

**Item V.C. Authorization for Director of the Legislative Counsel Bureau to Enter into a Contract for the Establishment of the Reporting System Required by ACR 12 (2017), which Allows a Person to Submit a Confidential Report of Alleged Harassment or Other Prohibited Conduct**

In addition to establishing a Legislative Code of Ethical Standards, ACR 12 of the 2017 Legislative Session revised the Legislature's Anti-Harassment Policy to make it applicable to lobbyists and enhance the complaint process. As part of the enhancement of the complaint process, ACR 12 added a new subsection 11 to Joint Standing Rule No. 20 as follows:

*11. The Legislative Counsel Bureau shall establish a reporting system which allows a person to submit a complaint of a violation of this Rule with or without identifying himself or herself. Such a complaint must provide enough details of the incident or incidents alleged, the names of the persons involved and the names of any witnesses to allow an appropriate inquiry to occur.*

After researching alternatives for establishing a reporting system that allows anonymous reporting, the Legislative Counsel Bureau is recommending a contract with Van Dermeyden Maddux, an investigations law firm with offices in both Nevada and California. The firm has offered its services to build and maintain the Nevada Legislature's complaint intake process and independently investigate any allegations of harassment that come in through the intake process.

The firm is currently available to establish and maintain a dual system similar to one they established and are currently maintaining under contract with the California Senate. The system would include the establishment and maintenance of both a telephone complaint hotline and an online complaint portal. The online reporting system will allow complainants and witnesses to submit allegations and to upload photos or other documents in support of the allegations. In addition, it will allow investigators to continue a dialogue with the person submitting the information while maintaining the anonymity of the person.

The benefits of contracting for this system include:

- (1) Adds ability for the Nevada Legislature to receive anonymous complaints.
- (2) Encourages early reporting which allows more prompt and appropriate responses.
- (3) Adds an outside neutral party to monitor and respond to complaints.
- (4) Capitalizes on experience of firm that specializes in investigations of sexual harassment and other prohibited conduct.
- (5) Makes a proven system readily available to the Nevada Legislature.

EMERGENCY REQUEST of Speaker of the Assembly

Assembly Concurrent Resolution No. 12-  
Assemblyman Frierson

Joint Sponsor: Senator Ford

FILE NUMBER 44

ASSEMBLY CONCURRENT RESOLUTION—Amending the Joint Standing Rules of the Senate and Assembly for the 79th Session of the Legislature.

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That Rule No. 20 of the Joint Standing Rules of the Senate and Assembly as adopted by the 79th Session of the Legislature is hereby amended to read as follows:

Rule No. 20. Maintenance of Working Environment; Procedure for Filing, Investigating and Taking Remedial Action on Complaints.

1. The Legislature hereby declares that it is the policy of the Legislature to prohibit any conduct, whether intentional or unintentional, which results in sexual harassment or other unlawful harassment based upon any other protected category. The Legislature intends to maintain a working environment which is free from sexual harassment and other unlawful harassment. Each Legislator is responsible to conduct himself or herself in a manner which will ensure that others are able to work in such an environment.

2. In accordance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., for the purposes of this Rule, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment;

(b) Submission to or rejection of such conduct by a person is used as the basis for employment decisions affecting the person; or

(c) Such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile or offensive working environment.

3. Each Legislator must exercise his or her own good judgment to avoid engaging in conduct that may be perceived by others as sexual harassment. The following noninclusive list provides illustrations of conduct that the Legislature deems to be inappropriate:

(a) Verbal conduct such as epithets, derogatory comments, slurs or unwanted sexual advances, invitations or comments;

(b) Visual conduct such as derogatory posters, photography, cartoons, drawings or gestures;

(c) Physical conduct such as unwanted touching, blocking normal movement or interfering with the work directed at a person because of his or her sex; and

(d) Threats and demands to submit to sexual requests to keep a person's job or avoid some other loss, and offers of employment benefits in return for sexual favors.

4. *In addition to other prohibited conduct, a complaint may be brought pursuant to this Rule for engaging in conduct prohibited by Rule No. 37 when the prohibited conduct is based on or because of the gender or other protected category of the person.*

5. Retaliation against a person for engaging in protected activity is prohibited. Retaliation occurs when an adverse action is taken against a person which is reasonably likely to deter the person from engaging in the protected activity. Protected activity includes, without limitation:

(a) Opposing conduct that the person reasonably believes constitutes sexual harassment or other unlawful harassment;

(b) Filing a complaint about the conduct; or

(c) Testifying, assisting or participating in any manner in an investigation or other proceeding related to a complaint of sexual harassment or other unlawful harassment.

