

CHAPTER VII  
ETHICS AND PROHIBITED ACTS



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#### **INTRODUCTION**

This chapter contemplates ethical standards that are applicable to legislators and legislative staff and details the enforcement mechanisms for violations of those standards. This chapter also discusses criminal conduct related to the Legislative Department.

#### **ETHICAL STANDARDS AND CONFLICTS OF INTEREST INVOLVING CORE LEGISLATIVE FUNCTIONS**

The Nevada Constitution vests the Senate and Assembly, respectively, with plenary and exclusive constitutional powers to govern, control, and regulate their membership and their internal organization, affairs, and management. (Nev. Const. Art. 4, Sec. 6; *Commission on Ethics v. Hardy*, 125 Nev. 285 (2009); *Mason's Manual of Legislative Procedure*, Secs. 2-3 and 560-564 (Denver, Colo., Nat'l Conf. of State Legs., 2020)) Moreover, the Nevada Constitution affords the Senate and Assembly, respectively, with plenary and exclusive constitutional power to govern, control, and regulate non-legislators who disrespect the house and to prohibit and sanction offensive behavior committed against the house by a non-legislator. (Nev. Const. Art. 4, Sec. 7; *Mason's Manual of Legislative Procedure*, Secs. 805-806 (Denver, Colo., Nat'l Conf. of State Legs., 2020); Luther S. Cushing, *Elements of the Law and Practice of Legislative Assemblies*, Secs. 690-695 (Boston, Mass., Little, Brown and Co., 1856)) The Senate and Assembly, respectively, also possess certain inherent powers of self-protection and self-preservation to govern, control, and regulate its membership and internal organization, affairs, and management. (*Mason's Manual of Legislative Procedure*, Sec. 2 (Denver, Colo., Nat'l Conf. of State Legs., 2020); *Cushing's Legislative Assemblies*, Sec. 533)) The Legislature has exercised these constitutional and inherent powers to establish ethical standards which bind legislators and other participants in the legislative process.

#### **LEGISLATIVE CODE OF ETHICAL STANDARDS**

In exercising their constitutional and inherent powers, the Senate and Assembly have adopted a Legislative Code of Ethical Standards (Ethics Code). (Joint Standing Rule 37, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) The Ethics Code applies to legislators, members of legislative staff, and lobbyists, and it creates ethical standards that regulate persons who participate in the legislative process and prohibits and sanctions certain ethical violations. (Joint Standing Rule 40, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023))

Substantively, the Ethics Code requires legislators, members of legislative staff, and lobbyists to behave properly, appropriately, and honorably with each other and with members of the public that engage in the legislative process. (Joint Standing Rule 37, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) Additionally, the Ethics Code requires legislators, members of legislative staff, and lobbyists to encourage, promote, and secure an atmosphere in which ethical behavior is the highest priority and is practiced unceasingly and without fail. (*Id.*)

The Ethics Code also prohibits legislators, members of legislative staff, and lobbyists from engaging in conduct that creates the appearance of impropriety. Additionally, legislators, members of legislative staff, and lobbyists are prohibited from engaging in 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. The Ethics Code specifically outlines the following conduct as prohibited:

- Conduct intended to threaten, harass, intimidate, or improperly influence another person who is participating in the legislative process.
- Conduct that creates a hostile work environment for another person who is participating in the legislative process.
- Conduct that causes harm or serious emotional distress, or the reasonable apprehension thereof, to another person who is participating in the legislative process.
- Conduct that involves impolite, disrespectful, or disorderly behavior that results in unreasonable or harmful interference with another person who is participating in the legislative process.
- Conduct that involves false or misleading accusations or allegations against another person who is participating in the legislative process.
- Conduct that involves dishonesty, fraud, deceit, or misrepresentation.
- Conduct that is intended to assist or induce another person to violate or attempt to violate the Ethics Code.

