

**PROPOSED REGULATION OF THE
COMMISSION ON ETHICS**

PROPOSED AMENDMENTS TO CHAPTER 281 (281A) OF NAC

Section. 1. Chapter 281A of NAC is hereby amended by adding the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *Agency representation form:*

- 1. A statement of representation and counseling before a state agency must be filed in proper form pursuant to NRS 281A.410.*
 - 2. The form for a statement of representation and counseling before a state agency is available at any office, and on the website, of the Commission.*
 - 3. The statement of representation and counseling before a state agency shall be deemed to be filed with the Commission:*
 - a. On the date the statement was mailed if it was sent by certified mail; or*
 - b. On the date that the statement was received by the Commission if the statement was sent by regular mail, transmitted by facsimile machine or electronic means, or delivered personally.*
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Sec. 3. *Acknowledgment form:*

- 1. The acknowledgment of statutory ethical standards must be filed in proper form pursuant to NRS 281A.500.*
 - 2. The form for the acknowledgment of statutory ethical standards is available at any office, and on the website, of the Commission.*
 - 3. The form for the acknowledgment of statutory ethical standards shall be deemed to be filed with the Commission:*
 - a. On the date the form was mailed if it was sent by certified mail; or*
 - b. On the date that the form was received by the Commission if the form was sent by regular mail, transmitted by facsimile machine or electronic means, or delivered personally.*
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Sec. 4. *Procedure for complaints upon the Commission's own motion.*

- 1. When the Executive Director receives evidence that leads the Executive Director to reasonably conclude that a public officer or public employee may have committed a violation of the Ethics in Government Law, the Executive Director may recommend to the Commission that it initiate a complaint on its own motion.*
- 2. The recommendation shall:*
 - a. Contain a written statement setting forth the information accompanied by evidence which supports the recommendation:*

- b. Be submitted on a form prescribed by the Commission;*
 - c. State relevant statutes alleged to have been violated; and*
 - d. Be supported by evidence which supports the allegation, as defined in NAC 281.186(6), or documents which are readily ascertainable by the public.*
 - 3. The Executive Director shall not submit to the Commission allegations based solely upon (a) an anonymous complaint or (b) unsworn statements. For the purpose of this section, an "anonymous complaint" means allegations submitted to the Commission by an anonymous requester with the intent to avoid disclosure of the requester's identity.*
 - 4. The Commission may reject the recommendation submitted by the Executive Director without prejudice or accept the recommendation and initiate a complaint on its motion pursuant to NRS 281.511(2).*
 - 5. A complaint upon the Commission's own motion shall be processed following the procedures set forth herein and as applicable in NAC 281.186 to NAC 281.205, inclusive.*
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Sec. 5. *Requests for advisory opinion; time limit to hear request, waiver of time limit and withdrawal of request.*

- 1. All requests for an advisory opinion received by the Commission pursuant to NRS 281.511(1) must be heard by the Commission within 45 days from its receipt of the request.*
 - 2. If a public officer or employee who requested an opinion pursuant to NRS 281.511(1) cannot be available to appear before the Commission for a hearing scheduled to be held within 45 days after filing his request, he must provide a written statement acknowledging that he cannot make himself available for such hearing and requesting that the 45-day period be waived to accommodate his schedule. Such a request must be received within 7 business days prior to the expiration of the 45-day period within which the hearing must be held.*
 - 3. Without prior written waiver as outlined in subsection 2, any request that is not heard within 45 days shall be deemed withdrawn by the public officer or public employee making the request.*
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Sec. 6. *Consanguinity; affinity.*

- 1. For purposes of determining whether a person is related within the third degree of consanguinity or affinity to a public officer or public employee, the Commission shall use a consanguinity chart which the public officer or employee is the starting point from which all degrees of relationship are calculated.*
- 2. The parents and children of the public officer or employee are related in the first degree of consanguinity.*
- 3. The spouse of the public officer or employee is related in the first degree by affinity.*
- 4. For all other relationships by affinity, the degree of the relationship shall be deemed the same as the degree of the underlying corresponding relationship by consanguinity.*
- 5. "Consanguinity" means the relationship of persons of the same blood or origin, including by adoption.*
- 6. "Affinity" means any familial relation resulting from marriage.*

Sec. 7. The section that will be substituted for NAC 281.0246 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.0189 “Record of the proceedings of a panel” defined. (NRS 281.471) “Record of the proceedings of a panel” means written documentation memorializing the deliberations of a panel during its proceedings. *Audio recordings may be utilized in lieu of a certified transcription of the proceeding.*

Sec. 8. The section that will be substituted for NAC 281.0246 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.0246 Duties of Chairman; delegation of assignments. (NRS 281.471) The Chairman:

1. Shall preside over the meetings and hearings of the Commission.
 2. May delegate assignments of work to the staff of the Commission as necessary and appropriate, *including the scheduling of panel proceedings and appointment of Commissioners to serve on the panel.*
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Sec. 9. The section that will be substituted for NAC 281.053 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.053 Duties of Executive Director. (NRS 281.471) In addition to any other duties of the Executive Director required by the Nevada Ethics in Government Law set forth in NRS 281.411 to 281.581, inclusive, or NAC 281.005 to 281.242, inclusive, or as otherwise imposed by the Commission, the Executive Director shall:

