark should not participate in the discussion due to his conflict of interest. Stark acknowledged his private interest but otherwise stated he could act objectively. However, Stark actively supported his wife's position. The meeting resulted in a few ideas on how to address certain personnel matters but no formal action was taken.

34. Mrs. Stark remained the manager of the Smith Valley Branch.
35. In January/February 2010, the County's budget cycle began for Fiscal Year 2010. The budget projections from the State were more dismal than the year before. Based on the projections, the Library would face significant lay-offs and cut-backs.
36. In February 2010, Stark emailed Kenneston requesting a meeting to discuss matters affecting the Library System. Kenneston believed the meeting was called to persuade her to retain Stark's wife's position again slated for lay-off.
37. In May 2010, the County Commission approved lay-offs of various Library personnel, including the position held by Mrs. Stark. Mrs. Stark held the position until June 30, 2010.

38. In response to pressure from the County Commission, Stark resigned as County Manager on June 18, 2010.

**B. Seeking/Accepting Favors Which Tend to Improperly Influence Public Officer to Depart from Public Duties**

**V. DISCUSSION OF RELEVANT STATUTES AND ISSUES**

**A. Public Policy**

**NRS 281A.020(1) provides:**

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 or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

Stark was the County Manager for Lyon County and was therefore a public officer entrusted by the public to commit himself to avoid conflicts of interest between his private interests and those of the general public whom he serves.

Generally, public officers must avoid involvement in or action on certain public matters which affect persons with whom they share significant private relationships. The Legislature has defined the types of relationships to include certain relatives, including spouses.

**NRS 281A.400(1) provides:**

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

Stark's conduct significantly contravenes the provisions and intent of NRS 281A.400(1) which require a public officer to separate his private interests from his public duties. The allegations regarding this statute state that Stark sought favors and/or economic opportunities from a Library Board member (allegation 2) and the Library Director (allegation 7) which would tend to improperly influence a reasonable person in his position as a public officer to depart from the faithful and impartial discharge of his public duties.

Stark's interactions with the Library Board member, Michael Florio, and the Library Director, Kenneston, constitute the precise conduct the provisions of NRS 281A are intended to discourage and prevent.

**1) Allegation (2) – Seeking Favor from Library Board Member Improperly Influencing Public Duties**

Stark initiated a private, confidential meeting with Florio while the Library Director had pending written disciplinary actions against his wife and immediately after learning that his wife's position was slated for lay-off given the budgetary constraints facing the Library System. The timing of this interaction is more than coincidence. The evidence favors a finding that this meeting was called to encourage the Library Board member (a supervisor of the Library Director) to reduce and/or withdraw the disciplinary action and reconsider the lay-off proposal related to Mrs. Stark.

Although it heard conflicting testimony between Stark and Mr. Florio, the Commission resolves the conflict in favor of Mr. Florio based on the credibility of his testimony and written evidence as well as the circumstances surrounding the meeting. Stark admitted that he initiated the meeting. However, Stark argued that he called the meeting to inform the Library Board in a delicate manner that Ms. Kenneston was untrustworthy and/or unprofessional.

Specifically, Stark argued<sup>5</sup> he was informed that Kenneston had bounced checks to the County and she may have problems with her driver's license. He wanted to inform Florio that it may embarrass the Library System to have its director writing bad checks to the

County and having driver's license issues when she drove a county vehicle. Stark's explanation lacks any credibility. No evidence was presented of any emergency causing Stark to become involved in any matters affecting the Library System or requiring him to inform Florio of this information at the precise time that his wife was being subjected to disciplinary action and potential lay-off. The evidence was clearly established that Stark was well-aware of the pending disciplinary action and lay-off proposal.

HR Director Englert had informed Stark of the meeting with the employee union representative regarding the proposed disciplinary action. Although Stark did not appear to ask Englert for information respecting this issue, Englert reported the matter to Stark as a courtesy and in accordance with his regular practice of informing Stark of all such meetings affecting County employees. Likewise, Comptroller Foli had regularly informed Stark of all budget matters affecting the Library System, including any required cuts and proposed lay-offs.

Despite informing Stark of these matters as a courtesy and as part of the overall budget process and personnel matters affecting the County, both the HR Director and Comptroller were adamant to remind Stark to remain uninvolved in matters affecting the Library System due to his conflict of interest. Both Englert and Foli testified repeatedly that Stark would often "vent" to them regarding matters involving the Library Director and his wife, and they always advised Stark to stay out of library business.