(*Id.*)

The terms “member of legislative staff” and “lobbyist” are specifically defined for the purpose of the Ethics Code. (Joint Rules 35 and 36, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023))

For purposes of the Ethics Code, the term “member of legislative staff” is defined as “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.” (Joint Standing Rule 36, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) The term is extremely broad and applies to full and part time positions as well as compensated and unpaid positions. For example, the term would cover employees, attaches, interns, and other staff of the Senate, Assembly, a legislative committee or caucus, the Legislative Counsel Bureau, or any other body of the Legislative Department of State Government. (*Id.*)

The term “lobbyist” is defined for purposes of the Ethics Code as a person who: (1) is required to register under the Nevada Lobbying Disclosure and Regulation Act; or (2) represents the interests of any lobbying client to a legislator or member of legislative staff. The term “lobbyist” under the Ethics Code similarly excludes persons who are excluded from the term “lobbyist” for purposes of the Nevada Lobbying Disclosure and Regulation Act. (Ch. 218H of NRS; Joint Standing Rule 35, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023))

Anyone who believes that a legislator, a member of legislative staff, or a lobbyist has violated the Ethics Code may file a complaint alleging the violation in accordance with the Senate Standing Rules or Assembly Standing Rules, as applicable. (Joint Standing Rule 38, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) However, a person may not file a complaint alleging the same or similar conduct in both houses. (*Id.*)

### **Conflicts of Interest**

Each legislator is required to determine whether the legislator has a conflict of interest regarding any matter that comes before the legislator. (Senate Standing Rule 23, and Assembly Standing Rule 23, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) A conflict of interest arises if the legislator would be materially affected by the legislator’s: (1) acceptance of a gift or loan; (2) private or economic interest; or (3) commitment to a member of the legislator’s household or immediate family. (*Id.*)

If a legislator knows that the legislator has a conflict of interest, the legislator is required to make a general disclosure of the conflict of interest on the record in a committee meeting or on the floor, and the disclosure must be recorded in the committee minutes or journal, as applicable. However, if the legislator has previously made such a general disclosure on one or more occasions during the current legislative session, the legislator is not required to make the general disclosure again concerning the same conflict of interest, and instead may reference the previous disclosure on the record. (*Id.*)

In determining whether to abstain from voting upon, advocating, or opposing a matter in which the legislator has a conflict of interest, a legislator is required to analyze: (1) whether the conflict of interest impedes the legislator's independent judgment; and (2) whether the legislator's interest is greater than the interests of an entire class of persons who are similarly situated to the legislator. If a legislator abstains from voting due to a conflict of interest, the necessary quorum to act upon and the number of votes necessary to act upon the matter is reduced by one. (*Id.*)

It should be noted that the conflict-of-interest rules do not prohibit a legislator with a conflict of interest from requesting or introducing a legislative measure concerning the underlying conflict. Additionally, even if the legislator has a conflict of interest, the legislator is not required to take any particular action before or while requesting or introducing the legislative measure. (*Id.*)

If a person believes that a legislator has a conflict of interest, the person may file a complaint alleging the conflict of interest in accordance with the Senate Standing Rules or Assembly Standing Rules, as applicable. (*Id.*)

### **Ethics Proceedings in the Senate**

In the Senate, ethics and conflict of interest complaints are handled by the Senate's Committee on Ethics. (Senate Standing Rule 23, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) The Committee on Ethics is composed of six members: (1) two members from the majority party appointed by the Majority Leader of the Senate; (2) one member from the minority party appointed by the Minority Leader of the Senate; and (3) three qualified electors, two of whom are appointed by the Majority Leader and one of whom is appointed by the Minority Leader. In addition to the regular members, the Majority Leader and Minority Leader also appoint alternative members to the Committee on Ethics and the regular and alternative members serve on the Committee on Ethics until the next regular session. (*Id.*)

The Committee on Ethics is: (1) authorized to hear requests brought by Senators for advice on specific questions of potential breaches of ethics and conflicts of interests; and (2) required to hear complaints brought by Senators and members of the public on specific questions of breaches of ethics and conflicts of interests. If the proceedings of the Committee on Ethics relate to the character, alleged misconduct, professional competence, or physical or mental health of a person, the proceedings are confidential, unless the subject of the proceedings waives the confidentiality or otherwise discloses the content of the proceedings or materials. (*Id.*)

To file a complaint that alleges a breach of ethics or conflict of interest in the Senate, an individual must file the complaint in writing, signed under penalty of perjury with the Legislative Counsel. The Legislative Counsel will then review the complaint and other supporting material and confer with the Chair of the Committee

on Ethics, or the Vice Chair, if the Chair is the subject of the complaint, to determine whether the Committee on Ethics has jurisdiction over the matter and whether an investigation is warranted on the matter. (*Id.*)