~~{5}~~ 6. A Legislator who encounters conduct that the Legislator believes is sexual harassment, other unlawful harassment, retaliation or otherwise inconsistent with this policy may file a written complaint with:

(a) The Speaker of the Assembly;

(b) The Majority Leader of the Senate; ~~{or}~~

(c) The Director of the Legislative Counsel Bureau, if the complaint involves the conduct of the Speaker of the Assembly or the Majority Leader of the Senate ~~{1}~~; or

~~{2}~~ (d) *The reporting system established pursuant to subsection 11.*

→ The complaint must include the details of the incident or incidents, the names of the persons involved and the names of any witnesses.

~~{6}~~ 7. The Speaker of the Assembly, the Majority Leader of the Senate or the Director of the Legislative Counsel Bureau, as appropriate, shall cause a discreet and impartial investigation to be conducted and may, when deemed necessary and appropriate, assign the complaint to a committee consisting of Legislators of the appropriate House.

~~{7}~~ 8. If the investigation reveals that sexual harassment, other unlawful harassment, retaliation or other conduct in violation of this policy has occurred, appropriate disciplinary or remedial action, or both, will be taken. The appropriate persons will be informed when any such action is taken. The Legislature will also take any action necessary to deter any future harassment.

~~{8}~~ 9. The Legislature encourages a Legislator to report any incident of sexual harassment, other unlawful harassment, retaliation or other conduct inconsistent with this policy immediately so that the complaint can be quickly and fairly resolved.

~~{9}~~ 10. All Legislators are responsible for adhering to the provisions of this policy. The prohibitions against engaging in sexual harassment and other unlawful harassment which are set forth in this Rule also apply to employees, Legislators, lobbyists, vendors, contractors, customers and any other visitors to the Legislature.

~~{10}~~ 11. *The Legislative Counsel Bureau shall establish a reporting system which allows a person to submit a complaint of a violation of this Rule with or without identifying himself or herself. Such a complaint must provide enough details of the incident or incidents alleged, the names of the persons involved and the names of any witnesses to allow an appropriate inquiry to occur.*

12. This policy does not create any enforceable legal rights in any person.

And be it further

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Joint Standing Rules of the Senate and the Assembly as adopted by the 79th Session of the Legislature are hereby amended by adding thereto a new rule, designated Rule No. 20.5, following Rule No. 20, to read as follows:

*Rule No. 20.5. Lobbyists to Maintain Appropriate Working Environment; Procedure for Filing, Investigating and Taking Remedial Action on Complaints.*

1. *A lobbyist shall not engage in any conduct with a Legislator or any other person working in the Legislature which is prohibited by a Legislator under Rule No. 20. Each lobbyist is responsible to conduct himself or herself in a manner which will ensure that others who work in the Legislature are able to work in an environment free from sexual harassment and other unlawful harassment.*

2. *Each lobbyist must exercise his or her own good judgment to avoid engaging in conduct that may be perceived by others as sexual harassment as described in Rule No. 20.*

3. *A lobbyist who encounters conduct that he or she believes is sexual harassment, other unlawful harassment, retaliation or otherwise inconsistent with this policy may file a written complaint with:*

(a) *The Speaker of the Assembly;*

(b) *The Majority Leader of the Senate;*

(c) *The Director of the Legislative Counsel Bureau; or*

(d) *The reporting system established pursuant to subsection 11 of Rule No. 20.*

→ *Such a complaint must include the details of the incident or incidents alleged, the names of the persons involved and the names of any witnesses.*

4. *If a person encounters conduct by a lobbyist which he or she believes is sexual harassment, or other unlawful harassment, retaliation or otherwise inconsistent with this policy, the person may file a complaint in the manner listed in subsection 3, or may submit a complaint in accordance with the reporting system established pursuant to subsection 11 of Rule No. 20.*

5. *If a complaint made against a lobbyist pursuant to this Rule is substantiated, appropriate disciplinary action may be brought against the lobbyist which may include, without limitation, having his or her registration as a lobbyist suspended.*

6. *This policy does not create any enforceable legal rights in any person.*

And be it further

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Joint Standing Rules of the Senate and Assembly as adopted by the 79th Session of the Legislature are hereby amended by adding thereto new rules, designated Rules Nos. 23 to 39, inclusive, following Rule No. 22, to read as follows:

*Rule No. 23. Reserved.*

*Rule No. 24. Reserved.*

*Rule No. 25. Reserved.*

*Rule No. 26. Reserved.*

*Rule No. 27. Reserved.*

*Rule No. 28. Reserved.*

*Rule No. 29. Reserved.*

#### *LEGISLATIVE CODE OF ETHICAL STANDARDS*

*Rule No. 30. Short Title; Applicability; Relation to Other Ethical Standards.*

*1. Rules Nos. 30 to 39, inclusive, may be cited as the Legislative Code of Ethical Standards.*

*2. The Legislative Code of Ethical Standards applies to:*

*(a) All Legislators at all times.*

*(b) All members of legislative staff when performing or exercising their legislative assignments, tasks, duties, responsibilities or powers.*