Prior to Stark's interaction with Florio, Stark was aware that he should not

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<sup>5</sup> Although Stark made the argument, the Commission makes no finding that Kenneston actually bounced checks or had problems with her driver's license.

become involved in any matter involving the Library. If Stark had concerns unrelated to his wife that affected the Library, he could have asked Englert or Foli to address those matters independently as they had been directed to do in all other matters.

Further, the record showed rather clearly that Mrs. Stark had shared her concerns regarding Kenneston on a regular basis with her husband, as would be expected of most married couples. Despite the efforts of Mrs. Stark to argue that she knew better than to discuss such issues with her husband because of the conflict of interest, her testimony belied common sense. In fact, when pushed, Mr. and Mrs. Stark agreed that they had conversations regarding these issues and Stark was well-aware of the tension between his wife and Kenneston.

In either circumstance, the record clearly establishes more than a mere preponderance of evidence that Stark knew about the proposed disciplinary action and lay-off affecting his wife's position. Only during that limited and defined time period when those issues were under consideration did Stark find it relevant to call a private meeting with Mr. Florio.

Mr. Florio also produced a memo of his conversation with Mr. Stark that was verified as having been written on the same day as (or within a day of) their meeting<sup>6</sup>. While the memo included some colorful and embellished

vernacular relating the meeting to "Chicago-type politics" in which secret favors between influential parties are exchanged as a quid pro quo, Florio confirmed that he understood Stark intended the meeting to ask Florio to encourage his subordinate, Ms. Kenneston, to reconsider the disciplinary action against Stark's wife and consider options other than the elimination of Mrs. Stark's position.

The act of calling this private meeting to influence matters involving his wife's employment status constitutes a willful violation of NRS 281A.400(1). Pursuant to NRS 281A.170, a "willful violation" means a violation where the public officer or employee . . . [a]cted intentionally and knowingly . . ."

NRS 281A.105 defines the term "intentionally" as "voluntarily or deliberately, rather than accidentally or inadvertently." The definition further states that proof of bad faith, ill will, evil intent or malice is not required.

NRS 281A.115 defines "knowingly" as "import[ing] a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission." Further, the definition states that "[k]nowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry." The legislative history enacting these provisions governing the definition of a willful violation of NRS 281A requires the Commission to interpret the meanings of "intentional" and "knowing" consistent with Nevada case law. See *Legislative Minutes of Assembly Committee on Elections, Procedures, Ethics and Constitutional Amendments and Senate*

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<sup>6</sup> Florio testified that he wrote a memorandum memorializing his understanding of the meeting the same evening and subsequently mailed a draft to himself as evidence of the timing upon which he drafted the document. Florio presented the unopened, post-marked document during the hearing.

*Committee on Judiciary regarding Senate Bill 160 of the 2009 Nevada Legislature.*

For an act to be intentional, NRS 281A.105 requires only that Stark acted voluntarily and deliberately. Stark's acts were not accidental or inadvertent. See *In re Fine v. Nevada Commission on Judicial Discipline*, 116 Nev. 1001 (2000) ("the relevant inquiry regarding willful misconduct is an inquiry into the intentional nature of the actor's conduct."). Stark deliberately initiated a private meeting with Florio to seek a favor respecting his wife's employment status.

As defined above, NRS 281A.115 imports a knowledge that the facts exist which constitute an act or omission. Stark knew he was calling a private meeting with Florio to discuss matters affecting the Library System, including the Library Director. Even if the meeting was called for the purposes alleged by Stark, calling such a meeting to address matters involving the Library Director would necessarily affect his wife, even if inadvertently, because of the tension between the Director and his wife.

NRS 281A does not require that Stark had actual knowledge that his conduct violated NRS 281A but it does impose constructive knowledge on a public officer when other facts are present that should put an ordinarily prudent person upon inquiry. See *Garcia v. The Sixth Judicial District Court of Nevada*, 117 Nev. 697 (2001) ("constructive knowledge fulfills a statutory requirement that an act be done 'knowingly.' State of mind need not be proved by positive or direct evidence but may be inferred from conduct and the facts and circumstances disclosed by the evidence.") and *State v. Rhodig*, 101 Nev. 608 (1985) ("... the law does not

require knowledge that such an act or omission is unlawful.").

Stark knew of his conflict of interest with the Library System because his wife was employed by the County Library and he served as County Manager. He had been reminded on numerous occasions by the HR Director and Comptroller that he should refrain from any matter involving the Library System. By contacting the Library Board Chairman to discuss matters affecting the Library System, Stark intentionally and knowingly acted in contravention of his conflict of interest.