If it is determined that the Committee on Ethics has jurisdiction over the matter and an investigation is warranted by the matter, the Legislative Counsel will send a written notice of that fact and a copy of the complaint to the person that is subject to the complaint. Alternatively, if it determined that the Committee on Ethics does not have jurisdiction over the matter or an investigation is not warranted on the matter, the Legislative Counsel will send a notice of that fact to the person that filed the complaint. (*Id.*)

### **Ethics Proceedings in the Assembly**

Similar to the Senate, ethics and conflicts of interest complaints in the Assembly are handled by the Assembly Select Committee on Ethics. (Assembly Standing Rule 23, *Standing Rules of the Senate and Assembly*, Nev. Leg., 82nd Sess. (2023)) The Select Committee on Ethics is composed of six members: (1) two members from the majority party appointed by the Speaker of the Assembly; (2) one member from the minority party appointed by the Minority Leader of the Assembly; and (3) three qualified electors, two of whom are appointed by the Speaker, and one of whom is appointed by the Minority Leader. The Speaker and Minority Leader also appoint alternate members to the Select Committee on Ethics, and the regular and alternate members serve on the Select Committee on Ethics until the next regular session. (*Id.*)

The Select Committee on Ethics is authorized to hear requests brought by Assemblymembers for advice on questions concerning breaches of ethics and conflicts of interest. Additionally, the Select Committee on Ethics hears complaints brought by Assemblymembers and members of the public alleging breaches of ethics and conflicts of interest. If a proceeding of the Select Committee on Ethics concerns the character, alleged misconduct, professional competence, or physical or mental health of a person, the proceedings are confidential, unless confidentiality is waived by the person subject to the proceedings or the person discloses the content of the proceeding or its materials to the public. (*Id.*)

To file a complaint alleging a breach of ethics or conflict of interest with the Select Committee on Ethics, a person must submit a written complaint, signed under penalty of perjury, to the Legislative Counsel. The Legislative Counsel is required to review the complaint and other supporting materials and consult with the Chair of the Select Committee on Ethics, or the Vice Chair, if the Chair is the subject of the complaint, to determine whether the Select Committee on Ethics has jurisdiction over the matter and an investigation is warranted on the matter. (*Id.*)

If it is determined that the Select Committee on Ethics has jurisdiction over the complaint and an investigation is warranted on the matter, the Legislative Counsel will send notice of that fact and a copy of the complaint to the person subject to the complaint. Alternatively, if it is determined that the Select Committee on Ethics does not have jurisdiction over the complaint or an investigation is not warranted on the matter, the Legislative Counsel will send a notice of that fact to the person that filed the complaint. (*Id.*)

## **ETHICAL STANDARDS CONCERNING NON-LEGISLATIVE ACTIONS**

For actions of legislators and legislative staff that do not implicate core legislative functions, various statutory ethical standards apply to those actions. Generally, these statutory ethical standards are codified in Chapter 281A of NRS, which includes the Code of Ethical Standards. These standards apply to public officers and public employees and are administered by the Commission on Ethics. (NRS 281A.060, 281A.150, 281A.160, and 281A.280)

As relates to the Legislative Department, the term “public officer” includes legislators and legislative staff who are appointed to their positions, such as the Director of the Legislative Counsel Bureau and the chiefs of the divisions of the Legislative Counsel Bureau. (NRS 218F.100 and 281A.160) The term “public employee” includes legislative staff who report to public officers. (NRS 281A.150) Legislators and legislative staff who are appointed to their positions must file an acknowledgment of the statutory ethical standards with the Director of the Legislative Counsel Bureau before taking the oath of office. (NRS 281A.500)

### **Code of Ethical Standards**

In Nevada, public officers and public employees are subject to the Code of Ethical Standards. (NRS 281A.400 to 281A.430, inclusive) The Code of Ethical Standards regulates the conduct of public officers and public employees and prohibits such persons from taking certain actions. (*Id.*)

As relates to the Legislative Department, legislators and legislative staff, as public officers and public employees, are prohibited under the Code of Ethical Standards from: (1) seeking or accepting certain gifts, services, favors, employment, engagement, emolument, or economic opportunities; (2) using the public officer’s or public employee’s position in government to secure or grant certain unwarranted privileges, preferences, exemptions or advantages; (3) participating as an agent of government in the negotiation or execution of a certain contracts; (4) accepting certain salaries, retainers, augmentations, expense allowances, or other compensation from any private source; (5) using certain information to further a significant pecuniary interest of certain persons or entities; (6) suppressing certain governmental reports or other official documents; (7) attempting to benefit certain interests through the

influence of a subordinate; and (8) seeking certain other employment or contracts through the use of the public officer's or employee's official position. (NRS 281A.400)

