

LCB File No. R186-05

**PROPOSED REGULATION OF THE
NEVADA COMMISSION ON ETHICS**

**NOTICE OF INTENT TO ACT UPON A REGULATION
NOTICE OF HEARING FOR THE ADOPTION, AMENDMENT AND REPEAL OF
REGULATIONS OF THE NEVADA COMMISSION ON ETHICS**

The Nevada Commission on Ethics (the "Commission") will hold a public hearing on **Monday, March 20, 2006, which begins at 12:00 p.m., at the Nevada Commission on Ethics, 2030 E. Sahara Avenue, Suite 125, Las Vegas, NV 89119 with a telephonic link to the Nevada Commission on Ethics, 3476 Executive Pointe Way, Suite 10, Carson City, NV 89706. This hearing will be a continuation of the hearing that began on February 8, 2006.** The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to chapter 281 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

Information Regarding Adoption

UPON ADOPTION OF ANY REGULATION, THE AGENCY, IF REQUESTED TO DO SO BY AN INTERESTED PERSON, EITHER PRIOR TO ADOPTION OR WITHIN 30 DAYS THEREAFTER, SHALL ISSUE A CONCISE STATEMENT OF THE PRINCIPAL REASONS FOR AND AGAINST ITS ADOPTION, AND INCORPORATE THEREIN ITS REASON FOR OVERRULING THE CONSIDERATION URGED AGAINST ITS ADOPTION.

1. Purpose and need of the Proposed Regulations. In an effort to make the procedures of the Commission more accessible to members of the public as well as public officers and public employees, the Commission is seeking to adopt by regulation its hearing procedures. Additionally, the Commission seeks to ensure that a subject of an ethics complaint has been afforded the appropriate due process.
2. Terms of the proposed regulations. The regulations to be adopted, amended or repealed are stated in the attached Proposed Regulation of the Nevada Commission on Ethics, LCB File No. R186-05.
3. Estimated Economic Effect. None known at the time of this posting.
4. Estimated Cost to the Agency. None known at the time of this posting.
5. Duplication with other Agencies: None known at the time of this posting.
6. Federal Law. None known at the time of this posting.

7. Federal Regulation. None known at the time of this posting.

8. New Fee Established. None.

Comments and Written Submissions

Persons wishing to comment on the proposed action of the Commission may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form to:

Nevada Commission on Ethics
2030 E. Flamingo Road, Suite 125
Las Vegas, NV 89119
Attn: Tami DeVries, Research Analyst

Written submissions must be received by the Commission by Friday, March 3, 2006. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Commission may proceed immediately to act upon any written submissions.

Copies of Proposed Regulation

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the following Commission offices:

Nevada Commission on Ethics
3476 Executive Pointe Way, Ste. 10
Carson City, NV 89706

Nevada Commission on Ethics
2030 E. Flamingo Rd., Ste. 125
Las Vegas, NV 89119

and in all counties in which an office of the Commission is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of each regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of public workshop has been posted at the following locations:

Carson City Library
Carson County
900 North Roop Street
Carson City, NV 89701

Churchill County Library
553 South Maine Street
Fallon, NV 89406

Clark County/Las Vegas Library
833 Las Vegas Blvd., North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane, P.O. Box 337
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County/Goldfield Public Library
Fourth & Crook Street/P.O. Box 430
Goldfield, NV 89013

Eureka Branch Library
10190 Monroe Street/P.O. Box 293
Eureka, NV 89316

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445

Lander County/Battle Mountain Branch
Library
625 Broad Street/P.O. Box 161
Battle Mountain, NV 89820

Lincoln County Library
93 Main Street/P.O. Box 330
Pioche, NV 89043

Lyon County Library
20 Nevin Way
Yerington, NV 89447

Mineral County Library
First & A Street/P.O. Box 1390
Hawthorne, NV 89415

Nye County/Tonopah Public Library
171 Central Street/P.O. Box 449
Tonopah, NV 89049

Pershing County Library
1125 Central Avenue/P.O. Box 781
Lovelock, NV 89419

Storey County Library
95 South R Street/ P.O. Box 14
Virginia City, NV 89440

Washoe County Library
301 South Center Street/P.O. Box 2151
Reno, NV 89505

White Pine County Library
950 Campton Street
Ely, NV 89301

Nevada State Library & Archives
100 Stewart Street
Carson City, NV 89710

Nevada Commission on Ethics
3476 Executive Pointe Way, Suite 10
Carson City, NV 89706

Nevada Commission on Ethics
2030 E. Flamingo Road, Suite 125
Las Vegas, NV 89119

Grant Sawyer State Building
555 E. Washington Avenue
Las Vegas, NV 89101

Bradley Building
2501 E. Sahara Avenue
Las Vegas, NV 89104

Blasdel Building
209 E. Musser Street
Carson City, NV 89701

Clark County Government Center
500 S. Grand Central Parkway
Las Vegas, NV 89106

Washoe County
Administration Building
1001 E. 9th Street
Reno, NV 89512

**PROPOSED REGULATION OF THE
NEVADA COMMISSION ON ETHICS**

PROPOSED AMENDMENTS TO CHAPTER 281 OF NAC

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

Section 1. Chapter 281 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

Sec. 2. *Principal office of the Commission.*

The Executive Director shall designate the location of the principal office of the Commission. The Executive Director shall conduct business primarily in the principal office of the Commission.

Sec. 3. *Ex Parte Communications*

1. Ex parte communication means any written or oral communication by any person outside of the Commission or the Commission staff to any member of the Commission made outside of a formal proceeding and not made to the entire Commission, which imparts information or argument regarding prospective Commission action or potential action concerning:

- (a) any ongoing investigation, or*
- (b) any pending litigation matter, or*
- (c) any pending advisory opinion request.*

2. Such communication could violate due process and is therefore prohibited. This prohibition shall apply to any and all responses and comments by individual Commissioners, including any “off the record” or “anonymous” responses or comments.

3. If such communication occurs, the member of the Commission who took part in the ex parte communication shall disclose this fact to the entire Commission and may be required to abstain from participation in the matter.

Sec. 4. *Subject may retain legal representation before the Commission.*

Any person who is the subject of a request for opinion filed with the Commission pursuant to subsections 1 or 2 of NRS 281.511 may retain legal counsel to represent his interest during:

- 1. The investigation of an ethics complaint;*
- 2. Any hearing held by the Commission regarding an ethics complaint after a just and sufficient cause panel has made its findings; or*
- 3. Any hearing held by the Commission for the purposes of rendering an advisory opinion.*

Sec. 5. *Procedure at hearing for advisory opinions filed pursuant to subsection 1 of NRS 281.511:*

- 1. The Chairman or presiding officer of a hearing shall:*
 - (a) Ascertain whether the subject of the advisory opinion and all persons requested to testify by the subject of the advisory opinion are present and whether all documents, books, records, and other evidence are presented in the hearing room. The subject of an advisory opinion must be present at the hearing on the matter;*
 - (b) Ensure an oath is administered to the subject and all persons whose testimony will be taken pursuant to NAC 281.112.*

- 2. The Chairman or presiding officer shall allow the subject to present opening arguments.*
- 3. The subject, any witnesses and/or counsel may be questioned by members of the Commission at any time during the proceedings.*
- 4. Upon conclusion of the subject's presentation and examination of witnesses and presentation of evidence, the Chairman or presiding officer shall allow the subject to offer closing arguments.*
- 5. Upon conclusion of closing arguments, the Commission shall deliberate the issues of fact presented in the hearing and render an advisory opinion to the subject. An advisory opinion rendered is binding upon the future conduct of the public officer or employee pursuant to subsection 1 of NRS 281.511.*
- 6. The Commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.*
- 7. This proceeding is confidential pursuant to NRS 281.511(5) unless that confidentiality is expressly waived by the subject.*

Sec. 6. *Notice of hearing for ethics complaints filed pursuant to subsection 2 of NRS 281.511.*

- 1. The final determination regarding just and sufficient cause by the panel issued pursuant to NRS 281.462 must specify a summary of the panel findings and the specific statutes upon which just and sufficient cause was found, and the date, time and municipal location of the hearing. This determination shall serve as the notice of hearing before the Commission.*
- 2. The subject must be provided the written notice required in subsection 1 at least 30 calendar days prior to the commencement of the hearing.*

3. Notice is complete upon delivery personally to the subject or by mailing by certified mail or overnight delivery service to the last known address of the subject.

Sec. 7. *Procedure for obtaining and granting continuances of a hearing for ethics complaints filed pursuant to subsection 2 of NRS 281.511.*

The procedures for obtaining and granting continuances of Commission hearings are as follows:

1. The time and date of the hearing may be continued by the Executive Director upon the written petition of the subject or for good cause shown by the subject or the Commission staff, or by stipulation of the subject of the hearing.

2. A continuance will not be granted unless it is made in good faith and not merely for delay.

3. Any such request that is not received prior to 3 working days before the meeting must be heard and decided upon by the entire Commission as a preliminary matter prior to the commencement of the hearing.

Sec. 8. *Motion to disqualify a member of the Commission from a hearing for ethics complaints or advisory opinions filed pursuant to subsections 1 or 2 of NRS 281.511.*

1. A subject may enter a motion to disqualify a member of the Commission for good cause.

2. Any motion to disqualify a member of the Commission must be made and dealt with in accordance with the provisions of NAC 281.103, except that such a motion must be ruled upon by the Commission as a whole.

3. If a motion to disqualify a member of the Commission is approved, the necessary quorum and the number of votes necessary to act upon the matter shall be reduced in the same manner as is required pursuant to NRS 281.511(5).

Sec. 9. *Procedure at hearing for ethics complaints filed pursuant to subsection 2 of NRS 281.511.*

1. The Chairman or presiding officer of a hearing 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;

(b) Ensure an oath is administered to all persons whose testimony will be taken pursuant to NAC 281.112;

(c) Exclude from the hearing all witnesses scheduled to testify except during the testimony of the witness. Instruct all witnesses to not discuss the case during the pendency of the proceeding. The subject will be allowed to remain present at the hearing;

(d) Hear any preliminary motions, stipulations and/or orders upon which the parties agree and address any administrative details;

(e) Request that the Executive Director present the complaint, the subject's response to the complaint, and an overview of the panel determination regarding just and sufficient cause.

2. The Chairman or presiding officer shall allow the subject to present opening arguments.

3. Witnesses and/or counsel may be questioned by members of the Commission at any time during the proceeding.

4. The subject may cross-examine witnesses.

5. Upon conclusion of the Commission witnesses and presentation of evidence, the Chairman or presiding officer shall allow the subject to proceed with the introduction of evidence and calling of witnesses on his behalf.

6. Members of the Commission may cross-examine witnesses called by the subject.

7. Upon conclusion of the subject's examination of witnesses and presentation of evidence, the Chairman or presiding officer shall allow the subject to offer closing arguments.

8. Upon conclusion of closing arguments, the Commission shall deliberate the issues of fact presented in the hearing and make a finding as to whether a violation or violations of statute have occurred.

9. Upon the finding of a statutory violation, the Commission shall follow the provisions of NRS 281.551 regarding the imposition of civil penalties and other statutory remedies.

10. The Commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.

Sec. 10. *Rules of evidence; informality of proceedings for ethics complaints filed pursuant to subsection 2 of NRS 281.511.*

1. In conducting any investigation, inquiry or hearing, the Commission, its officers and its employees are not bound by the technical rules of evidence, and any informality in a proceeding or in the manner of taking testimony does not invalidate any opinion, order, decision, rule or regulation made, approved or confirmed by the Commission. The rules of evidence of courts of this State will be followed generally but may be relaxed at the discretion of the Commission if deviation from the technical rules of evidence will aid in determining the facts.

2. Any evidence offered at a hearing must be material and relevant to the issues of the hearing.

3. The Commission may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that presentation of that evidence be discontinued.

4. The subject may object to the introduction of evidence and shall briefly state the grounds of the objection at the time the evidence is offered.

5. If an objection is made to the admissibility of evidence, the Commission may:

(a) Note the objection and admit the evidence;

(b) Sustain the objection and refuse to admit the evidence; or

(c) Receive the evidence subject to subsequent ruling by the Commission.

Sec. 11. *Submission or exclusion of documentary evidence of subject for ethics complaints filed pursuant to subsection 2 of NRS 281.511.*

1. Not less than 20 business days prior to a hearing before the Commission, the subject shall provide the Executive Director with copies of all documents and exhibits that are reasonably available to the subject and which the subject reasonably anticipates will be used in support of his position. The subject shall promptly supplement and update any such documents and exhibits.

2. If the subject fails to provide any document or exhibits required to be provided by the provisions of this section, the Commission may exclude the document or exhibit from the hearing.

Sec. 12. *Failure of a subject to appear at hearing for ethics complaints filed pursuant to subsection 2 of NRS 281.511.*

If a subject fails to appear at a hearing scheduled by the Commission and a continuance has not been requested or granted, upon an offer of proof by the Executive Director that the subject was given proper notice and upon a determination by the Commission that proper notice was given, the Commission may proceed to consider the case without the participation of the absent subject and may dispose of the matter on the basis of the evidence before it. If the subject fails to appear at the hearing or fails to respond to the notice provided pursuant to NAC 281.188, the charges specified in the final determination regarding whether just and sufficient cause by the panel issued pursuant to NRS 281.462 may be considered as true.

Sec. 13. *Petition for adoption, filing, amendment or repeal of regulation: Filing; contents; action by Commission.*

1. Any person who wishes to petition for the adoption, filing, amendment or repeal of a regulation of the Commission must file a written petition at the principal office of the Commission.

2. A petition for the adoption, filing, amendment or repeal of a regulation must include:

- (a) The name and address of the petitioner;*
- (b) A clear and concise statement, including, if applicable, the proposed language, of the regulation to be adopted, filed, amended or repealed;*
- (c) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation; and*
- (d) The statutory authority for the adoption, filing, amendment or repeal of the regulation.*

3. The Commission may decline to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not contain the information required by subsection 2.

4. The Commission will review the petition at the next feasible scheduled meeting following receipt of the petition.

5. The Commission will notify the petitioner in writing of its decision with regard to the petition within 30 days after the petition is considered by the Commission.

Sec. 14. NAC 281.0153 is hereby amended to read as follows:

NAC 281.0153 “Complaint” defined. (NRS 281.471) “Complaint” means a request for an opinion submitted to the Commission pursuant to subsection 2 of NRS 281.511 ~~[-or pursuant to NRS 294A.345 or 294A.346].~~

Sec. 15. NAC 281.016 is hereby amended to read as follows:

NAC 281.016 “Hearing” defined. (NRS 281.471) “Hearing” means a hearing:

1. On the merits of an ethics complaint.

~~[2. On a complaint concerning campaign practices held by the Commission.~~

~~—3]~~ 2. On an advisory opinion.

Sec. 16. NAC 281.0167 is hereby amended to read as follows:

NAC 281.0167 “Opinion” defined. (NRS 281.471) “Opinion” means a quasi-judicial decision rendered by the Commission pursuant to NRS ~~[281.477 or]~~ 281.511.

Sec. 17. NAC 281.0184 is hereby amended to read as follows:

NAC 281.0184 “Proper form” defined. (NRS 281.471) “Proper form” means a form, available from ~~[the]~~ *an* office or website of the Commission, which is created by the Commission for the intended purpose of the form and is submitted to the Commission *at its*

principal office with all required information clearly and legibly printed or typed on the form. *Proper form includes any duplicate copies specified on the form. For the purposes of ethics complaints filed pursuant to subsection 2 of NRS 281.511, proper form includes the original and two copies of the form along with three copies of all supporting documents and evidence. Except as otherwise provided in NAC 281.177, documents submitted via facsimile transmission are not considered to be filed in proper form.*

Sec. 18. NAC 281.0192 is hereby amended to read as follows:

NAC 281.0192 “Requester” defined. (NRS 281.471) “Requester” means a person or group of persons who file with the Commission ~~[a complaint concerning campaign practices pursuant to NRS 294A.345 or 294A.346 or]~~ an ethics complaint pursuant to subsection 2 of NRS 281.511.

Sec. 19 NAC 281.0197 is hereby amended to read as follows:

NAC 281.0197 “Statement of financial disclosure” defined. (NRS 281.471) “Statement of financial disclosure” means the form which an *appointed* public officer ~~[who is appointed to an office]~~ *as defined by NRS 281.4365* must file with the Commission pursuant to NRS 281.559 *or an elected public officer as defined by NRS 281.4365 must file with the Secretary of State pursuant to NRS 281.561.*

Sec. 20. NAC 281.0198 is hereby amended to read as follows:

NAC 281.0198 “Subject” defined. (NRS 281.471) “Subject” means:

1. A public officer or public employee against whom an ethics complaint has been filed pursuant to subsection 2 of NRS 281.511; or
- ~~[2. A candidate against whom a complaint concerning campaign practices has been filed pursuant to NRS 294A.345 or 294A.346.]~~

2. A public officer or public employee who files an advisory opinion request pursuant to subsection 1 of NRS 281.511.

Sec. 21. NAC 281.022 is hereby amended to read as follows:

NAC 281.022 “Entitled to receive annual compensation” interpreted. (NRS 281.471) As used in NRS 281.559, 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 public officer ~~[who is appointed to an office]~~ has a right to receive for serving in the office in question.

Sec. 22. NAC 281.053 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 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 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.

3. Act as the primary public information and media relations contact for the Commission pursuant to the public information policy adopted by the Commission on August 18, 2004, and any subsequent amendment to that policy. The Executive Director, or when appropriate, the

Chairman or Vice Chairman, shall be the only persons authorized to speak on behalf of the Commission as a whole.

4. As necessary and appropriate, schedule, make arrangements for and provide notice of meetings and hearings of the Commission.

Sec. 23. NAC 281.097 is hereby amended to read as follows:

NAC 281.097 Written communications and documents: Format; date of filing. (NRS 281.471)

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 *principal* office of the Commission. *Such documents must be in proper form as defined by NAC 281.0184.*

2. Except as otherwise provided in subsection 6 of NRS 281.559 with regards to a statement of financial disclosure, the Commission will consider a written communication or document which is required to be filed with the Commission to have been filed with the Commission on the date on which the communication or document is received at the *principal* office of the Commission. *Documents submitted via facsimile transmission are not considered to be filed in proper form.*

Sec. 24. NAC 281.103 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 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. 25. NAC 281.1125 is hereby amended to read as follows:

NAC 281.1125 Subpoenas. (NRS 281.471)

1. A subject of an ethics complaint may request that a subpoena be issued by filing a written request for a subpoena at the *principal* office of the Commission. A subject of an ethics complaint who requests the issuance and service of a subpoena pursuant to this section shall pay all expenses related to the issuance and service of the subpoena.

2. Service of a subpoena issued pursuant to this section or NRS 281.475 must be made in the manner provided by Rule 45~~((e))~~ of the Nevada Rules of Civil Procedure.

Sec. 26. NAC 281.1127 is hereby amended to read as follows:

NAC 281.1127 Testimony must be in person; exception. (NRS 281.471) A *subject of an ethics complaint or advisory opinion and any* witness before the Commission shall testify in person, except that the Commission may, for good cause shown, allow the witness to testify by telephone or videoconference.

Sec. 27. NAC 281.1155 is hereby amended to read as follows:

NAC 281.1155 Determination of jurisdiction: Duties of Executive Director; request for review. (NRS 281.471) The Executive Director shall confer with the Commission Counsel to determine 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. 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 *principal* office of the Commission in writing not later than 10 days after the date on which the public officer or public employee received notification.

Sec. 28. NAC 281.186 is hereby amended to read as follows:

NAC 281.186 Proper form required; withdrawal. (NRS 281.471) The Commission will only consider those ethics complaints which are filed in proper form *pursuant to NAC 281.0184* with the Executive Director at the *principal* office of the Commission. *For the purposes of ethics complaints filed pursuant to subsection 2 of NRS 281.511, proper form includes the original and two copies of the form along with three copies of all supporting documents and evidence. Ethics complaints submitted via facsimile transmission are not considered to be filed in proper form.* Once an ethics complaint has been filed with the Commission, the requester of the ethics complaint may not withdraw the complaint without the consent of the Commission. A request to withdraw an ethics complaint must be in writing and set forth the specific reasons for requesting the withdrawal of the ethics complaint.

Sec. 29. NAC 281.1865 is hereby amended to read as follows:

NAC 281.1865 Determination of jurisdiction: Duties of Executive Director; procedure for review. (NRS 281.471)

1. The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning an ethics complaint.
2. *An ethics complaint must be accompanied by a minimal level of evidence supporting the allegation raised and demonstrating that the allegation could constitute a violation of the Ethics in Government Law. As used in this section, “evidence” means a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, minutes, agendas, transcripts, property records, business records, corporate records or other such similar means, that supports a reasonable belief of the allegations made within the complaint. The term does not include a newspaper article or other media report if*

the article or report is offered by itself; however, evidence corroborating a newspaper article or media report is acceptable.

~~[2]~~ 3. 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]~~ 4. 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]~~ 5. 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 *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]~~ 6. 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. 30. NAC 281.188 is hereby amended to read as follows:

NAC 281.188 Notice to subject; 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 certified mail, return receipt requested *or by overnight delivery service*.

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 (*NRS 281.411 through NRS 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.

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.

Sec. 31. NAC 281.189 is hereby amended to read as follows:

NAC 281.189 Scope of investigation by Executive Director. (NRS 281.471) The Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint. *If the Executive Director intends to*

include issues and facts beyond those previously noticed pursuant to NAC 281.188, he must provide additional notice to the subject of such issues and facts and afford him the same opportunity for response as is required by subsection 3 of NAC 281.188.

