

PROPOSED REGULATION OF THE COMMISSION ON ETHICS

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PROPOSED REGULATORY CHANGES – 2014

NAC CHAPTER 281A - ETHICS IN GOVERNMENT

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REVISER’S NOTE.

NAC 281.005 to 281.242, inclusive, have been renumbered and moved to chapter 281A of NAC in accordance with chapter 195, Statutes of Nevada 2007, at page 641, which required the related provisions of chapter 281 of NRS to be renumbered and moved to chapter 281A of NRS.

GENERAL PROVISIONS

NAC 281A.010 Definitions. (NRS 281A.290) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 281A.020 to 281A.105, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.005)

NAC 281A.020 “Chair” defined. (NRS 281A.290) “Chair” means the Chair of the Commission.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98)—(Substituted in revision for NAC 281.011)

NAC 281A.023 “Commission” defined. (NRS 281A.290) “Commission” means the Commission on Ethics.

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008)

NAC 281A.025 “Commission Counsel” defined. (NRS 281A.290) “Commission Counsel” means the legal counsel to the Commission appointed by the Commission pursuant to NRS 281A.250.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.0151)

NAC 281A.033 “Executive Director” defined. (NRS 281A.290) “Executive Director” means the Executive Director appointed by the Commission pursuant to NRS 281A.230.

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008)

NAC 281A.034 “First-party request for an opinion” defined. (NRS 281A.290) “First-party request for an opinion” means a request for an opinion filed pursuant to subsection 1 of NRS 281A.440.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.035 “Hearing” defined. (NRS 281A.290) “Hearing” means a hearing concerning:

1. The merits of a third-party request for an opinion;
2. A first-party request for an opinion; or
3. A request for an opinion filed pursuant to subsection 6 of NRS 281A.550.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.016)

~~{ NAC 281A.040 “Information related to the third party request for an opinion” defined. (NRS 281A.290) “Information related to the third party request for an opinion” includes, without limitation:~~

- ~~—1. A third party request for an opinion;~~
- ~~—2. All investigative materials and information related to the third party request for an opinion, including, without limitation, any investigation report;~~
- ~~—3. Each document in the possession of the Commission or its staff related to the third party request for an opinion; and~~
- ~~—4. The record of the proceedings of an investigatory panel related to the third party request for an opinion.~~

~~□ The term does not include any confidential information unless the confidentiality of the information has been expressly or impliedly waived.~~

~~—(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0162)}~~

This Section may be deleted. The phrase is now only used in NAC 281A.420, which is being amended in accordance with the provisions of NRS 281A.440(8) and (9), as amended in SB 228.

NAC 281A.045 “Investigate” defined. (NRS 281A.290) “Investigate” means to examine and inquire into a matter and to marshal evidence according to those methods and employing those services that the Executive Director determines are reasonable and necessary under the relevant facts and circumstances presented by the matter.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.0163)

NAC 281A.047 “Investigatory panel” and “panel” defined. (NRS 281A.290) “Investigatory panel” or “panel” has the meaning ascribed to it in NRS 281A.108.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281A.055)

NAC 281A.050 “Opinion” defined. (NRS 281A.290)

1. “Opinion” means an oral or written quasi-judicial decision rendered by the Commission pursuant to NRS 281A.440 or 281A.550.

2. The term includes, without limitation, the disposition of a third-party request for an opinion by stipulation, agreed settlement, consent order or default as authorized by NRS 233B.121.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0167)

NAC 281A.060 “Party” defined. (NRS 281A.290) “Party” means the subject *or his counsel, Commission staff which investigates a third-party request for opinion* and any other person who the Commission reasonably determines will be treated as a party in a matter before the Commission.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.017)

The Commission, serving in its quasi-judicial capacity, recently changed its internal structure for administrative due process concerns to ensure that the Executive Director investigates all third-party RFOs and presents all evidence to the Commission (prosecutes the matter). However, because the ED is not statutorily required to be an attorney, the Commission secured an additional position to its staff during the 2013 Legislative Session, an Associate Counsel. The ED performs these investigatory and hearing presentation functions through the Commission’s Associate Counsel and Investigator. The Associate Counsel/ED coordinate all prehearing materials, motions and negotiations with the Subject’s counsel as parties appearing before the Commission. Under this structure, it would be inappropriate for the Commission to have ex parte communications from either party or otherwise interfere with the RFO before it is presented at a hearing. Other similarly situated administrative agencies identify such agency staff as parties; i.e., Public Utilities Commission (NRS 703.070). Also, depending on the nature of the case, the Commission may also give standing to other persons with interests in the matter.