Additionally, the Code of Ethical Standards prohibits legislators and legislative staff, as public officers and public employees, from using governmental time, property, equipment, and facilities for certain purposes. As relates to legislative staff, those employees are prohibited from using governmental time, property, equipment, or facilities to benefit a significant personal or pecuniary interest of the employee or any person to whom the employee has a commitment in a private capacity. Similarly, legislators are prohibited from using governmental time, property, equipment, or facilities for a nongovernmental purpose or for the private benefit of the legislator or another person. (*Id.*)

The Code of Ethical Standards also prohibits legislative staff, as public officers and public employees, from representing or counseling private persons for compensation before the Executive Department or Legislative Department under certain circumstances. (NRS 281A.410) However, a legislator may represent or counsel a private person before the Executive Department. (*Id.*)

The Code of Ethical Standards also generally prohibits legislators and legislative staff, as public officers and public employees, from bidding on or otherwise entering into contracts between the Legislative Department and a business entity for which the legislator or legislative staff has a significant pecuniary interest. (NRS 281A.430)

### **Other Ethical Duties**

In Nevada, there are many ethical standards that apply to public officers and public employees beyond those enumerated in the Code of Ethical Standards. (NRS 281A.500 to 281A.550, inclusive) For example, legislators and legislative staff, as public officers and public employees, generally are prohibited from: (1) receiving an honorarium; (2) requesting or causing a governmental entity to incur certain expenses or otherwise make certain expenditures to support or oppose a ballot question or a candidate for office; and (3) soliciting or accepting employment from persons to whom certain contracts were awarded. (NRS 281A.510, 281A.520, and 281A.550)

### **Ethics Proceedings Before the Commission on Ethics**

The Commission on Ethics administers the ethical standards prescribed by Chapter 281A of NRS. (NRS 281A.280) The Commission on Ethics is composed of eight members, four of whom are appointed by the Legislative Commission and four of whom are appointed by the Governor. (NRS 281A.200) One appointment by the Legislative Commission and the Governor, respectively, must be an attorney who is licensed to practice law in Nevada. Two appointments by the Legislative Commission and the Governor, respectively, must be former public officers or employees. Additionally, not more than four members may be from the same political party and

not more than four members may be residents of the same county. While serving on the Commission on Ethics, the members may not hold another public office or engage in certain political or advocacy acts. (*Id.*)

The Commission on Ethics under certain circumstances will write an advisory opinion for a legislator or legislative staff, as public officers and public employees. (NRS 281A.675) An advisory opinion may: (1) provide guidance to public officers and public officials on matters that involve interpretations of the statutory ethical standards; or (2) grant statutorily prescribed variances from certain statutory ethics standards. (*Id.*) If the Commission on Ethics renders an advisory opinion, it is binding on the requester. (NRS 281A.680)

Another core function of the Commission on Ethics is to investigate and adjudicate ethics complaints. (NRS 281A.700 to 281A.790, inclusive) Procedurally, certain ethics committees, members of the public who are not incarcerated, and the Commission on Ethics itself can file an ethics complaint. (NRS 281A.710) If the Commission on Ethics determines that it has jurisdiction over the ethics complaint, it will investigate the complaint and commence proceedings on the matter under certain circumstances. (NRS 281A.715 to 281A.760, inclusive) Depending on the circumstances, the Commission on Ethics may render an opinion on the ethics complaint, issue a letter of caution or instruction, or impose certain other remedies or penalties. (NRS 281A.765 to 281A.790, inclusive) If the Commission on Ethics finds that a legislator has willfully violated the statutory ethical duties, the Commission is required to submit its opinion to the Majority Leader of the Senate, President Pro Tempore of the Senate, Speaker of the Assembly, or Speaker Pro Tempore of the Assembly, as applicable. (NRS 281A.790)

## **PROHIBITED ACTS INVOLVING THE LEGISLATURE**

The Legislature has criminalized various acts that interfere with legislative power. These crimes relate to conduct dealing with legislative facilities and grounds, committee operations and other legislative proceedings, legislative measures, and influencing legislators.