Even if Stark was deemed to have no actual knowledge that such involvement would implicate the Ethics in Government Law (and therefore no actual knowledge that his conduct would violate the provisions of NRS 281A), the record reflects Stark's long career in public service (including years in law enforcement and serving in management positions for various local governments throughout the Country). As such, he was aware of and relied upon the statutes and regulations governing public officers and employees under NRS 281A and similar conflict of interest provisions in other jurisdictions. These facts would or are deemed to put an ordinarily prudent person upon inquiry that a County Manager is subject to the provisions of the Ethics in Government Law and that any voluntary acts would likewise be subject to NRS 281A.

Based on Stark's willful act (of deliberately and voluntarily initiating and participating in a private meeting with a Library Board member to discuss matters affecting his wife's employment

despite his knowledge of the conflict of interest), an administrative sanction of \$1000.00 is hereby imposed pursuant to NRS 281A.480(1)(a). A penalty imposed for a violation of NRS 281A is intended to be punitive and reflect the seriousness and nature of the improper conduct. Because Mr. Stark and his wife are presently unemployed and without any known income, \$1000.00 is an appropriate and significantly punitive sanction based on the circumstances. However, the conduct described in this matter would ordinarily be worthy of the maximum penalty under the law (up to \$5,000).

**2) Allegation (7) – Seeking Favor from Library Director Improperly Influencing Public Duties**

Although his conduct was not willful, Stark also violated NRS 281A.400(1) when he interacted with the Library Director regarding matters affecting the Library System, including those matters affecting his wife’s expected lay-off. The evidentiary record reflects that Stark regularly involved himself in matters affecting the Library System. In this instance, Stark sent several emails to Kenneston seeking to discuss matters affecting the library, library budget and potential lay-off proposals.

While Stark testified that he intended only to be informative and involve Kenneston in County leadership, such assertions again lack credibility based on the circumstances and timing of Stark’s interactions. Stark began to approach Kenneston when his wife’s position was proposed to be eliminated and after Stark had been regularly reminded to remove himself from any

matters affecting the Library System, in particular, matters involving his wife’s supervisor, Ms. Kenneston.

While Stark’s actions in this regard are problematic, the Commission failed to find by a preponderance of evidence that this conduct was willful. Nevertheless, the Commission finds a preponderance of evidence supports that the conduct violated NRS 281A.400(1)<sup>7</sup>.

**C. Use of Government Position to Secure Unwarranted Preferences**

**NRS 281A.400(2) provides:**

2. A public officer or employee shall not use the public officer’s or employee’s position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281A.420.

(b) “Unwarranted” means without justification or adequate reason.

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<sup>7</sup> Commissioner Lamboley agreed to the finding that the conduct constitutes a violation but voted against the motion regarding willfulness. See Concurring and Dissenting Opinion by Commissioner Lamboley.

This provision of NRS 281A challenged the Commission to consider whether Stark secured an unwarranted privilege, preference or exemption by approving and making changes to the Library budget resulting in the preservation of his spouse's employment despite the proposal that her position be eliminated. The evidence revealed that Stark was not involved in the budget process related to the Library System. The Comptroller specifically excluded Stark from any matters or decisions involving the Library's budget. The Comptroller provided initial estimates and projections for budget cuts and when those projections proved wrong and more money was available than originally expected, the Comptroller, without any input or influence from Stark, reallocated funds to the Library System to avoid lay-offs. As a result, the credible evidence regarding this specific allegation did not support finding a violation of NRS 281A.

However, several facts were raised in consideration of this allegation that supported the finding of a violation of NRS 281A.400(1), described in more detail above. In particular, Stark used his position as County Manager to initiate a private meeting with Florio in an effort to secure an unwarranted privilege or exemption for his wife, a person to whom he has a commitment in a private capacity as defined by NRS 281A.420(8). He called the meeting to ask the Library Board Chairman to influence his subordinate, the Library Director, to reduce and/or eliminate the disciplinary action against Mrs. Stark and to reconsider the proposed elimination of her position with the Library. Likewise, Stark used his position to initiate meetings with the

Library Director to attempt to persuade her regarding matters affecting his wife's position.

If the allegation respecting this provision of NRS 281A had been characterized in this manner, it would likely have resulted in another violation of the Ethics Law. Instead, this evidence serves as guidance to Stark and other public officers similarly situated that such conduct constitutes the improper use of an official position to secure unwarranted privileges for a person to whom the public officer or employee has a commitment in a private capacity.