NAC 281A.065 “Presiding officer” defined. (NRS 281A.290) “Presiding officer” means a member of the Commission appointed by the Chair to preside over a hearing.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.0173)

NAC 281A.070 “Principal office of the Commission” defined. (NRS 281A.290) “Principal office of the Commission” means the office of the Commission designated by the Commission pursuant to NAC 281A.190 as the office in which the business of the Commission must be primarily conducted.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.0177)

NAC 281A.075 “Proceedings of an investigatory panel” defined. (NRS 281A.290) “Proceedings of an investigatory panel” means:

1. A review and determination by an investigatory panel pursuant to NAC 281A.405 as to whether the Commission has jurisdiction over a third-party request for an opinion.

2. A review pursuant to NAC 281A.430 and determination by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a matter presented in a third-party request for an opinion.

□ For the purposes of this chapter, the proceedings of an investigatory panel do not constitute a hearing.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0182)

NAC 281A.080 “Proper form” defined. (NRS 281A.290) “Proper form” means a form, available from an office or website of the Commission, which is:

1. Created by the Commission for the intended purpose of the form; and

2. Submitted to the Commission at the principal office of the Commission with all required information clearly and legibly printed or typed on the form.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006)—(Substituted in revision for NAC 281.0184)

~~† NAC 281A.085 “Record of the proceedings of an investigatory panel” defined. (NRS 281A.290) “Record of the proceedings of an investigatory panel” means written or audio documentation memorializing the deliberations of an investigatory panel during the proceedings of the investigatory panel.~~

~~—(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0189)†~~

This section may be deleted because we deleted NAC 281A.040 and this term now only appears in NAC 281A.445. The relevant language is now replaced in NAC 281A.445.

NAC 281A.090 “Requester” defined. (NRS 281A.290) “Requester” means a person ~~or group of persons~~ who files with the Commission a third-party request for an opinion.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0192)

The Commission does not accept a Third-Party RFO from a group of persons. NRS 281A.440(2) provides that the Commission may accept such an RFO from a “person,” and the Commission’s form for a Third-Party RFO requires the signature and status of a single person as the requester. This person is also required to declare an oath to testify truthfully at any related hearing (NRS 281A.440(12)).

NAC 281A.100 “Subject” defined. (NRS 281A.290) “Subject” means a public officer or public employee:

1. With respect to whom a third-party request for an opinion has been filed;
2. Who files a first-party request for an opinion; or
3. Who files a request for an opinion pursuant to subsection 6 of NRS 281A.550.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0198)

NAC 281A.103 “Third-party request for an opinion” defined. (NRS 281A.290) “Third-party request for an opinion” means a request for an opinion:

1. Filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440; or
2. Initiated by the Commission on its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.

(Added to NAC by Comm’n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.105 “Vice Chair” defined. (NRS 281A.290) “Vice Chair” means the Vice Chair of the Commission.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98)—(Substituted in revision for NAC 281.021)

NAC 281A.110 Severability. (NRS 281A.290)

1. The provisions of this chapter are hereby declared to be severable.
2. If any provision of this chapter 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 this chapter that can be given effect without the invalid provision or application.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006)—(Substituted in revision for NAC 281.024)

COMMISSION ON ETHICS

Administration

NAC 281A.150 Election of Chair and Vice Chair. (NRS 281A.290) The Commission will elect a Chair and a Vice Chair from among its members at its first meeting of each new fiscal year.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003)—(Substituted in revision for NAC 281.0245)

NAC 281A.155 Duties of Chair; delegation of assignments. (NRS 281A.290) The Chair:

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 investigatory panels.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.0246)

NAC 281A.160 Duties of Vice Chair. (NRS 281A.290) The Vice Chair shall perform the duties of the Chair during the absence of the Chair.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R038-98, 4-17-98; R102-00, 8-28-2000)—(Substituted in revision for NAC 281.027)

NAC 281A.165 Vacancy in office of Chair. (NRS 281A.290) If the office of Chair becomes vacant, the Vice Chair shall serve as the Acting Chair until the next meeting of the Commission, at which time the Commission will elect a successor to fill the unexpired term of the Chair.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.029)

