

**PROPOSED REGULATION OF THE  
COMMISSION ON ETHICS**

**LCB File No. R084-08**

May 28, 2008

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

AUTHORITY: §§1-21, NRS 281A.290.

A REGULATION relating to the Commission on Ethics; providing procedures for the Commission to initiate an ethics complaint on its own motion; revising procedures for the Commission to investigate ethics complaints and render opinions; providing requirements for the filing of certain forms with the Commission; and providing other matters properly relating thereto.

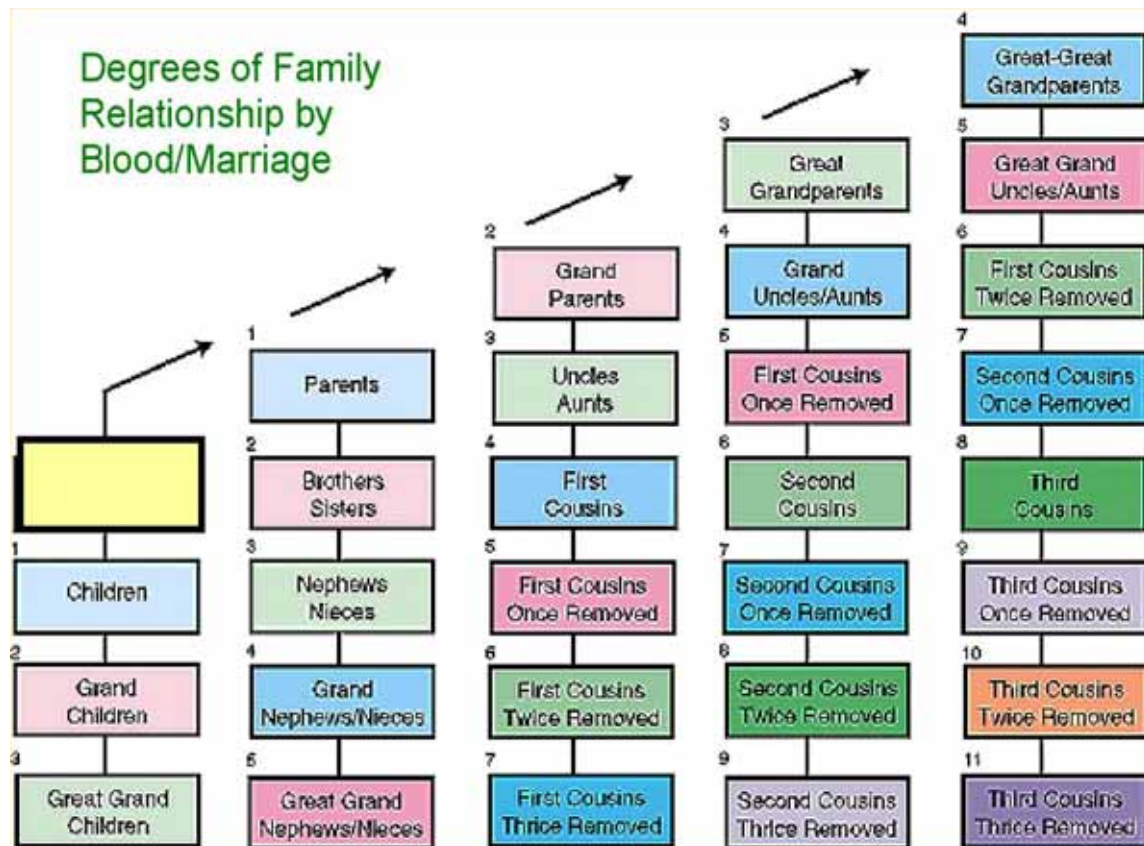
**Section 1.** Chapter 281 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

**Sec. 2.** *“Commission” means the Commission on Ethics.*

**Sec. 3.** *“Executive Director” means the Executive Director appointed by the Commission pursuant to NRS 281A.230.*

**Sec. 4.** *For the purposes of NRS 281A.420 and 281A.620, the Commission will determine relationships within the third degree of consanguinity or affinity pursuant to the following chart and instructions:*

## Consanguinity/Affinity Chart



### **INSTRUCTION:**

#### **For Consanguinity (relationship by blood) calculations:**

Place the public officer/employee for whom you need to establish relationships by consanguinity in the blank box. The labeled boxes will then list the relationship by title to the public officer/ employee and the degree of distance from the public officer/employee.

Anyone in a box numbered 1, 2, or 3 is within the third degree of consanguinity. Nevada Ethics in Government Law addresses consanguinity within the third degree by blood, adoption or marriage.

#### **For Affinity (relationship by marriage) calculations:**

Place the spouse of the public officer/employee for whom you need to establish relationships by affinity in the blank box. The labeled boxes will then list the relationship by title to the spouse and the degree of distance from the public officer/employee by affinity.

A husband and wife are related in the first degree by marriage. For other relationships by marriage, the degree of relationship is the same as the degree of underlying relationship by blood.

**Sec. 5. 1.** *Except as otherwise provided in subsection 2, a request for an opinion pursuant to subsection 1 of NRS 281A.440 will be heard by the Commission within 45 days after receipt of the request by the Commission.*

*2. If a public officer or public employee who requests an opinion pursuant to subsection 1 of NRS 281A.440 cannot appear before the Commission for a hearing on the request within 45 days after receipt of the request by the Commission, the public officer or public employee may submit a written statement acknowledging that he cannot appear before the Commission for the hearing and requesting a waiver of the 45-day period within which the hearing must be held. Such a request must be received within 7 business days before the expiration of the 45-day period.*

*3. If the public officer or public employee does not request a waiver pursuant to subsection 2 and fails to appear at the hearing scheduled by the Commission within 45 days after receipt of the request for an opinion, the request for an opinion will be deemed withdrawn by the public officer or public employee making the request.*

**Sec. 6. 1.** *If the Executive Director receives evidence that leads the Executive Director to reasonably conclude that a public officer or public employee may have committed a violation of the Nevada Ethics in Government Law as set forth in chapter 281A of NRS, the Executive Director may recommend to the Commission that the Commission initiate an ethics complaint upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.*

*2. A recommendation from the Executive Director pursuant to subsection 1 must:*

- (a) Be submitted on a form prescribed by the Commission;*
- (b) Contain a written statement setting forth the information that supports the recommendation; and*

*(c) Include any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such similar means that support the recommendation. Such proof may include, without limitation, any evidence which is offered that corroborates a newspaper article or other media report but may not include a newspaper article or other media report if the article or report is offered by itself.*

*3. The Executive Director shall not submit a recommendation to the Commission pursuant to subsection 1 based solely upon:*

- (a) A statement other than a sworn statement; or*
- (b) An allegation submitted to the Commission with the intent to avoid disclosure of the identity of the person making the allegation.*

*4. Upon receiving a recommendation from the Executive Director pursuant to subsection 1, the Commission will:*

- (a) Reject the recommendation without prejudice; or*
- (b) Accept the recommendation and initiate an ethics complaint upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.*

**Sec. 7.** NAC 281.0156 is hereby amended to read as follows:

281.0156 “Ethics complaint” means a request for an opinion submitted to the Commission pursuant to *paragraph (a) or (b) of subsection 2 of NRS ~~[281.511.]~~ 281A.440 or initiated by the Commission on its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.*

**Sec. 8.** NAC 281.0162 is hereby amended to read as follows:

281.0162 “Information related to the *ethics* complaint” includes, without limitation:

1. An ethics complaint;

2. All investigative materials and information related to the ethics complaint, including, without limitation, any investigation report;

3. Each document in the possession of the Commission or its staff related to the ethics complaint; and

4. The record of the proceedings of a panel related to the ethics complaint.

↪ The term does not include any confidential information unless the confidentiality for the information has been expressly or impliedly waived.

**Sec. 9.** NAC 281.0189 is hereby amended to read as follows:

281.0189 “Record of the proceedings of a panel” means written *or audio* documentation memorializing the deliberations of a panel during its proceedings.

**Sec. 10.** NAC 281.0246 is hereby amended to read as follows:

281.0246 The Chairman:

1. Shall preside over the meetings and hearings of the Commission.

2. May delegate assignments of work to the staff of the Commission as necessary and appropriate ~~[.]~~, *including, without limitation, the scheduling of panels.*

**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 set forth in *chapter 281A of NRS* ~~[281.411 to 281.581, inclusive,]~~ or NAC 281.005 to 281.242, inclusive, *and sections 2 to 6, inclusive, 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,]~~ *281A.240*, 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 sections 2 to 6,*

*inclusive, of this regulation*, chapter ~~[281]~~ **281A** of NRS and the previous opinions of the Commission.

2. At the first meeting of the Commission of each new fiscal year, report to the Commission on the state of the fiscal, regulatory and legislative matters and any other business matters of the Commission for the prior fiscal year and on the goals for the Commission for the new fiscal year.

3. ~~[Serve as the primary contact person for the Commission concerning any questions regarding, or requests for, public information or any media relations of the Commission in accordance with any policy adopted by the Commission concerning public information.~~

~~—4.— As necessary and appropriate, schedule, make any arrangements for and provide notice of any meeting or hearing of the Commission.]~~ *Adhere to the policies and procedures adopted by the Commission for its internal governance and external dealings.*

**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]~~ *majority of the appointed and sworn members of the Commission* present. Except as otherwise provided in NAC 281.005 to 281.242, inclusive, *and sections 2 to 6, inclusive, 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.]~~ *If the Commission is considering a matter on which a member of the Commission is ineligible to participate pursuant to subsection 4 of NRS 281A.220, subsection 2 of NRS 281A.420 or NAC 281.214, the necessary quorum to act upon and the number of votes necessary to act upon the matter is reduced as though the member who is disqualified was not a member of the Commission.*

**Sec. 13.** NAC 281.097 is hereby amended to read as follows:

281.097 1. Each written communication or document filed with the Commission must:

- (a) Be in proper form;
- (b) Be clearly and legibly typed or printed on 8 1/2- by 11-inch paper, on one side only;
- (c) Be addressed to the principal office of the Commission; and
- (d) Include any duplicate copy required to be included with the form, as specified on the form.

2. Except as otherwise provided in ~~[subsection 6 of NRS 281.559 with regards to a statement of financial disclosure, the]~~ **NAC 281.227:**

**(a) 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.

~~[3. Except as otherwise provided in NAC 281.227, a]~~

**(b) A** written communication or document that is required to be filed with the Commission may not be submitted via facsimile transmission.

**Sec. 14.** NAC 281.103 is hereby amended to read as follows:

281.103 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;]~~ **281A.220;** 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~~ 15 days before the date of the hearing.

3. A written motion must contain:

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

(b) A description of the relief sought; and

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

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

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

6. The Chairman, in his discretion, may accept and rule upon a motion on a matter , *except a motion for disposition of 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. 15.** NAC 281.186 is hereby amended to read as follows:

281.186 1. The Commission will only consider those ethics complaints *submitted pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440* which are filed in proper form with the Executive Director at the principal office of the Commission.



2. An ethics complaint *submitted pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440* must contain:

(a) The original completed form for an ethics complaint in the format required by the Commission;

(b) Two copies of the completed form; and

(c) Three copies of all supporting documents and evidence.

3. An ethics complaint *submitted pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440* must be accompanied by evidence which supports the allegation that the subject has violated a statutory ethical standard set forth in the ethics complaint and demonstrates that the alleged conduct of the subject would constitute a violation of the Nevada Ethics in Government Law set forth in *chapter 281A of NRS . ~~[281.411 to 281.581, inclusive.]~~*

4. Once an ethics complaint has been filed with the Commission ~~[.]~~ *pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440*, the requester of the ethics complaint may not withdraw the ethics complaint without the consent of the Executive Director.

5. A request to withdraw an ethics complaint *submitted pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440* must be in writing and set forth the specific reasons for requesting the withdrawal of the ethics complaint.

6. As used in this section, “evidence which supports the allegation” means any reliable and competent form of proof provided by witnesses, public and private records, audio or visual recordings, documents, exhibits, concrete objects and other such similar means that support a reasonable belief in the allegation made in the ethics complaint. The term includes any evidence which is offered that corroborates a newspaper article or other media report. The term does not include a newspaper article or other media report if the article or report is offered by itself.

**Sec. 16.** NAC 281.1865 is hereby amended to read as follows:

281.1865 1. The Executive Director shall confer with the Commission Counsel to determine whether:

(a) The Commission has jurisdiction concerning an ethics complaint ~~that~~ *submitted pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440;* and

(b) The ethics complaint was properly filed with the Commission in accordance with NAC 281.186.

2. If the Executive Director and Commission Counsel determine that the Commission has jurisdiction concerning the ethics complaint and that the ethics complaint was properly filed pursuant to NAC 281.186, the Executive Director shall investigate and proceed in the matter pursuant to NRS ~~[281.511.]~~ *281A.440.*

3. The Executive Director shall notify the requester if the Executive Director and Commission Counsel determine that:

(a) The Commission lacks jurisdiction concerning the ethics complaint pursuant to subsection 1; or

(b) The ethics complaint was not properly filed with the Commission in accordance with NAC 281.186.

4. A person who receives a notice pursuant to paragraph (a) of subsection 3 may request a review of the determination regarding jurisdiction by a panel. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the person received notification. The Chairman will appoint a panel to conduct the review of the determination regarding jurisdiction.

5. If a panel appointed pursuant to subsection 4 determines that the Commission has jurisdiction concerning an ethics complaint ~~[ ]~~ *submitted pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440*, the Executive Director shall investigate and proceed in the matter pursuant to NRS ~~[281.511.]~~ *281A.440*. 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.]~~ *281A.440* to the same panel that determined that the Commission has jurisdiction concerning the ethics complaint.

**Sec. 17.** 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:

- (a) Personal delivery;
- (b) Certified mail, return receipt requested; or
- (c) Overnight delivery service in which proof of delivery is documented.

2. A notice of an ethics complaint made pursuant to this section must include:

(a) All information filed by the requester of the ethics complaint or information upon which the Commission based its motion, as appropriate;

(b) A copy of the Nevada Ethics in Government Law set forth in *chapter 281A of NRS* ;  
~~[281.411 to 281.581, inclusive;]~~

(c) A copy of NAC 281.005 to 281.242, inclusive, ~~[H]~~ and *sections 2 to 6, inclusive, of this regulation;*

(d) An outline of the process used by the Commission to resolve ethics complaints ~~[H]~~; *and*

(e) *A form prescribed by the Commission for waiving the time limits set forth in subsections 3 and 4 of NRS 281A.440.*

3. The subject of an ethics complaint may file a written response to the ethics complaint with the Commission. ~~[H]~~ *Except as otherwise provided in this subsection, 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]~~ *If the subject of an ethics complaint* files with the Commission a waiver of the time limits ~~[in accordance with]~~ *set forth in* subsections 3 and 4 of NRS ~~[281.511.]~~ *281A.440, the Executive Director may authorize the response to be filed not later than 20 days after the date on which the subject of an ethics complaint received the notice of the ethics complaint.*

**Sec. 18.** NAC 281.191 is hereby amended to read as follows:

281.191 1. Except as otherwise provided in NRS ~~[281.511.]~~ *281A.440*, 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]~~ *the* ethics complaint in the possession of the Commission and its staff is confidential.

2. Upon the conclusion of the proceedings of the panel on an ethics complaint, the ~~finding of the panel regarding just and sufficient cause and the file of the Commission on the ethics complaint are public records and are~~ *information related to the ethics complaint is a public record* available for public review during normal business hours at the principal office of the Commission.

**Sec. 19.** NAC 281.199 is hereby amended to read as follows:

281.199 The procedures for obtaining and granting a continuance of a hearing concerning an ethics complaint are as follows:

1. The date or time of the hearing may be continued for a reasonable time by the Executive Director:

(a) Upon the written petition of the subject for good cause shown; or

(b) By stipulation of the subject and the Commission ~~[-]~~, *acting through the Executive Director.*

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

**Sec. 20.** NAC 281.201 is hereby amended to read as follows:

281.201 1. The Chairman or presiding officer of a hearing concerning an ethics complaint shall:

(a) Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room before the hearing begins.

(b) Ensure that an oath is administered in accordance with NAC 281.112 to all persons whose testimony will be taken.

(c) Exclude from the hearing all witnesses scheduled to testify except during the testimony of the witness. To preserve the integrity of the process and the evidence presented during a proceeding, the Chairman or presiding officer may request all witnesses not to discuss the case during the pendency of the proceeding.

(d) Hear and rule on any procedural motions, approve any stipulations and address any administrative details.

(e) Designate a member of the staff of the Commission to present the ethics complaint, the response to the ethics complaint by the subject and the determination of the panel concerning just and sufficient cause for the Commission to render an opinion in the matter.

(f) Allow the subject to present opening comments.

(g) Call and question any witnesses or present any evidence on behalf of the Commission concerning the ethics complaint and allow any member of the Commission to question such witnesses.

2. The subject may remain present at the hearing.

3. The subject may question any witnesses.

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

5. The subject, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

6. Upon the conclusion of the presentation of evidence by the subject and the examination of any witnesses, the Chairman or presiding officer shall allow the subject to present closing comments.

7. Upon the conclusion of the closing comments by the subject, the Commission will deliberate the issues of fact presented at the hearing, make a determination of the findings of fact, apply the applicable law to the findings of fact and render an opinion concerning whether the subject has violated any of the provisions of *chapter 281A of NRS* . ~~[281.411 to 281.581, inclusive.]~~

8. Upon a finding of a *willful* violation of any of the provisions of *chapter 281A of NRS* , ~~[281.411 to 281.581, inclusive,]~~ the Commission ~~[will]~~ *may* impose any civil penalties ~~[or]~~ *authorized pursuant to NRS 281A.480 and will impose any* other statutory remedies required pursuant to NRS ~~[281.551.]~~ *281A.480.*

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

**Sec. 21.** NAC 281.227 is hereby amended to read as follows:

281.227 1. ~~[A statement of financial disclosure]~~ *The following documents* must be filed in proper form ~~[pursuant to NRS 281.571.]~~ :

*(a) A disclosure of representation and counseling required pursuant to NRS 281A.410;*

*(b) An acknowledgement of the statutory ethical standards required pursuant to NRS 281A.500; and*

*(c) A statement of financial disclosure required pursuant to NRS 281A.600.*

2. The form for ~~[a statement of financial disclosure]~~ *each document specified in subsection 1* is available at any office, and on the website, of the Commission.

3. ~~[In accordance with subsection 6 of NRS 281.559, a statement of financial disclosure shall]~~ *A document specified in subsection 1 will* be deemed to be filed with the Commission:

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

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