

**PROPOSED REGULATION OF THE COMMISSION ON ETHICS**

**LCB File No. R111-03**

September 4, 2003

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-26, NRS 281.471.

**Section 1.** Chapter 281 of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. The Executive Director shall confer with the Commission counsel to determine jurisdiction concerning an ethics complaint.*
- 2. If the Executive Director and Commission counsel determine that the Commission has jurisdiction concerning the ethics complaint pursuant to subsection 1, the Executive Director shall investigate and proceed in the matter pursuant to NRS 281.511.*
- 3. If the Executive Director and Commission Counsel determine that the Commission lacks jurisdiction concerning the ethics complaint pursuant to subsection 1, the Executive Director shall so notify the requester.*
- 4. A person who receives a notice pursuant to subsection 3 may request a review of the determination regarding jurisdiction by a panel. Such a request must be submitted to the 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 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. 2.** NAC 281.005 is hereby amended to read as follows:

281.005 As used in NAC 281.005 to 281.242, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC ~~[281.011 to 281.021,]~~ *281.007 to 281.022*, inclusive, have the meanings ascribed to them in those sections.

**Sec. 3.** NAC 281.007 is hereby amended to read as follows:

281.007 “Advisory opinion” means ~~[a confidential]~~ *an* opinion rendered by the Commission upon the request of a public officer or public employee pursuant to subsection 1 of NRS 281.511.

**Sec. 4.** NAC 281.0153 is hereby amended to read as follows:

281.0153 “Complaint” means a request for an opinion submitted ~~[by a third party]~~ to the Commission pursuant to subsection 2 of NRS 281.511, or pursuant to NRS 294A.345 or 294A.346.

**Sec. 5.** NAC 281.0182 is hereby amended to read as follows:

281.0182 “Proceedings of a panel” means a review by a panel of the recommendation of the Executive Director concerning an ethics complaint as to whether *the Commission has jurisdiction over an ethics complaint or whether* just and sufficient cause exists for the Commission to render an opinion pursuant to subsection 2 of NRS 281.511. For the purposes of NAC 281.005 to 281.242, inclusive, *and section 1 of this regulation*, the proceedings of a panel do not constitute a hearing and seldom require the testimony of witnesses.

**Sec. 6.** NAC 281.0192 is hereby amended to read as follows:

281.0192 “Requester” means a person or group of persons who file with the Commission a complaint concerning campaign practices pursuant to NRS ~~[281.477]~~ *294A.345 or 294A.346* or an ethics complaint pursuant to subsection 2 of NRS 281.511.

**Sec. 7.** NAC 281.0197 is hereby amended to read as follows:

281.0197 “Statement of financial disclosure” means the form which ~~[each candidate for public or judicial office, and]~~ each public ~~[or judicial officer, who would be or]~~ *officer who* is entitled to receive compensation for serving in office must file with the Commission pursuant to NRS ~~[281.561.]~~ *281.599 (section 19 of chapter 476, Statutes of Nevada 2003, at page 3018).*

**Sec. 8.** NAC 281.022 is hereby amended to read as follows:

281.022 As used in NRS 281.561, the Commission will interpret “entitled to receive *annual* compensation” to mean entitled to receive any remuneration, not including any reimbursement for lodging, meals, travel or any combination thereof, which a candidate for a public ~~[or judicial office,]~~ *office* or a public ~~[or judicial officer,]~~ *officer* has a right to receive for serving in the office in question.

**Sec. 9.** NAC 281.024 is hereby amended to read as follows:

281.024 1. The provisions of NAC 281.005 to 281.242, inclusive, *and section 1 of this regulation*, are hereby declared to be severable.

2. If any provision of NAC 281.005 to 281.242, inclusive, *and section 1 of this regulation*, is held invalid, or if the application of any such provision to any person, thing or circumstance is held invalid, such invalidity does not affect any other provision of NAC 281.005 to 281.242, inclusive, *and section 1 of this regulation*, that can be given effect without the invalid provision or application.

**Sec. 10.** NAC 281.0245 is hereby amended to read as follows:

281.0245 The Commission will elect a Chairman *and a Vice Chairman* from among its members at its first meeting of each new fiscal year.

**Sec. 11.** NAC 281.053 is hereby amended to read as follows:

281.053 In addition to any other duties of the Executive Director required by the Nevada Ethics in Government Law or NAC 281.005 to 281.242, inclusive, *and section 1 of this regulation*, 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, *and section 1 of this regulation*, chapter 281 of NRS and the rules and 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 affairs of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year.