NAC 281A.170 Vacancy in office of Vice Chair. (NRS 281A.290) If the office of the Vice Chair becomes vacant, a successor will be elected by the Commission at its next meeting to fill the unexpired term of the Vice Chair.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R102-00, 8-28-2000)—(Substituted in revision for NAC 281.035)

NAC 281A.175 Appointment of temporary Acting Chair or Vice Chair in certain circumstances. (NRS 281A.290) If both the Chair and Vice Chair are disqualified or recused from participating in a matter, the Commission may appoint a temporary Acting Chair or Vice Chair, or both, for the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.038)

NAC 281A.180 Duties of Executive Director. (NRS 281A.290) In addition to any other duties of the Executive Director required by this chapter or chapter 281A of NRS, or as otherwise imposed by the Commission, the Executive Director shall:

1. Pursuant to paragraph (e) of subsection 1 of NRS 281A.240, create a curriculum for training and conduct training for public officers and employers of public employees on the requirements of this chapter, chapter 281A of NRS and previous opinions of the Commission that have been determined by the Commission to have broad educational value.

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. Adhere to the policies and procedures adopted by the Commission for its internal governance and external dealings.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008)—(Substituted in revision for NAC 281.053)

NAC 281A.185 Preparation of written opinions by Commission Counsel. (NRS 281A.290) In addition to any other duties imposed on him or her by the Commission, the

Commission Counsel shall, in a timely manner, prepare a written opinion for each third-party request for an opinion, first-party request for an opinion and request for an opinion filed pursuant to subsection 6 of NRS 281A.550 that is heard by the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.056)

NAC 281A.190 Principal office of Commission: Designation; primary location for conduct of business. (NRS 281A.290)

1. The Commission will designate which office of the Commission will serve as the principal office of the Commission.

2. The business of the Commission must be primarily conducted in the principal office of the Commission, including, without limitation, the submission of any documents and any requests for an opinion from the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.066)

NAC 281A.195 Participation of member of Commission in ex parte communication. (NRS 281A.290)

1. If any member of the Commission participates in an ex parte communication, the member ~~must~~ *shall* disclose to the Commission that he or she participated in an ex parte communication.

2. If a member of the Commission discloses that he or she participated in an ex parte communication or the Commission otherwise determines that a member of the Commission participated in an ex parte communication, the Commission may require the member to abstain from participating with the Commission in any hearing or determination to be made by the Commission concerning the matter that was the subject of the ex parte communication.

3. As used in this section, “ex parte communication” means any written or oral communication between *a party or* a person who has any *interests in a* matter pending before the Commission, or any agent of such person, and a member of the Commission which:

- (a) Is communicated outside the presence of the entire Commission;
- (b) Is not communicated during a formal proceeding of the Commission; and
- (c) Includes any comment, response or argument regarding any:
 - (1) Ongoing investigation by the Commission; or
 - (2) Matter that is pending before the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.076)

The Commission wants to preclude ex-parte communications with Commission staff which is responsible for the investigation and presentation of evidence (prosecution) in a contested Third-Party RFO as a Party. See also amendment to definition of “party” herein to include Commission staff which investigates a matter. Other administrative agencies which have staff that investigate contested matters have similar provisions; i.e., Public Utilities Commission (NRS 703.481).

NAC 281A.200 Meetings of Commission: Majority required; necessary quorum reduced for ineligible member. (NRS 281A.290)

1. A meeting of the Commission will not proceed without a majority of the appointed and sworn members of the Commission present. Except as otherwise provided in this chapter, a majority vote of the members present and eligible to vote at a meeting is sufficient to carry out all business of the Commission.

2. 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 3 of NRS 281A.420 or NAC 281A.505, 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 is not a member of the Commission.

(Added to NAC by Comm'n on Ethics, eff. 12-24-85; A by R038-98, 4-17-98; R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008)—(Substituted in revision for NAC 281.085)

General Practice and Procedure Before Commission

NAC 281A.250 Provisions governing practice and procedure: Applicability; construction; deviation. (NRS 281A.290)

1. Except as otherwise provided in subsection 3, the provisions of NAC 281A.250 to ~~281A.290~~ **281A.310**, inclusive, govern all practice and procedure before the Commission.