### **Interference With the Legislative Process**

It is a crime punishable as a gross misdemeanor to interfere with the legislative process in Nevada. (NRS 218A.905 and 218A.915) A person who willfully does any of the following without legal authority interferes with the legislative process:

- Prevents or attempts to prevent the Legislature from conducting meetings.
- Disturbs, disrupts, obstructs, tampers, or interferes with, or attempts to do so with, a meeting of the Legislature.

- Withholds, defaces, alters, or destroys an official document or record of the Legislature, if the conduct interferes with the functioning of the Legislature.
- Withholds, defaces, alters, or destroys any property that is owned or used by the Legislature.
- Remains in certain legislative facilities or other places where the Legislature is conducting its business, after receiving certain warnings and being asked to leave.
- Prevents or attempts to prevent a legislator, or legislative officer or employee, from performing that person's official duties.
- Coerces or attempts to coerce a legislator, or legislative officer or employee, to perform any act under color of office, by any unlawful means, threats of violence, fraud, or intimidation.
- Possesses a firearm, explosive, dangerous device, or deadly weapon in a legislative facility.
- Prevents or attempts to prevent the use of an authorized remote-technology system in a committee meeting.
- Disturbs, disrupts, obstructs, tampers, or interferes with, or attempts to do so with, the use of an authorized remote-technology system in a committee meeting.

(NRS 218A.825 and 218A.905)

If a person interferes with the legislative process as described above, the person may be taken into custody by the Sergeant at Arms until the person has been arrested by the police or a citation for contempt has been served on the person. (Nev. Const. Art. 4, Sec. 7; NRS 218A.910) In this vein, each house may institute contempt proceedings related to any interference with the legislative process. (NRS 218A.925, 218A.930, and 218A.935) Additionally, the presiding officer of either house may seek injunctive relief if a person is interfering with the legislative process. (NRS 218A.920)

### **Testimony and Other Communications**

The Legislature has also established various crimes for the purpose of ensuring the integrity of testimony given at legislative proceedings. For example, it is a crime punishable as a gross misdemeanor if a sworn witness before a committee or other legislative proceeding willfully misrepresents their testimony. (NRS 218E.080) Similarly, it is a misdemeanor for a person before a committee or other legislative proceeding or in their communications with a legislator to make a knowing

misrepresentation in the testimony or communication. (NRS 218E.085) Additionally, it is a crime punishable as a gross misdemeanor for a person to neglect or refuse to do any of the following: (1) comply with a legislative subpoena; (2) be sworn in before or testify in legislative proceedings; or (3) produce evidence in the possession or control of the person. (NRS 218E.095)

## **Legislative Measures**

As relates to legislative measures, it is a felony to fraudulently alter a legislative measure with the intent to procure its enactment or adoption using different language from that intended by the house. (NRS 218A.950) In this vein, it is a felony to fraudulently alter the enrolled copy of a legislative measure with the intent to procure it to be approved by the Governor, certified by the Secretary of State, or otherwise printed or published in different form for that which it was passed or adopted in the Legislature. (NRS 218A.955)

## **Bribery and Corruption**

The Legislature has also established various felonies related to conduct that compromises the integrity of the legislative process. For example, a person cannot offer or promise a legislator any compensation, gratuity, or reward by corrupt means to influence the legislator to vote a certain way or abstain from voting. (NRS 218A.960) Additionally, a legislator may not ask for or receive any compensation, gratuity, or reward, or a promise therefore, under an agreement or understanding that the legislator will vote a certain way or otherwise act in a particular manner regarding a matter before the Legislature. (NRS 218A.965)

## **Misuse of Office**

Nevada law prohibits legislators from taking certain actions that would use their official power to gain some unwarranted benefit. The Legislature has specifically criminalized certain conduct of legislators related to contracts and taking certain actions after leaving office.

As relates to contracts, a legislator, with certain exceptions, is prohibited from becoming a named contractor or subcontractor under or take certain interests in any contract that is paid for in whole or in part from money that was appropriated by the Legislature for which the legislator is a member. (NRS 218A.970) If a legislator violates this prohibition, the contract may be declared void, and the legislator must forfeit their office and be punished for a gross misdemeanor. (*Id.*)

After a legislator leaves office and the legislator's successor has been elected or appointed to the seat, it is a crime punishable as a misdemeanor for the former or retired legislator to: (1) use official stationery or business cards, unless the stationery or business card specifically identifies that fact; (2) deliberately have themselves

identified as a current legislator in a directory published after the date that they leave office; or (3) use a legislative license plate on their personal vehicle after the date that they leave office. (NRS 218A.975)