1. Pursuant to paragraph (e) of subsection 1 of NRS 281.4635, create a curriculum for training and conduct training for public officers and employers of public employees on the requirements of NAC 281.005 to 281.242, inclusive, chapter 281 of NRS and the previous opinions of the Commission.
 2. At the first meeting of the Commission of each new fiscal year, report to the Commission on the state of the fiscal, regulatory and legislative matters and any other business matters of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year.
 3. ~~[Serve as the primary contact person for the Commission concerning any questions regarding, or requests for, public information or any media relations of the Commission in accordance with any policy adopted by the Commission concerning public information.~~
 4. ~~As necessary and appropriate, schedule, make any arrangements for and provide notice of any meeting or hearing of the Commission.]~~ *Serve at the pleasure of the Commission and adhere to the policies and procedures adopted by the Commission for its internal governance and external dealings.*
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Sec. 10. The section that will be substituted for NAC 281.085 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.085 Meetings of Commission: Quorum required; sufficiency of majority vote. (NRS 281.471)

1. A meeting of the Commission will not proceed without a quorum present. Except as otherwise provided in NAC 281.005 to 281.242, inclusive and this subsection, a majority vote of the members present and eligible to vote at a meeting is sufficient for all business of the Commission. *If the Commission is considering a matter on which members of the Commission are ineligible to participate pursuant to NRS 281.462(4), NRS 281.501(2) or NAC 281.214, the necessary quorum to act upon and the number of votes necessary to act upon the matter is reduced as though those ineligible members were not members of the Commission.*

2. As used in this section, “quorum” means a majority of the appointed and sworn members of the Commission *that are eligible to participate*.

Sec. 11. The section that will be substituted for NAC 281.103 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.103 Motions. (NRS 281.471)

1. Motions related to an ethics complaint must be made:

(a) After a panel has made a final determination that just and sufficient cause exists for the Commission to render an opinion pursuant to NRS 281.462; and

(b) Before the hearing on the matter unless the cause for the motion arises at and during the hearing on the matter.

2. A motion that is made before the hearing on the matter must be in writing and must be filed at the principal office of the Commission not later than ~~H24~~ 15 days before the date of the hearing.

3. A written motion must contain:

(a) A brief statement of the facts and the points and authorities upon which the motion is based;

(b) A description of the relief sought; and

(c) A certificate of mailing which indicates that the motion was served upon all other parties to the matter.

4. The Commission, in its discretion, may allow a party making a motion to argue the motion before the Commission.

5. The Commission, in its discretion, may allow a party or any other person to respond to a motion.

6. The Chairman, in his discretion, may accept and rule upon a motion, *except a dispositive motion*, on a matter at any time before, during or after the hearing by the Commission on the matter.

7. A motion for rehearing or the reconsideration of an opinion on a matter issued by the Commission must be filed with the Commission not later than 15 days after the date on which the final opinion of the Commission is served.

Sec. 12. The section that will be substituted for NAC 281.1865 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.1865 Duties of Executive Director; review of determination regarding jurisdiction. (NRS 281.471)

1. The Executive Director shall confer with the Commission Counsel to determine whether:
 - (a) The Commission has jurisdiction concerning an ethics complaint; and
 - (b) The ethics complaint was properly filed with the Commission in accordance with NAC 281.186.
2. If the Executive Director and Commission Counsel determine that the Commission has jurisdiction concerning the ethics complaint and that the ethics complaint was properly filed pursuant to NAC 281.186, the Executive Director shall investigate and proceed in the matter pursuant to NRS 281.511.
3. The Executive Director shall notify the requester if the Executive Director and Commission Counsel determine that:
 - (a) The Commission lacks jurisdiction concerning the ethics complaint pursuant to subsection 1; or
 - (b) The ethics complaint was not properly filed with the Commission in accordance with NAC 281.186.
4. A person who receives a notice pursuant to paragraph (a) of subsection 3 may request a review of the determination regarding jurisdiction by a panel. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the person received notification. The Chairman will appoint a panel to conduct the review of the determination regarding jurisdiction.
5. If a panel appointed pursuant to subsection 4 determines that the Commission has jurisdiction concerning an ethics complaint, ~~[the Executive Director shall.]~~ *upon such determination, the 60-day investigative period pursuant to NRS 281.511(3) shall commence.* ~~[investigate and proceed in the matter pursuant to NRS 281.511.]~~ Upon conclusion of the investigation, the Executive Director shall, to the extent possible, submit his recommendation regarding just and sufficient cause required pursuant to NRS 281.511 to the same panel that determined that the Commission has jurisdiction concerning the ethics complaint.