2. The Commission will liberally construe the provisions of NAC 281A.250 to ~~281A.290~~ **281A.310**, 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 281A.250 to ~~281A.290~~ **281A.310**, inclusive, if the deviation will not materially affect the interests of the party who is the subject of the request.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003)—(Substituted in revision for NAC 281.093)

NAC 281A.255 Written communications and documents: Form and contents; date and manner of filing. (NRS 281A.290)

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

- (a) Be in proper form *as provided pursuant to the relevant provisions of this chapter*;
- (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 ~~;~~ **and**

(e) Include any necessary exhibits in a form and format reasonably accessible to the Commission, including digital or electronic media.

2. Except as otherwise provided in NRS 281A.410 and 281A.500, 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. ~~A written communication or document that is required to be filed with the Commission may not be submitted via facsimile transmission.~~

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.097)

SB 228 amended NRS 281A.410(6) and 281A.500(6) to authorize transmission of agency representation forms and acknowledgment forms by facsimile machine or other electronic means. There is no reason why other written communications may not be filed by facsimile or other electronic means, except for Requests for Opinions which require original signatures on the forms prescribed by the Commission.

NAC 281A.260 Consolidation of matters. (NRS 281A.290) The Commission may consolidate, in whole or in part, two or more matters into one hearing if the Commission determines that the matters share common facts and issues.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000)—(Substituted in revision for NAC 281.101)

REVISER'S NOTE.

Section 36 of LCB File No. R102-00 duplicated former NAC 281.101 (cf. NAC 281A.260) with minor changes. Thus, former NAC 281.101 (cf. NAC 281A.260) has been amended during codification to reflect this new language.

NAC 281A.265 Motions. (NRS 281A.290)

1. Motions related to a third-party request for an opinion may only be made:
 - (a) After an investigatory panel has made a determination that there is just and sufficient cause for the Commission to render an opinion pursuant to NRS 281A.220; and
 - (b) Before the hearing on the matter unless the cause for the motion arises for the first time 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 15 days before the date of the hearing.~~ *before the close of business on a date to be designated by the Commission after the investigatory panel has made a determination.*
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 Chair, in his or her 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 for the reconsideration of an opinion on a third-party request for an opinion issued by the Commission must be filed with the Commission not later than 15 days after the date on which the opinion of the Commission is served.

(Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.103)

Given the Commission’s scheduling demands and intermittent meeting dates, as well as the new processes with Associate Counsel which authorize written motions by the Associate Counsel and require written responses to any motions filed by the Subject, the 15-day requirement is no longer workable. It is more appropriate to authorize the Commission to provide appropriate deadlines for motions in the Scheduling Order issued with the Notice of Hearing.

NAC 281A.270 Discovery. (NRS 281A.290) 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 Chair may allow discovery on a matter before the Commission to the extent which he or she deems appropriate.

(Added to NAC by Comm’n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003)—(Substituted in revision for NAC 281.106)

NAC 281A.275 Stipulations of fact; resolution of matter without hearing. (NRS 281A.290)

1. A party in a matter before the Commission may stipulate to any fact in issue. The stipulation must be in writing or made by oral statement on the record.

2. At its discretion and with the agreement of the subject of a third-party request for an opinion, the Commission may, in lieu of holding a hearing, resolve a matter before the Commission with a stipulation, agreed settlement, consent order or default as authorized pursuant to NRS 233B.121. Such a resolution must be in writing or made by oral statement on the record.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.109)

NAC 281A.280 Oaths. (NRS 281A.290)

1. The Chair and Vice Chair, including an Acting Chair and Acting Vice Chair, if any, may administer oaths.

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

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003)—(Substituted in revision for NAC 281.112)

NAC 281A.285 Subpoenas. (NRS 281A.290)

1. A subject of a third-party request for an opinion may request that a subpoena be issued by filing a written request for a subpoena at the principal office of the Commission.

2. A subject of a third-party request for an opinion who requests the issuance and service of a subpoena pursuant to this section shall *serve the subpoena in accordance with NRS 281A.300(2) and* pay ~~{all expenses}~~ *the costs* related to the ~~{issuance and}~~ service of the subpoena.

~~{2.—Service of a subpoena issued pursuant to this section or NRS 281A.300 must be made in the manner provided by Rule 45 of the Nevada Rules of Civil Procedure.}~~

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1125)

Consistent with the amendment to NRS 281A.300(2) in SB 228, the Commission may issue a subpoena to the Subject of an RFO (if appropriate). Upon the request, the Commission

staff drafts the subpoena for the Chair’s approval and issues it to the Subject. The Subject then has the obligation to serve the subpoena and pay costs related to the service. The statute doesn’t require the Subject to pay the Commission for the issuance of the Subpoena. Unless the regulation were to provide specifications and deadlines for requesting the issuance of a subpoena (which we can do via scheduling order), this regulation is redundant to NRS 281A.300 and unnecessary.