**Sec. 12.** NAC 281.085 is hereby amended to read as follows:

281.085 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 section 1 of this regulation*, a majority vote of the members present and eligible to vote at a meeting is sufficient for all business of the Commission.

2. As used in this section, “quorum” means a majority of the appointed and sworn members of the Commission.

**Sec. 13.** NAC 281.093 is hereby amended to read as follows:

281.093 1. Except as otherwise provided in subsection 3, the provisions of NAC 281.093 to 281.1127, inclusive, govern all practice and procedure before the Commission.

2. The Commission will liberally construe the provisions of ~~NRS~~ **NAC** 281.093 to 281.1127, inclusive, to determine all matters before the Commission in a just, speedy and economical manner.

3. For good cause shown, the Commission may deviate from the provisions of NAC 281.093 to 281.1127, inclusive, if the deviation will not materially affect the interests of the party who is the subject of the request.

**Sec. 14.** NAC 281.097 is hereby amended to read as follows:

281.097 **1.** Each written communication or document filed with the Commission must be clearly and legibly typed or printed on 8 1/2 by 11 inch paper, on one side only, and addressed to the office of the Commission. ~~The~~

**2. *Except as otherwise provided in subsection 6 of NRS 281.559 (section 19 of chapter 476, Statutes of Nevada 2003, at page 3018), the*** Commission will consider a written communication or document to have been filed with the Commission on the date on which the communication or document is received at the office of the Commission.

**Sec. 15.** NAC 281.103 is hereby amended to read as follows:

281.103 **1.** ~~All motions~~ **Motions** related to an ethics complaint must be made ~~before~~ :  
**(a) *After the Commission has determined that the Commission has jurisdiction pursuant to NAC 281.1155 or section 1 of this regulation; 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 office of the Commission not later than 12 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 rule upon a 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. 16.** NAC 281.106 is hereby amended to read as follows:

281.106 The provisions for civil discovery set forth in N.R.C.P. 26 to 37, inclusive, do not apply to matters before the Commission. Upon the request of a party, for good cause shown, the Chairman may allow discovery *on a matter before Commission* to the extent which he deems appropriate.

**Sec. 17.** NAC 281.112 is hereby amended to read as follows:

281.112 *1.* The Chairman and Vice Chairman, including an Acting Chairman and Acting Vice Chairman, if any, may administer oaths. ~~{In their absence, a}~~

*2.* A court reporter present at meetings and hearings may administer oaths.

**Sec. 18.** NAC 281.1145 is hereby amended to read as follows:

281.1145 At any time before the Commission renders an advisory opinion pursuant to NRS 281.511, the public officer or public employee who filed the request for the advisory opinion may withdraw his request by ~~fil[ing a written]~~ *providing a* notice of withdrawal ~~[with] to~~ the Commission. ~~[The notice of withdrawal may be in the form of a letter to the Commission.]~~

**Sec. 19.** NAC 281.1155 is hereby amended to read as follows:

281.1155 The Executive Director shall confer with the Commission Counsel to determine ~~[any questions of]~~ jurisdiction concerning requests for an advisory opinion. If the Commission Counsel determines that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee. ~~[in writing, by certified mail, return receipt requested.]~~ A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be submitted to the office of the Commission in writing not later than 10 days after the date on which the public officer or public employee received ~~[the notice.]~~ *notification.*

**Sec. 20.** NAC 281.117 is hereby amended to read as follows:

281.117 1. A copy of a written opinion published by the Commission on a matter will be served ~~[, by certified mail,]~~ upon each party to that matter.

2. A copy of each opinion published by the Commission will be made available for downloading from the website of the Commission.

3. A copy of each opinion published by the Commission will be delivered to ~~[:~~  
~~—(a) The Secretary of State;~~  
~~—(b) The State Library and each law library and public library located in this state;~~

~~—(c) The Reno Gazette Journal, the Las Vegas Review Journal, the Las Vegas Sun, the Nevada Appeal and, upon request, any other newspaper in this state; and~~

~~—(d) Any] any other person or organization [,] upon request . [and payment of a reasonable fee.]~~

**Sec. 21.** NAC 281.188 is hereby amended to read as follows:

281.188 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 certified mail, return receipt requested.

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;

(c) A copy of NAC 281.005 to 281.242, inclusive ~~[,]~~, *and section 1 of this regulation;* and

(d) An outline of the process used by the Commission to resolve ethics complaints.

3. The subject of an ethics complaint ~~[must, not later than 10 days after the date on which he received the notice of the ethics complaint,]~~ *may* file a written response *to the ethics complaint* with the Commission. ~~[The Executive Director may extend the time for an additional 10 days for good cause shown.]~~ *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.*

**Sec. 22.** NAC 281.191 is hereby amended to read as follows:

281.191 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~~ ~~confirmation of the existence of the ethics complaint,~~ the finding of the panel regarding just and sufficient cause and ~~all information related to~~ *the file of the Commission on* the complaint ~~is~~ *are* open for public review.

**Sec. 23.** NAC 281.193 is hereby amended to read as follows:

281.193 At its proceedings on an ethics complaint, a panel shall consider:

1. The *results of the investigation of the Executive Director and the* recommendation of the Executive Director regarding just and sufficient cause;

2. The ethics complaint and all related information and material filed with the Commission by the requester or submitted on the motion of the Commission; and

3. The response, if any, of the public officer or public employee who is the subject of the complaint.

**Sec. 24.** NAC 281.227 is hereby amended to read as follows:

281.227 ~~[A candidate for a public and judicial office, and a public or judicial officer, who is entitled to receive compensation for his office must file a statement]~~ *Statements* of financial disclosure *must be filed* in proper form . ~~[with the Commission.]~~ The form for a statement of financial disclosure is available at the office, and on the website, of the Commission.

**Sec. 25.** NAC 281.242 is hereby amended to read as follows:

281.242 1. Except as otherwise provided in this section, to obtain copies of public records from the Commission, a person must:

(a) File a written request at the office of the Commission or appear personally at the office of the Commission; and

(b) Before the copies are made, pay the actual cost of the copies or an estimate of the actual cost, as determined by the Commission's staff, unless the Commission's staff, in its discretion and based upon its experience with the person requesting the copies, allows the person to pay the actual cost of the copies when the copies are provided to the person.

2. Except as otherwise provided in this section, the cost of obtaining copies of public records from the Commission is 25 cents for each page of the public record that is copied.

3. Except as otherwise provided in this section, to obtain copies of a transcript concerning a matter that was recorded by the Commission, a person must file a written request at the office of the Commission ~~[or appear personally at the office of the Commission and:~~

~~—(a) Pay for copies of the transcript pursuant to the provisions of subsections 1 and 2 if, at the time of the request, a transcript concerning the matter has been prepared by the Commission's staff; or~~

~~—(b) Pay for copies of the transcript pursuant to the provisions of NRS 239.053 or, with the approval of the Commission, pursuant to arrangements made]~~ *and make arrangements* directly with the court reporter.

4. A person may not obtain copies of a transcript concerning a matter that was recorded by the Commission unless the contents of the proceedings concerning that matter may be disclosed to that person pursuant to the provisions of NRS 281.411 to 281.581, inclusive, and NAC 281.093 to 281.1127, inclusive.

5. A court reporter may not provide to a person copies of a transcript concerning a matter that was recorded by the Commission or any other documents unless the court reporter has received written permission from the Commission to do so.

6. The Commission may waive all or a portion of the cost of obtaining copies of public records ~~[or a transcript]~~ if the person requesting the copies files a written request for such a waiver at the office of the Commission and the Commission determines that:

(a) The copies requested are reasonable in quantity; and

(b) The person requesting the copies is a party to a matter before the Commission and does not have the financial ability to pay for all or a portion of the cost of the copies.

**Sec. 26.** NAC 281.009, 281.015, 281.0152, 281.0155, 281.0157, 281.0166, 281.0169, 281.018, 281.0186, 281.0187, 281.023, 281.108, 281.1165, 281.118, 281.187, 281.211, 281.221, 281.229, 281.231, 281.233, 281.235, 281.237 and 281.240 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**281.009 “Candidate” defined.** “Candidate” has the meaning ascribed to it in NRS 281.4323.

**281.015 “Commission” defined.** “Commission” means the Commission on Ethics.

**281.0152 “Compensation” defined.** “Compensation” has the meaning ascribed to it in NRS 281.4327.

**281.0155 “Decision” defined.** “Decision” has the meaning ascribed to it in NRS 281.433.

**281.0157 “Executive Director” defined.** “Executive Director” has the meaning ascribed to it in NRS 281.4333.

**281.0166 “Nevada Ethics in Government Law” defined.** “Nevada Ethics in Government Law” means NRS 281.411 to 281.581, inclusive.

**281.0169 “Panel” defined.** “Panel” has the meaning ascribed to it in NRS 281.4357.

**281.018 “Person” defined.** “Person” means a natural person, a business entity or a social organization.

**281.0186 “Public employee” defined.** “Public employee” has the meaning ascribed to it in NRS 281.436.

**281.0187 “Public officer” defined.** “Public officer” includes:

1. A public officer, as that term is defined in NRS 281.005; and

2. A public officer, as that term is defined in NRS 281.4365.

**281.023 “Vexatious purpose or action” interpreted.** For the purposes of the Nevada Ethics in Government Law, the Commission will consider a vexatious purpose or action to include, without limitation, any purpose or action which is intended to mislead or deceive or which is misleading or deceptive.

**281.108 Continuances; notice.** Upon the request of the subject of an ethics complaint, the Executive Director may continue a hearing before the Commission concerning the ethics complaint for a period not to exceed 30 days. Upon its own motion, or for good cause shown upon the motion of the subject of an ethics complaint, the Commission may continue the hearing in a matter for a period not to exceed 30 days. A notice of continuance must set forth the reason for the continuance and the new hearing date.

**281.1165 Confidentiality; exceptions.** Unless a public officer or public employee who requests an advisory opinion waives the confidentiality relating to his request expressly or by conduct described in subsection 5 of NRS 281.511, his request for the advisory opinion, the advisory opinion issued by the Commission pursuant to that request and any motion, determination, evidence or record of a hearing relating to that request are confidential.

**281.118 Issuance and preparation of opinions.**

1. If the confidentiality of an advisory opinion rendered by the Commission has not been expressly or impliedly waived, the Commission will:

(a) Provide, within 30 days after the date on which the Commission renders the opinion, the confidential written advisory opinion only to the public officer or public employee who requested the advisory opinion; and

(b) Issue and publish a written hypothetical opinion abstracted from the confidential advisory opinion within 45 days after the date on which the confidential advisory opinion is provided to the public officer or public employee who requested the advisory opinion.

2. The Commission Counsel shall prepare each written confidential advisory opinion and the abstracted hypothetical advisory opinion issued and published by the Commission pursuant to this section.

**281.187 Commission may initiate complaint on its own motion.** The Commission may, in a closed session, initiate an ethics complaint against a public officer or public employee on its own motion pursuant to paragraph (c) of subsection 2 of NRS 281.511.

**281.211 Hearing on ethics complaint: Notice to subject.** If the Commission holds a hearing on an ethics complaint, the Executive Director shall notify the subject of the hearing of the place and time of the hearing by the Commission on the matter.

**281.221 Preparation by Commission Counsel.** The Commission Counsel shall prepare, for the signature of the Chairman, a written opinion for each ethics complaint and complaint concerning campaign practices rendered by the Commission.

**281.229 Statement of acknowledgment.** Every public officer shall, pursuant to NRS 281.552, file with the Commission a form acknowledging that the public officer has received, read and understands the Nevada Ethics in Government Law. The form for a statement of acknowledgment is available at the office, and on the website, of the Commission.

**281.231 Statement of acknowledgment: Retention.** The Commission will retain each statement of acknowledgment filed with the Commission pursuant to NRS 281.552 for at least 6 years after the date on which the statement was filed.

**281.233 Statement of disclosure of agency representation.** Any Legislator or public officer who, during the previous calendar year, has represented or counseled a private person and is required to file with the Commission a disclosure of such representation pursuant to subsection 3 of NRS 281.491 shall file the disclosure using the form for such a disclosure that is available at the office, and on the website, of the Commission.

**281.235 Statement of disclosure of agency representation: Retention.** The Commission will retain all statements of disclosure of agency representation filed with the Commission for at least 6 years from the date of filing.

**281.237 Forms for statements available for public inspection.** All forms for statements of financial disclosure, statements of acknowledgment and statements of disclosure of agency representation are available for public inspection at the office of the Commission.

**281.240 Maintenance of files.** The Commission will maintain the following files:

1. Files relating to complaints concerning campaign practices filed pursuant to NRS 281.477;
2. Files relating to complaints and requests for opinions filed pursuant to NRS 281.511;
3. Statements of financial disclosure filed pursuant to NRS 281.573;
4. Statement of acknowledgments filed pursuant to NRS 281.552; and
5. Statement of disclosure of agency representation filed pursuant to NRS 281.491.