#### **D. Use of Non-public Information to Further Pecuniary Interest**

##### **NRS 281A.400(5) provides:**

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further the pecuniary interests of the public officer or employee or any other person or business entity.

To support a violation of NRS 281A.400(5), evidence must be provided that a public officer acquired information through his public duties that is not otherwise available by law or practice to the public. While the evidence clearly reflects that Stark had information regarding the County budget and deliberations regarding it by virtue of his public duties and relationships,



insufficient evidence supported the notion that the budget information was otherwise unavailable to the public.

Although Comptroller Foli suggested that the budget is not typically available to the public until the proposed budget is printed and presented to the County Commission, sufficient conflicting evidence was brought forward that the projections and budget issues were generally available to the public upon public inquiry.

Consequently, the required elements of this statute have not been satisfied by a preponderance of the evidence, and, therefore, Stark has not used non-public information to further his own or his wife's interests in violation of NRS 281A.400(5). However, to the extent that Stark used his knowledge of the budget to further his private interests by seeking favors and unwarranted benefits from Library Board member Florio and Library Director Kenneston, Stark has violated NRS 281A.400(1) – as described above – and implicated the provisions of NRS 281A.400(2) and NRS 281A.020 by failing to avoid conflicts between his private interests and public duties.

#### **E. Influence Subordinate for Personal or Financial Interest**

##### **NRS 281A.400(9) provides:**

9. A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

According to the County's organizational chart, the Library Director does not fall within the chain of command reporting to the County Manager. Rather, the Library Director reports to the Library Board, which is appointed by the County Commission and is operated separate and apart from the authority of the County Manager. While the evidence clearly supported that Stark improperly attempted to influence Kenneston in matters affecting his wife's employment, Kenneston was not Stark's subordinate and therefore his attempts to influence Kenneston did not violate the statute related to influencing a subordinate. NRS 281A.400(9)<sup>8</sup>.

While Stark's conduct respecting Kenneston does not satisfy the elements of NRS 281A.400(9), his acts do constitute the improper use of his position to influence a public matter involving a person to whom he has a commitment in a private capacity. This conduct does implicate the public policy requiring public officers to honor the public trust and act impartially and in the best interests of the public by avoiding conflicts with any private interests. See NRS 281A.020.

Finally, although the allegations presented in the RFO did not address whether Stark attempted to influence other subordinates to further his private interests, the record substantiates Stark's attempts to influence the HR Director and Comptroller, his subordinates within the County's organizational structure, to benefit his private interests in preserving his wife's employment status.

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<sup>8</sup> Commissioner Lamboley voted against this conclusion. See Concurring and Dissenting Opinion by Commissioner Lamboley.

Both the HR Director and Comptroller testified that Stark had repeatedly discussed matters affecting the Library System and his wife's disciplinary action and proposed lay-off with them. Each felt uncomfortable with Stark's comments and had to continuously remind Stark that he should not be involved in such matters. While Stark describes those discussions as "venting sessions," his subordinates testified that the communications made them uncomfortable.

HR Director Englert further testified and acknowledged that Stark's comments in personnel matters involving his wife made Englert feel uncomfortable enough to defer any future personnel matters involving Stark's wife to the County's limited liability insurer. Englert determined that because he was Stark's subordinate and due to the frequency of Stark's complaints to him about the matter, Englert had a conflict of interest of his own in addressing such matters because they involved the interests of his supervisor. While Englert confirmed that Stark had never overtly asked him to act regarding the personnel matters, his discussions and comments were sufficient to constitute attempted influence.

As these matters were not specifically alleged, the Commission makes no finding whether Stark's acts violated the Ethics in Government Law under these circumstances. However, the Commission utilizes the record in this matter as guidance to other public officers similarly situated regarding conduct likely prohibited by NRS 281A.400(9).

Finally, the record reflected that Stark initiated emails and meetings with Kenneston during the 2010 budget cycle when more lay-offs were imminent and his wife's position was again subject to elimination. The allegation regarding this involvement and influence in library matters in 2010 (allegation (11)) involves application of NRS 281A.400(9). Because Kenneston was found not a subordinate above, this allegation is likewise dismissed. However, Stark's continued involvement in Library matters during 2010 by emailing Kenneston and initiating further meetings with her constitutes the use of his position to influence matters affecting his wife's employment and therefore was improper and contrary to the public trust.