NAC 281A.290 Testimony in person required; exception. (NRS 281A.290) A subject or witness before the Commission shall testify in person, except that the Commission may, for good cause shown, allow a witness to testify by telephone or videoconference.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006)—(Substituted in revision for NAC 281.1127)

NAC 281A.295 Conduct of persons at meetings and hearings; consequences of improper conduct. (NRS 281A.290)

1. All persons appearing before, or attending a meeting or hearing of, the Commission shall conduct themselves in a polite, respectful and orderly manner. Smoking is not allowed at any meeting or hearing of the Commission.

2. The Commission will require a person who does not comply with subsection 1 to leave the room where the meeting or hearing is being held, and the person will be barred from attending the remainder of the meeting or hearing.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.1129)

NAC 281A.300 Representation of subject by legal counsel. (NRS 281A.290) A subject may retain legal counsel to represent him or her during:

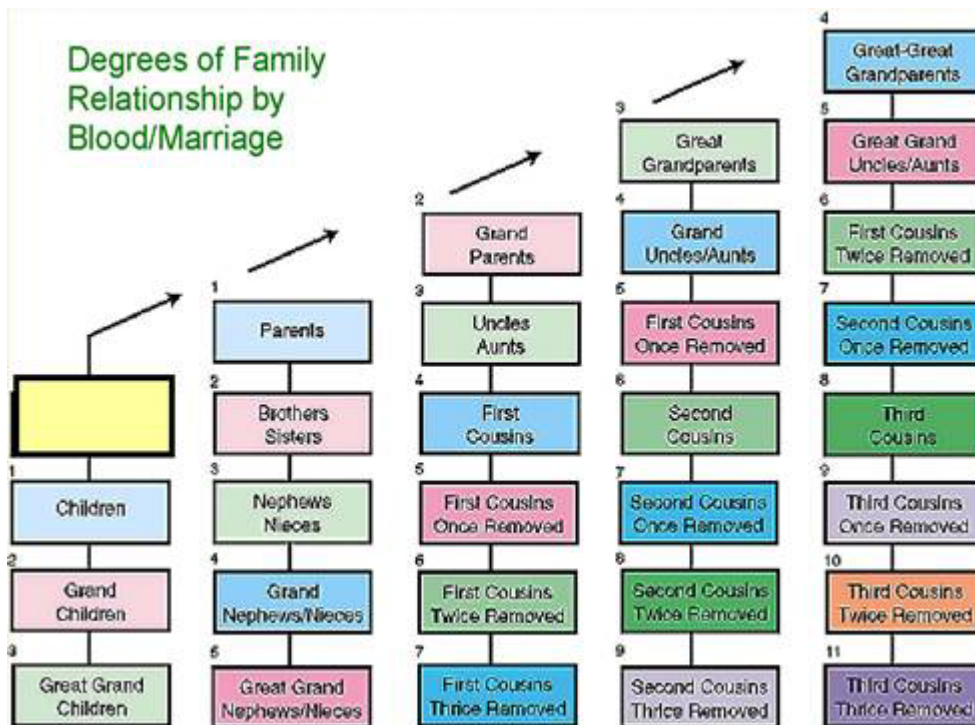
1. Any investigation of a third-party request for an opinion; or
2. Any hearing.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1131)

NAC 281A.310 Determination of relationships within third degree of consanguinity or affinity. (NRS 281A.290) For the purposes of NRS ~~281.571 and 281A.420,~~ **281A.065**, the Commission will determine relationships within the third degree of consanguinity or affinity pursuant to the following chart and instructions:

Consanguinity/Affinity Chart

Amend Title of Chart to read:
[“Degrees of Consanguinity/Affinity”](#)



INSTRUCTION:

The Nevada Ethics in Government Law addresses relationships of a public officer or employee, or to the spouse or domestic partner of the public officer or employee, by blood,

adoption, marriage or domestic partnership within the third degree of consanguinity or affinity.

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 *adoption, marriage or domestic partnership*) calculations:

Place the spouse *or domestic partner* 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 *or domestic partner* and the degree of distance from the public officer/employee by affinity.