Sec. 13. The section that will be substituted for NAC 281.188 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.188 Notification of subject; filing of response. (NRS 281.471)

1. Once an ethics complaint has been properly filed with the Commission by a requester or initiated on the motion of the Commission and the Commission has determined that the Commission has jurisdiction over the matter presented in the ethics complaint, the Executive Director shall forthwith notify the public officer or public employee who is the subject of the ethics complaint and provide the public officer or public employee an opportunity to respond to the allegations contained in the ethics complaint. Such a notification must be in writing and sent to the subject of the ethics complaint by:
 - (a) Personal delivery;
 - (b) Certified mail, return receipt requested; or
 - (c) Overnight delivery service in which proof of delivery is documented.

2. A notice of an ethics complaint made pursuant to this section must include:
 - (a) All information filed by the requester of the ethics complaint or information upon which the Commission based its motion, as appropriate;
 - (b) A copy of the Nevada Ethics in Government Law set forth in NRS 281.411 to 281.581, inclusive;
 - (c) A copy of NAC 281.005 to 281.242, inclusive; ~~and~~
 - (d) An outline of the process used by the Commission to resolve ethics complaints; *and*
 - (e) *A form allowing a waiver of time limits.*
 3. The subject of an ethics complaint may file a written response to the ethics complaint with the Commission. If the subject of an ethics complaint files a response with the Commission, the response must be filed not later than 10 days after the date on which he received the notice of the ethics complaint, unless he files with the Commission a waiver of the time limits in accordance with subsections 3 and 4 of NRS 281.511. *Upon receipt of a waiver of time limits, the Executive Director may extend the time for the written response from the subject of an ethics complaint to not later than 20 days after the date on which he received the notice of the ethics complaint.*
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Sec. 14. The section that will be substituted for NAC 281.191 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.191 Confidentiality and availability of information. (NRS 281.471)

1. Except as otherwise provided in NRS 281.511, until the conclusion of the proceedings of a panel to determine whether there is just and sufficient cause for the Commission to render an opinion in the matter:
 - (a) The Commission will not confirm or deny whether an ethics complaint has been filed by a requester, or initiated upon the motion of the Commission, against a public officer or public employee; and
 - (b) All information related to an ethics complaint in the possession of the Commission and its staff is confidential.
 2. Upon the conclusion of the proceedings of the panel on an ethics complaint, the ~~[finding of the panel regarding just and sufficient cause and the file of the Commission on the ethics complaint]~~ *information related to the complaint as defined in NAC 281.0162, [are] is* public record~~[s]~~ and ~~[are]~~ available for public review during normal business hours at the principal office of the Commission.
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Sec. 15. The section that will be substituted for NAC 281.199 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.199 Hearings: Continuance. (NRS 281.471) The procedures for obtaining and granting a continuance of a hearing concerning an ethics complaint are as follows:

1. The date or time of the hearing may be continued for a reasonable time by the Executive Director:
 - (a) Upon the written petition of the subject for good cause shown; or
 - (b) By stipulation of the subject and the Commission, *acting through its Executive Director.*

2. A continuance will not be granted unless it is made in good faith, is reasonably necessary and is not sought merely for delay or by reason of inexcusable neglect of the subject.

Sec. 16. The section that will be substituted for NAC 281.201 in Chapter 281A of NAC is hereby amended to read as follows:

NAC 281.201 Hearings: Conduct; action by Commission. (NRS 281.471)

1. The Chairman or presiding officer of a hearing concerning an ethics complaint shall:
 - (a) Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.
 - (b) Ensure that an oath is administered in accordance with NAC 281.112 to all persons whose testimony will be taken.
 - (c) Exclude from the hearing all witnesses scheduled to testify except during the testimony of the witness. To preserve the integrity of the process and the evidence presented during a proceeding, the Chairman or presiding officer may request all witnesses not to discuss the case during the pendency of the proceeding.
 - (d) Hear and rule on any procedural motions, approve any stipulations and address any administrative details.
 - (e) Designate a member of the staff of the Commission to present the ethics complaint, the response to the ethics complaint by the subject and the determination of the panel concerning just and sufficient cause for the Commission to render an opinion in the matter.
 - (f) Allow the subject to present opening comments.
 - (g) Call and question any witnesses or present any evidence on behalf of the Commission concerning the ethics complaint and allow any member of the Commission to question such witnesses.
2. The subject may remain present at the hearing.
3. The subject may question any witnesses.
4. Upon the conclusion of the presentation of any evidence and the examination of any witnesses on behalf of the Commission, the Chairman or presiding officer shall request the subject to proceed with the introduction of evidence and calling of witnesses on his behalf.
5. The subject, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.
6. Upon the conclusion of the presentation of evidence by the subject and the examination of any witnesses, the Chairman or presiding officer shall allow the subject to present closing comments.
7. Upon the conclusion of the closing comments by the subject, the Commission will deliberate the issues of fact presented at the hearing, make a determination of the findings of fact, apply the applicable law to the findings of fact and render an opinion concerning whether the subject has violated any of the provisions of NRS 281.411 to 281.581, inclusive.
8. Upon a finding of a *willful* violation of any of the provisions of NRS 281.411 to 281.581, inclusive, the Commission ~~will~~ *may* impose any civil penalties or other statutory remedies required pursuant to NRS 281.551.
9. The Commission may waive any provision of this section to expedite or ensure the fairness of the hearing.