#### **F. Disclosure/Abstention**

**NRS 281A.420(1) and (3) provide, in relevant part:**

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 pecuniary interest; or

(c) Which would reasonably be affected by the public officer's or employee's commitment in a private capacity to the interest of others,

- without disclosing sufficient information concerning the gift, loan, interest or commitment 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 pecuniary interest, or upon the person to whom the public officer or employee has a commitment in a private capacity. Such disclosure must be made at the time the matter is considered. If the public officer or employee is a member of a body which makes decisions, the public officer or employee shall make the disclosure to the chair and other members of the body...

3. Except as otherwise provided in this section, in addition to the requirements of subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

(a) The public officer's acceptance of a gift or loan:

(b) The public officer's pecuniary interest; or

(c) The public officer's commitment in a private capacity to the interests of other's.

The provisions of NRS 281A.420 contemplate formal actions (or decisions) by public officers which affect the public trust. While the disclosure provisions have been interpreted to extend to general matters affecting an agency or governmental entity, the Commission does not interpret the provisions to extend to an informal,

internal meeting at which no action is taken. Here, the leadership meeting was a brainstorming meeting to generate ideas among County leaders. No action was taken or directed by any County leader.

Everyone at the meeting knew that Stark's wife's employment issues were a topic of discussion such that it would have rendered disclosure repetitive under these specific circumstances. While the law does not require disclosure during informal brainstorming matters, to avoid an appearance of impropriety regarding potential influence or improper use of his position, even though it had been universally known to the entire group, Stark would have been well-advised to disclose his relationship and potentially to abstain from participating in those discussions.

In this type of meeting, the inherent concern with Stark's participation does not directly implicate disclosure and abstention as contemplated by NRS 281A.420. Rather, such participation triggers concerns respecting Stark's possible influence of subordinates regarding his private interests or otherwise using his position as the County Manager to seek favors or secure unwarranted benefits for his wife. This internal meeting did not produce evidence of such conduct. However, a similar meeting may implicate the Ethics in Government Law under different circumstances. Because the disclosure and abstention provisions do not necessarily contemplate being applied to brainstorming meetings, they do not support the Commission finding of a violation in this context.

## VI. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Stark was a "public officer," as defined by NRS 281A.160 and 281A.180. The Commission has jurisdiction over former public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. As County Manager, Stark willfully violated the provisions of NRS 281A.400(1) by initiating a private meeting with a Library Board member to request the Board member to exercise influence over matters affecting Stark's wife's employment status with the County Library. Under the authority provided in NRS 281A.480, an administrative sanction of \$1000.00 is imposed on Stark.
4. Stark additionally violated NRS 281A.400(1) by initiating meetings and requesting favors from the Library Director, his wife's supervisor, to affect his wife's employment status. Insufficient evidence supports finding this to be a willful violation, and therefore no sanction is imposed.
5. The evidence is insufficient to support finding any other violations of NRS 281A based on the allegations presented.

Dated this 9<sup>th</sup> day of February, 2012.

NEVADA COMMISSION ON ETHICS

By:   
Nevada Commission on Ethics

### **Commissioner Lamboley concurring in part, and dissenting in part.**

I agree with the Opinion's findings of fact and conclusions of law that Respondent Stark's conduct violated provisions of the Nevada Ethics In Government Law, specifically NRS 281A.400(1) as alleged in Allegations Nos. 2 and 7, and that conduct in Allegation No. 2 was properly deemed a willful violation under NRS 281A.480 (as elements are defined in NRS 281A.105 and 281A.115) for which a sanction in the amount of \$1000.00 is appropriate. Accordingly, I concur and join in that part of the Opinion.

I, however, do not agree with the Opinion's conclusions that Respondent Stark's conduct respecting NRS 281A.400(1) as alleged in Allegation No. 7 was not willful and that his conduct did not violate other provisions of the ethics law, specifically, NRS 281A.400(2) and (9) as alleged in Allegations Nos. 1, 8 and 11 and NRS 281A.420(1) and (3) as alleged in Allegations Nos. 9 and 10. Therefore, I dissent from the Opinion on those issues.

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<sup>9</sup> Pursuant to NRS 281A.220(4), current Commission Chair Erik Beyer did not participate in this opinion as he served on the Investigatory Panel. As of the issuance of this written opinion, the presiding officers in this matter, then-Chair Moran and Commissioner Keele, no longer serve on the Commission. Therefore, Commissioner Marvel has signed on behalf of the participating Commissioners.

This case presents 12 allegations involving conduct occurring over a period of some 6 months, January through June 2009, and again in January and February 2010. In these administrative proceedings it is appropriate to observe that the numerous allegations provide ample and sufficient notice to Respondent Stark of the various issues he must consider and address in defense of the overall conduct alleged to have violated various provisions of NRS Chapter 281A.

Contrary to defense contentions, the issues here are not limited to consideration of discrete date-specific events. Rather, it is Respondent Stark's overall conduct that is at issue. The date-specific events are but manifestations that tie together and demonstrate a course of conduct designed to utilize Mr. Stark's position as County Manager to influence others for the benefit of himself and Mrs. Stark. This was a knowing and intentional (willful) pattern of action.

The defense concedes that if Mr. Stark's conduct is found violative of the ethics law, an applicable provision would be NRS 281A.400(2) because of the prohibition against a "commitment in a private capacity to the interests of others," i.e. Mrs. Stark, and presumably not NRS 281A.400(1). I find Mr. Stark's conduct violated both statutory provisions: NRS 281A.400(1) because his intended conduct did tend improperly to influence him, as a reasonable man in his position, to depart from the faithful and impartial discharge of his own public duties to which he was entrusted; and NRS 281A.400(2) because he sought unwarranted privileges,

preferences, and advantages for Mrs. Stark.

I find there is substantial, credible, and probative evidence of record, including the Opinion's findings, that establishes a clear pattern and course of conduct by Respondent Stark from January through June 2009 in which he routinely and regularly engaged in a series of actions intended to influence and protect Mrs. Stark's employment in the Lyon County Public Library System. Admittedly, Mr. Stark had no supervisory authority over the Library System, which was precisely the reason why Mrs. Stark was employed there and not by the County.

The record and the Opinion's findings evidence that, in efforts to give voice to his influence and supervisory authority as Lyon County Manager, Mr. Stark repeatedly expressed dissatisfaction over the Library System and its Director, based on Mrs. Stark's reports on employment and personnel matters in the Library System, to those whom he did supervise, the County Human Resources (HR) Director and the County Comptroller, and who in turn did have responsibilities over personnel and funding of the Library System. The record reflects Mr. Stark persisted in doing so despite clear admonitions on each such occasion that he cease and desist for obvious conflict reasons.

The HR Director was responsible for and participated in Library System personnel matters. The HR director participated in a disciplinary session involving Mrs. Stark, which resulted in a reduction of discipline from a written to an oral reprimand. Later, when other personnel issues arose involving Mrs. Stark, the HR Director withdrew

because of conflicts that arose in prior matters and because Mr. Stark was his boss.

The Comptroller was responsible for presenting and administering the overall county budget adopted by the County Commission, which budget did include appropriations for the Library System. In carrying out his responsibilities, the Comptroller interacted with the County Manager as well as with the Library Board, and specifically with its Director, on county fiscal resources, appropriations and staffing matters. The Comptroller specifically allocated "new found money" to the Library System for personnel retention in an amount sufficient to retain Mrs. Stark.

Notwithstanding the separate, independent status of the Library System, the record and Opinion findings demonstrate that Mr. Stark also initiated a variety of meetings and e-mailings on several occasions to communicate with a Library Board and Budget Subcommittee member and the Library Director about the Library funding and personnel issues. The County Manager's "leadership team meeting" to which Mr. Stark specially invited the Library Director who was otherwise never included, and at which he neither sufficiently disclosed nor abstained, but acted as chair and actively participated, offers a classic, critical example of Mr. Stark's overreaching efforts to influence Library personnel matters.

Albeit the Library Director was a stranger, not occupying a subordinate position in the direct line or chain of command under the County Manager, by his "leadership meeting" invitation

and participatory conduct, Mr. Stark nonetheless made the Library Director feel as being a subordinate to him, and that feeling is the proper measure of subordination for purposes of applying NRS 281A.400(9) in this case.

Indeed most, if not all, of the record evidences that Mr. Stark's conduct was knowingly and intentionally calculated to influence and protect Mrs. Stark's employment in the Library System. Admittedly, Mr. and Mrs. Stark spoke almost daily about Library matters, and Mrs. Stark's concerns in particular. Mr. Stark's attentive and responsive conduct regarding his spouse's employment situation is surely understandable, but not excusable under ethics laws.

Finally, I also do not agree that the record evidence does not support a determination that Respondent Stark's conduct did not violate NRS 281.400(5) as alleged in Allegations No. 3 and 5. Although the factual record to support the statutory essential elements for those allegations is not substantial, I believe it may be sufficient nonetheless in the totality of the circumstances in this case.

  
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Commissioner Paul H. Lamboley, Esq.