~~{A husband and wife}~~ *Spouses* are related in the first degree *of affinity* by marriage *and domestic partners are related in the first degree of affinity by domestic partnership*. For *adoption and* other relationships by marriage *or domestic partnership*, the degree of relationship is the same as the degree of underlying relationship by blood.

As used in this chart, “domestic partner” has the meaning ascribed to it in NRS 281A.085 and “domestic partnership” has the meaning ascribed to it in NRS 281A.086.

(Added to NAC by Comm’n on Ethics by R084-08, eff. 9-18-2008)

SB 228 amended the definition of “commitment in a private capacity” (NRS 281A.065, formerly NRS 281A.420(8)) to include domestic partnerships. This chart has caused significant confusion to the public officers and employees and the Commission itself – and the Commission seeks any clarity regarding the nature of the relationships covered within the third degree of consanguinity or affinity.

First-Party Requests for Opinions

NAC 281A.350 Proper form required. (NRS 281A.290) The Commission will only consider a first-party request for an opinion filed by a public officer or public employee that is submitted to the Commission ~~{in proper}~~ *in the form prescribed by the Commission.*

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1135)

The section does not identify what constitutes the proper form. The Commission has developed forms for First-Party RFOs which are required to be filed by a requester and which contain instructions on where and how to file the form.

NAC 281A.353 Hearings. (NRS 281A.290)

1. Except as otherwise provided in subsection 2, a first-party request for an opinion will be heard by the Commission within 45 days after receipt of the first-party request for an opinion by the Commission.

2. If a public officer or public employee who files a first-party request for an opinion cannot appear before the Commission for a hearing on the first-party request for an opinion within 45 days after receipt of the first-party request for an opinion by the Commission, the public officer or public employee may submit a written statement acknowledging that he or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. A request for a waiver must be received not later than 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 first-party request for an opinion, the first-party request for an opinion will be deemed withdrawn by the public officer or public employee making the request.

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008; A by R134-10, 10-26-2011)

NAC 281A.355 Withdrawal. (NRS 281A.290) At any time before the Commission renders an opinion relating to a first-party request for an opinion, the public officer or public employee who filed the first-party request for an opinion may withdraw the first-party request for an opinion by providing a notice of withdrawal to the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1145)

NAC 281A.360 Determination of jurisdiction: Duties of Executive Director; request for review. (NRS 281A.290) The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a first-party request for an 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.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1155)

NAC 281A.365 Conduct of hearings; action by Commission; effect of opinion; confidentiality. (NRS 281A.290)

1. The Chair or presiding officer of a hearing concerning a first-party request for an opinion shall:

(a) Ascertain whether the subject of the first-party request for an opinion and all persons requested by the subject to testify 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 281A.280, to the subject of the first-party request for an opinion and all persons whose testimony will be taken.

2. The subject of the first-party request for an opinion ~~must~~ *shall* be present at the hearing.
 3. The Chair or presiding officer shall allow the subject of the first-party request for an opinion to:
 - (a) Present opening comments;
 - (b) Present any evidence on his or her own behalf; and
 - (c) Examine any witnesses on his or her own behalf.
 4. The subject of the first-party request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.
 5. Upon the conclusion of the presentation of evidence by the subject of the first-party request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.
 6. Upon the conclusion of the closing comments by the subject of the first-party request for an opinion, the Commission will:
 - (a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;
 - (b) Render an opinion on the matter; and
 - (c) Submit a copy of the opinion to the subject.
 7. The opinion rendered by the Commission shall be binding upon the subject of the first-party request for an opinion as to his or her future conduct pursuant to subsection 1 of NRS 281A.440.
 8. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.
 9. The first-party request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the opinion acts in a manner set forth in subsection 7 of NRS 281A.440 to waive the confidentiality of such information.
- (Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1175)

Third-Party Requests for Opinions

NAC 281A.400 Proper form required; submission; contents; withdrawal. (NRS 281A.290)

1. The Commission will only consider a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 which is submitted ~~in proper~~ *in the* form *prescribed by the Commission* ~~[with the Executive Director]~~ at the principal office of the Commission.
2. A third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 must contain:
 - (a) The original completed form for a third-party request for an opinion 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. A third-party request for an opinion filed 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 third-party request for an opinion

and demonstrates that the alleged conduct of the subject would constitute a violation of chapter 281A of NRS.

4. