

Nevada Ethics in Government Law



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Nevada Commission on Ethics



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What is the Nevada Commission on Ethics?

The Nevada Commission on Ethics is a blended executive/legislative commission responsible for administering and enforcing Nevada's Ethics in Government Law set forth in NRS chapter 281A.

The Commission

- The Ethics Commission consists of 8 members appointed to serve 4-year terms
 - 4 members appointed by the Governor
 - 4 members appointed by the Legislative Commission.
- Not more than 4 members may be residents of the same county and
- Not more than 4 members may be members of the same political party.



Staff

- The state-wide staff to the Commission consists of an Executive Director, Commission Counsel, Associate Counsel, Investigator, Paralegal and an Executive Assistant.

Nevada Commission on Ethics Vision & Mission Statement

OUR VISION

Principled public servants preserving
the public trust.

OUR MISSION

To enhance the public's faith and confidence in
government and uphold the public trust by
**ensuring that public officers and public
employees commit themselves to avoiding
conflicts** between their private interests and their
public duties.

Conflict of Interest

- Conflicts of interest can interfere with basic principles of fairness – everyone having the same burdens and benefits in our society. A public official may have many opportunities to take unfair advantage of his or her position or to gain a benefit at the expense of others. When public officers and employees ignore their conflicts of interest, the public trust becomes undermined. The public can lose faith in the integrity of government and the decision-making processes.





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Nevada Commission on Ethics

- Interprets and provides guidance on the statutory provisions of NRS 281A - the Ethics in Government Law
- Investigates and adjudicates requests for opinion from public officers, public employees and the public
- Accepts certain written disclosures

Commission Jurisdiction

Public Officer is:

- ✓ Elected or appointed to position established by the NV Constitution, a state statute, charter or ordinance of any county, city or other political subdivision, AND
- ✓ Exercises a "public power, trust, or duty"
 - Has administrative discretion/formulates policy;
 - Authority to expend public money; **and**
 - Administers laws and rules of a state, county, city or other political subdivision.

2013 - added presidents of a university, college or community college, school superintendents & city and county managers as public officers. (SB228, Ch. 551).

NRS 281A.160 & 281A.182

Commission Jurisdiction

- "State Legislator" - a member of the Nevada Senate or Assembly **except** when undertaking "core legislative functions." (disclosure, abstention and related matters).
- "Member of a local legislative body" - a member of a governing body of any political subdivision.

Public officer does not include:

- Judge or officer of the court
- Person in a PURELY advisory capacity
- County health officer
- Others specifically excluded by the statute



Commission Jurisdiction

Public Employee:

- ✓ Performs public duties for compensation from a state, county, city or political subdivision.
- ✓ At some level, acts under the direction or control of a public officer.



NRS 281A.150

Commission Jurisdiction

Former public officers and employees:

The Commission has jurisdiction over conduct of public officers and employees within **TWO YEARS** from the alleged conduct or its reasonable discovery.



NRS 281A.280

Commission Practices-

Requests for Opinion – Advice and Complaints

First-Party Confidential Advisory Requests about past, present, or future conduct of public officers or employees (Advice)

Third-Party Requests from the public about public officers/employees (Complaints)

Guidance on Ethics

- Part of our Mission is to provide guidance through the Ethics Laws.



Requests For Opinions



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Confidential Advisory Opinions

“It would be impossible to draft an ethics legislation that would cover every possible case, but the saving grace of this legislation is that the individual in a ‘twilight’ area can request an opinion before taking an action.”

– Senator Richard Bryan, Sponsor of the legislation providing for first party advisory opinion requests.

– See also, Carrigan v. Nevada Comm’n on Ethics, 129 Nev. ____ (2013).



First-Party Requests for Opinion

Any public officer or public employee with questions regarding his or her own past, present or future conduct related to the Ethics in Government Law may request a confidential advisory opinion from the Commission. Consideration of these advisory opinions has been statutorily exempted from Nevada's Open Meeting Law.



Ethics

Third-Party Requests for Opinion



The Commission has authority to render an opinion interpreting the Ethics in Government Law and apply the standards to a given set of facts and circumstances upon the request from a person, a specialized or local ethics committee; and upon the Commission's own motion.

The Commission has adopted procedural regulations that outline how these RFOs are processed. Those regulations appear in chapter 281A of Nevada Administrative Code.

Initial Review of Third-Party RFO

The Commission exercises very limited jurisdiction. Each RFO is first reviewed by the Commission's Executive Director and Commission Counsel to determine whether the Commission has jurisdiction to investigate the matter. The requester and subject have appeal rights to the Commission regarding jurisdictional decisions.

The Commission will accept jurisdiction if:

- (1) The subject of the RFO is a public officer or public employee;
- (2) The RFO contains an allegation of a violation of chapter 281A of Nevada Revised Statutes; and
- (3) The RFO includes a reliable form of credible evidence to support the allegations.

After acceptance of jurisdiction of the RFO, the Commission notifies the requester and the subject of the RFO and initiates its investigation. The subject is provided time to respond in writing to the allegations. The investigation is conducted under the direction of the Executive Director.

Investigatory Panel



After the investigation is completed, the Executive Director presents a recommendation to a two-member investigatory panel of the Commission regarding whether the evidence supports just and sufficient cause for the Commission to conduct a hearing and render an opinion in the matter. The investigatory panel reviews all of the facts and evidence collected and issues a Panel Determination regarding just and sufficient cause for the Commission to render an opinion. If one or both of the panel members agree that just and sufficient cause exists, the matter is forwarded to the Commission. If both panel members agree that just and sufficient cause does NOT exist, the matter is dismissed.

Confidentiality of Third-Party RFO

- A Third-Party RFO becomes public ONLY AFTER the investigatory panel has made its determination regarding just and sufficient cause for the Commission to render an opinion.
- Before a Panel Determination, the Commission and its staff may neither confirm nor deny the receipt of a RFO.
- After a Panel Determination, the RFO is publicly disclosed, but the Commission's Investigatory File remains confidential (with exceptions).



Third-Party RFO - Hearings

- Notice and Scheduling

- If the Investigatory Panel finds that just and sufficient cause exists to forward any or all of the allegations in a RFO to the Commission for hearing, the Commission issues a Notice of Hearing and Scheduling Order to the subject of the RFO outlining the date, time and location of the hearing and deadlines for various prehearing requirements.

Hearing- Third Party RFO

Commission hearings of Third-Party RFOs are not subject to Nevada's Open Meeting Law, but are typically conducted in open public sessions to promote transparency in government. Witnesses and documents may be subpoenaed, evidence and testimony are considered, and the Commission deliberates and determines whether the subject's conduct violated a provision of NRS 281A. If the Commission finds that the subject violated NRS 281A, the Commission will determine whether the violation is willful; i.e., knowing and intentional. The Commission may impose civil penalties and other sanctions for a willful violation, including monetary fines and referrals for removal from office or other disciplinary action.

Of course, any subject found to have violated the Ethics in Government Laws may appeal the Commission's decisions to the District Court via the judicial review process.

Commission's main considerations:



Written Filings



Prohibited Conduct



Abstention and Disclosure

Required Written Disclosures for Public Officers

Financial Disclosure Statement (FDS)

If you are 1) appointed to a position, 2) elected, or 3) appointed to an elective office, and are entitled to receive annual compensation of \$6,000 +, you must file an FDS annually with the SECRETARY OF STATE- *not the Ethics Commission* - on or before January 15th each year.

Required Written Disclosures for Public Officers

Acknowledgment of Statutory Ethical Standards

Every public officer shall acknowledge that s/he has received, read and understands the statutory ethical standards at the beginning of his/her term, and some must file the same form every **even numbered year** thereafter.

NRS 281A.500

Required Written Disclosures for Public Officers

Agency Representation Disclosure

Any public officer who has represented or counseled a private person for compensation before a state agency of the Executive Branch shall file a disclosure with the Commission which includes the name of the represented client, the nature of the representation and the state agency not later than January 15th of every year.

NRS 281A.410

PROHIBITED CONDUCT

- Accepting gifts, services, favors, employment, economic opportunities, etc. which would tend to improperly influence a reasonable person

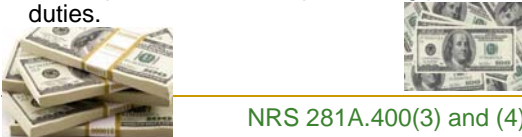


- Using a public office to secure unwarranted privileges, preferences, exemptions, or advantages for self or others.

NRS 281A.400(1) and (2)

Ethics in Government – Prohibitions

- Participating as an agent of government to negotiate or execute contracts with a business in which one has a pecuniary interest.
- Accepting a salary or other compensation from a private source for performing public duties.



NRS 281A.400(3) and (4)

Ethics in Government – Prohibitions

- Furthering private pecuniary interest or that of others by using any non-public information acquired through public duties or relationships.
- Suppressing or delaying government reports or documents which might tend to unfavorably affect pecuniary interest or that of a person to whom one has a private commitment.



NRS 281A.400(5) and (6)

Ethics in Government – Prohibitions

- Using government resources - time, property, equipment, and so forth to benefit a personal or financial interest.

- But some personal use is allowed . . .



NRS 281A.400(7)(a)

Limited Personal Use of Government Property – Criteria

1. Use is authorized by the responsible public officer or necessary in an emergency;
2. Use does not interfere with the performance of public duties;
3. Cost or value of use is nominal; **AND**
4. Use does not create the “appearance of impropriety”.

State Legislators have similar restrictions set forth in NRS 281A.400(8).

Ethics in Government – Prohibitions

- Attempting to benefit a **personal** or financial interest by influencing subordinates.
- Seeking other employment or contracts through the use of public position.



NRS 281A.400(9) and (10)

Additional standards for public officers – “Cooling-Off”

- One-year cooling off period to seek or accept employment or certain private representations after leaving public service (certain exceptions) (NRS 281A.550(3) and (5) and 281A.410)
- Relief may be granted from the strict application of certain prohibitions. (NRS 281A.550(6))
- Exceptions/Relief Limited.

Additional standards for public officers – Prohibited Contracts

- No contracts between government agencies and business entities in which public officer has a pecuniary interest, **unless open competitive bidding; or**
- No sales of goods/services to local governmental agency governed by public officer unless sole source of supply.
- **Relief from the strict application of the statute may be obtained.**

NRS 281A.400(3) and 281A.430

Additional standards for public officers

- No accepting an honoraria for performing your public duty.
(NRS 281A.510)
- May not cause a governmental entity to make an expenditure to support or oppose a ballot question or candidate (during period between candidate filing and election).
(NRS 281A.520)

Criminal statutes applicable to public officers

- Anti-nepotism provisions (NRS 281.210)
- Prohibited contracts (NRS 281.221)
- No personal profits from public office (NRS 281.230)

*These statutes **are not** within the jurisdiction of the NCOE; however, some parts of the Ethics in Government Law can trigger criminal statutes and referral for prosecution.*



Disclosure and Abstention for Public Officers and Employees

Walking the Disclosure & Abstention tightrope



Voting, Disclosing, & Abstaining

- **Disclosure** is mandatory for any interest created by:
 - ✓ A gift or loan
 - ✓ A **substantial*** pecuniary interest
 - ✓ A "commitment in a private capacity with respect to the interests of another person" (defined herein)

These are **presumed** to be conflicts of interest.
- **Disclosure** must be made at the time the matter is considered.

* New as of 2013 Legislative session

NRS 281A.420(1)



But what is a
'conflict of interest' anyway?

What policy is being furthered
here?

Conflict of Interest

A real or seeming incompatibility between one's private interests and one's public or fiduciary duties.

~ Black's Law Dictionary, Eighth Edition



Appearance of Impropriety

Conduct which would create *in a reasonable person's mind* a perception that the public officer's/employee's ability to carry out his or her responsibilities with integrity, impartiality, and competence is impaired.



~from Canon 2 of the American Bar Association Model Code of Judicial Conduct

Voting, Disclosing, & Abstaining

A public officer **is not** required to disclose:

Campaign contributions or **contributions to a legal defense** fund that are reported in a timely manner pursuant to NRS 294A.125 and NRS 294A.286.

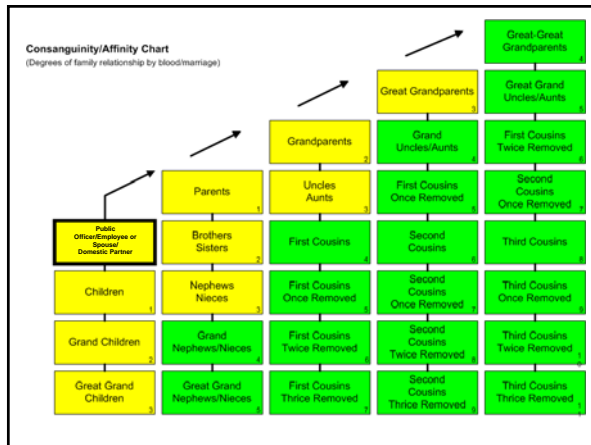
NRS 281A.420(2)

Commitment in a Private Capacity

A commitment, interest or relationship of a public officer or employee to a person with/from whom he/she:

- Is a spouse or domestic partner;
- Is a household member;
- Is related (or is related to his/her spouse or domestic partner) by blood, adoption, marriage or domestic partnership within the 3rd degree of consanguinity/affinity;
- Is employed (or employs the spouse, domestic partner or household member); or
- Shares a substantial and continuing business relationship; OR
- Shares other substantially similar commitments, interests or relationships.

NRS 281A.065



Suggestions to Avoid Conflicts

- Disclose
- Disclose
- Disclose
- Disclose
- Disclose
- Disclose
- Disclose



Voting, Disclosing & Abstaining

Abstention is **required only** in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected.

This determination should be made by the public officer and explained **on the record**.

NRS 281A.420(4)

Voting, Disclosing & Abstaining

- Prohibits advocating or voting for the passage or failure of, but otherwise allows participation in the consideration of, a matter with respect to which *the independence of judgment of a reasonable person in the public officer's situation would be materially affected* by:
 - ✓ A gift or loan
 - ✓ A pecuniary interest
 - ✓ A commitment in a private capacity to the interests of others

NRS 281A.420(3)

Voting, Disclosing & Abstaining

- Voting is presumed permissible **if the resulting benefit/detriment to the public officer (or committed person) is no greater than the benefit/detriment to anyone else affected by the matter.**

NRS 281A.420(4)

Woodbury Opinion (updated to present):

NCOE Opinion No. 99-56

- **Disclose sufficient information** to inform the public of the potential effect of the action or abstention upon public officer and private commitments,
- **Apply the reasonable person standard**, considering whether private interest/commitment would likely have a material effect on a (similarly situated) reasonable person's independence of judgment, and
- **Explain why** the standard does or does not apply.

Penalties

- The Commission is authorized to impose civil penalties for **willful** violations of the Ethics in Government Law. Considerations include severity of the violation, and aggravating or mitigating factors.
- A willful violation is a violation where the public officer or employee:
 - acted intentionally & knowingly (no bad intent required); OR
 - was in a situation with a duty to act but intentionally & knowingly failed to act as required by statute.

NRS 281A.475, 281A.480 and 281A.170

Penalties available:

Monetary sanctions & referral for removal from office

- Not to exceed **\$5,000** for a first willful violation;
- Not to exceed **\$10,000** for a separate act or event that constitutes a second willful violation; and
- Not to exceed **\$25,000** for a separate act or event that constitutes a third willful violation.
- **Referral for removal** from position of trust.

The Commission must consider comparable situations in a comparable manner and ensure the disposition of a matter bears a reasonable relationship to the severity of the violation.

NRS 281A.475 and 281A.480

ATTORNEY GENERAL DEFENDING PUBLIC OFFICERS

NRS 281A.450 Legal defense of public officer or employee in proceedings relating to opinion requests.
1. If a request for an opinion is submitted to or initiated by the Commission concerning a present or former state officer or employee, unless the state officer or employee retains his or her legal counsel or the Attorney General tenders the defense of the state officer or employee to an insurer who, pursuant to a contract of insurance, is authorized to defend the state officer or employee, the **Attorney General shall defend** the state officer or employee or employ special counsel to defend the state officer or employee in any proceeding relating to the request for the opinion if:

- (a) The state officer or employee submits a **written request** for defense in the manner provided in [NRS 41.0339](#); and
- (b) Based on the facts and allegations known to the Attorney General, the Attorney General determines that the act or omission on which the alleged violation is based:
 - (1) Appears to be **within the course and scope of public duty or employment** of the state officer or employee; and
 - (2) Appears to have been performed or omitted in **good faith**.



SAFE HARBOR PROVISIONS

NRS 281A.480(5):Notwithstanding any other provision of this chapter, any act or failure to act by a public officer or employee or former public officer or employee relating to this chapter is **not a willful violation** of this chapter if the public officer or employee establishes by sufficient evidence that:

- (a) The public officer or employee relied in **good faith** upon the **advice of the legal counsel** retained by his or her the public body, agency or employer:
and
- (b) The act or failure to act by the public officer or employee **was not contrary to a prior published opinion** issued by the Commission.

This is why it is important to consult your government attorney pertaining to any ethical matters.



Commission Opinions

- Opinions of the Nevada Commission on Ethics are indexed on the NCOE website:



<http://ethics.nv.gov>

Nevada Commission on Ethics

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