Sec. 32. NAC 281.215 is hereby amended to read as follows:

NAC 281.215 Commission to determine order of proceedings. (NRS 281.471) Except as otherwise provided in NRS ~~[281.477 and]~~ 281.511 *and Sections 5 and 9 of this regulation*, the Commission will determine, as it deems appropriate, the order of proceedings for the hearing and will inform the parties thereof before the hearing commences.

Sec. 33. NAC 281.219 is hereby amended to read as follows:

NAC 281.219 Testimony: Generally. (NRS 281.471)

1. Except as otherwise provided in NRS 281.511 *and Sections 5 and 9 of this regulation*, a ~~[party to a hearing before the Commission may, to the extent required by the Commission,]~~ *subject to an ethics complaint or advisory opinion shall be provided with the opportunity to* appear and testify before the Commission and participate in the hearing. The subject of the hearing may be represented by counsel, hear the evidence presented to the Commission, respond and present evidence and testimony on his own behalf, examine and cross-examine witnesses, and make arguments.

2. The Commission will question witnesses at the hearing.

Sec. 34. NAC 281.223 is hereby amended to read as follows:

NAC 281.223 Written opinions. (NRS 281.471)

1. A written opinion of the Commission must plainly state:

(a) Each violation alleged against the public officer or public employee who is the subject of the opinion;

- (b) The determination of the Commission with regard to each allegation; and
- (c) The applicable findings of fact and conclusions of law.

2. Each opinion must be numbered, dated and signed by the Chairman.

3. A copy of a written opinion published by the Commission on a matter will be served upon each party to that matter.

4. A copy of each opinion published by the Commission will be made available on the website of the Commission.

5. A copy of each opinion published by the Commission will be delivered to any other person or organization upon request.

Sec. 35. NAC 281.227 is hereby amended to read as follows:

NAC 281.227 Statements of financial disclosure. (NRS 281.471)

1. A statement of financial disclosure must be filed in proper form *pursuant to NRS 281.571 and NAC 281.0184.*

2. The form for a statement of financial disclosure is available at ~~the~~ *an* office, and on the website, of the Commission.

3. In accordance with subsection 6 of NRS 281.559, a statement of financial disclosure shall be deemed to be filed with the Commission:

(a) On the date that the statement of financial disclosure was mailed if it was sent by certified mail; or

(b) On the date that the statement of financial disclosure was received by the Commission if the statement was sent by regular mail, transmitted by facsimile machine or electronic means, or delivered personally.

Sec. 36. NAC 281.242 is hereby amended to read as follows:

NAC 281.242 Obtaining copies of public records or transcripts; payment of costs of public records. (NRS 281.471)

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 *principal* office of the Commission or appear personally at ~~the~~ *an* 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 *principal* office of the Commission 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 if the person requesting the copies files a written request for such a waiver at the *principal* 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.

Text of Repealed Sections

Sec. 37. NAC 281.0154 is hereby repealed:

NAC 281.0154 “Complaint concerning campaign practices” defined. (NRS 281.471)

“Complaint concerning campaign practices” means a complaint or request for an opinion concerning campaign practices filed with the Commission pursuant to NRS 294A.345 or 294A.346.

Sec. 38. NAC 281.048 is hereby repealed:

NAC 281.048 Executive Director to schedule and provide notice of meetings, hearings and proceedings. (NRS 281.471) The Executive Director shall, as necessary and appropriate, schedule, make arrangements for and provide notice of meetings and hearings of the Commission and proceedings of a panel.

Sec. 39. NAC 281.117 is hereby repealed:

NAC 281.117 Distribution of opinions. (NRS 281.471)

1. A copy of a written opinion published by the Commission on a matter will be served 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 any other person or organization upon request.

Sec. 40. NAC 281.202 is hereby repealed:

NAC 281.202 Proper form and filing required. (NRS 281.471) The Commission will consider only those complaints concerning campaign practices which are submitted to the office of the Commission in proper form. A complaint concerning campaign practices must be filed with the Executive Director at the office of the Commission and be accompanied by all evidence and argument to be offered by the requester concerning the issues related to the complaint.

Sec. 41. NAC 281.204 is hereby repealed:

NAC 281.204 Requirements for notice to subject. (NRS 281.471) Upon receiving a complaint concerning campaign practices, the Executive Director shall notify the subject of the complaint by the most expedient means possible. If verbal notice is given, written notice must also be provided by facsimile or overnight delivery no later than the next calendar day after the receipt of the complaint. The notice must include the time and place of the hearing on the matter by the Commission.