*(c) All lobbyists when they:*

*(1) Appear in person in the Legislative Building or any other building in which the Legislature or any of its legislative committees hold meetings during a regular or special session or the interim between sessions, including, without limitation, any building in which a meeting is held by teleconference or videoconference; or*

*(2) Represent the interests of any lobbying client to a Legislator or a member of legislative staff, regardless of whether such representation occurs during a regular or special session or the interim between sessions and regardless of the location where such representation occurs or the means of communication used to provide such representation.*

*3. The Legislative Code of Ethical Standards remains in full force and effect throughout the interim between regular sessions of the Legislature and until new Joint Standing Rules of the Senate and Assembly are adopted as part of the organization of a newly-constituted Legislature at the commencement of a session, unless a conflict exists with a joint rule adopted by the Senate and Assembly for a special session occurring between regular sessions.*

*4. The Legislative Code of Ethical Standards is intended to supplement all other ethical standards recognized by rules and laws governing ethics and does not limit the application of such other ethical standards but is cumulative thereto, so that the application or attempted application of any one of the ethical standards does not bar the application or attempted application of any other, except in circumstances where Section 6 of Article 4 of the Nevada Constitution invests each House with plenary and exclusive constitutional powers.*

*Rule No. 31. Purpose and Construction.*

*1. The purpose of the Legislative Code of Ethical Standards is to:*

*(a) Establish the highest standards of ethical behavior founded upon principles of dignity, decorum, civility and respect;*

*(b) Prohibit any conduct that creates the appearance of impropriety; and*

*(c) Prohibit any improper, inappropriate or dishonorable conduct that is unbecoming to the legislative process or is inconsistent with or undermines the people's faith, trust and confidence in the integrity of the legislative process.*

*2. The Legislative Code of Ethical Standards must be construed:*

*(a) Liberally to carry out and achieve its purposes; and*

*(b) Strictly against any person alleging that his or her conduct is not subject to its provisions, so that any doubt or uncertainty as to the application of its provisions must be resolved against such a person and in favor of removing unethical behavior from the legislative process.*

**Rule No. 32. Definitions.**

*As used in the Legislative Code of Ethical Standards, unless the context otherwise requires, the words and terms defined in Rules Nos. 33 to 36, inclusive, have the meanings ascribed to them in those sections.*

**Rule No. 33. "Legislative Committee" Defined.**

*1. "Legislative committee" means any legislative committee or commission appointed to conduct or perform legislative business during a regular or special session or the interim between sessions.*

*2. The term includes, without limitation:*

- (a) Any joint, standing, temporary, special or select committee;*
- (b) Any committee of the whole;*
- (c) Any interim committee; or*
- (d) Any subcommittee.*

**Rule No. 34. "Lobbying Client" Defined.**

*1. "Lobbying client" means a person who employs, retains, contracts for or otherwise engages the services of a lobbyist to represent the interests of the person to Legislators or members of legislative staff, whether or not any compensation is paid for the services.*

*2. The term includes, without limitation, a client that is a government, governmental agency or political subdivision of a government.*

**Rule No. 35. "Lobbyist" Defined.**

*1. "Lobbyist" means a person who:*

*(a) Is required to register as a lobbyist during a regular or special session pursuant to chapter 218H of NRS, regardless of whether the person properly registers or fails to register as a lobbyist as required by that chapter; or*

*(b) Represents the interests of any lobbying client to a Legislator or a member of legislative staff, regardless of whether such representation occurs during a regular or special session or the interim between sessions and regardless of the location where such representation occurs or the means of communication used to provide such representation.*

*2. The term does not include a person who is excluded from the term "lobbyist" as defined in NRS 218H.080.*

**Rule No. 36. "Member of Legislative Staff" Defined.**

*1. "Member of legislative staff" means any member of a Legislator's staff or any officer, employee, assistant or other person employed with reference to the legislative duties of a Legislator or the Legislative Branch, regardless of whether they are paid or otherwise compensated to serve in their positions.*

*2. The term includes, without limitation, any officers, employees, attaches, interns or other staff of:*

- (a) The Legislature or either House;*
- (b) Any legislative committee;*
- (c) Any legislative office or caucus;*
- (d) Any division of the Legislative Counsel Bureau; or*
- (e) Any other agency, body, office, organization or unit of the Legislative Branch.*

**Rule No. 37. Ethical Standards; Prohibited Conduct.**

*1. The people of the State of Nevada have the right to expect and demand that each Legislator, member of legislative staff or lobbyist adheres to the highest standards of ethical behavior founded upon principles of dignity, decorum, civility and respect because such ethical standards are essential to ensure and enhance the people's faith, trust and confidence in the integrity of the legislative process.*

*2. Each Legislator, member of legislative staff or lobbyist has a solemn and unerring responsibility and duty to do everything in his or her power to:*

- (a) Behave properly, appropriately and honorably with each other and with members of the public who participate in the legislative process; and
  - (b) Encourage, promote and secure an atmosphere in which ethical behavior is the highest priority and is practiced unceasingly and without fail.
3. Each Legislator, member of legislative staff or lobbyist shall not engage in or attempt, offer, agree, assist or induce another person to engage in:
- (a) Any conduct that creates the appearance of impropriety; or
  - (b) Any improper, inappropriate or dishonorable conduct that is unbecoming to the legislative process or is inconsistent with or undermines the people's faith, trust and confidence in the integrity of the legislative process.
4. The conduct prohibited by this Rule includes, without limitation, any conduct that:
- (a) Is intended to threaten, harass, intimidate or improperly influence another person who is participating in the legislative process.
  - (b) Creates a hostile work environment for another person who is participating in the legislative process.
  - (c) Causes harm or serious emotional distress, or the reasonable apprehension thereof, to another person who is participating in the legislative process.
  - (d) Involves impolite, disrespectful or disorderly behavior that results in unreasonable or harmful interference with another person who is participating in the legislative process.
  - (e) Involves false or misleading accusations or allegations against another person who is participating in the legislative process.
  - (f) Involves dishonesty, fraud, deceit or misrepresentation.
  - (g) Is intended to assist or induce another person to violate or attempt to violate the Legislative Code of Ethical Standards.

**Rule No. 38. Complaints.**

1. A person may file a complaint alleging a breach of the Legislative Code of Ethical Standards in accordance with the Standing Rules of each House, except that a person may not file a complaint alleging the same or substantially similar conduct with more than one House.
2. If the complaint alleges an ethical breach by or against a Legislator or the ethical breach otherwise involves a particular Legislator, the complaint must be filed with the Legislator's House, even if the complaint also alleges an ethical breach against a member of legislative staff or a lobbyist.

**Rule No. 39. Authority of Senate and Assembly to Adopt Ethical Standards and Prohibit and Sanction Ethical Breaches.**

1. The Senate and Assembly hereby find and declare that:
  - (a) Section 6 of Article 4 of the Nevada Constitution invests each House with plenary and exclusive constitutional powers to govern, control and regulate its membership and its internal organization, affairs and management, expressly providing that: "Each House shall judge of the qualifications, elections and returns of its own members, choose its own officers (except the President of the Senate), determine the rules of its proceedings and may punish its members for disorderly conduct, and with the concurrence of two thirds of all the members elected, expel a member." (*Heller v. Legislature*, 120 Nev. 456 (2004); *Commission on Ethics v. Hardy*, 125 Nev. 285 (2009); *Mason's Manual of Legislative Procedure* §§ 2-3 and 560-564 (2010) (*Mason's Manual*))
  - (b) Section 7 of Article 4 of the Nevada Constitution invests each House with plenary and exclusive constitutional powers to govern, control and regulate any person who is not a member but who is guilty of disrespect to the House by disorderly or contemptuous behavior in its presence, and each House also has inherent powers, according to the common parliamentary law, to prohibit and sanction all offensive behavior committed against it by any person who is not a member. (*Mason's Manual* §§ 805-806; *Luther S. Cushing, Elements of the Law & Practice of Legislative Assemblies* §§ 690-695 (1856) (*Cushing's Legislative Assemblies*))
  - (c) In addition to its other powers, each House possesses certain inherent powers of institutional self-protection and self-preservation to govern, control and regulate its membership and its internal organization, affairs and management. (*In re Chapman*, 166 U.S. 661, 668 (1897); *Mason's Manual* § 2; *Cushing's Legislative Assemblies* § 533 (1856))

(d) *The inherent powers of each House are considered "so essential to the authority of a legislative assembly, that it cannot well exist without them; and they are consequently entitled to be regarded as belonging to every such assembly as a necessary incident." (Cushing's Legislative Assemblies § 533)*

(e) *The inherent powers of each House authorize it to take all necessary and proper institutional actions that are "recognized by the common parliamentary law." (Cushing's Legislative Assemblies § 684)*

(f) *Thus, it is well established that each House is "vested with all the powers and privileges which are necessary and incidental to a free and unobstructed exercise of its appropriate functions. These powers and privileges are derived not from the Constitution; on the contrary, they arise from the very creation of a legislative body, and are founded upon the principle of self-preservation." (Ex parte McCarthy, 29 Cal. 395, 403 (1866))*

2. *The Senate and Assembly hereby exercise their constitutional and inherent powers and privileges and adopt the Legislative Code of Ethical Standards in the Joint Standing Rules to:*

(a) *Establish ethical standards to regulate the behavior and conduct of persons who participate in the legislative process; and*

(b) *Prohibit and sanction ethical breaches.*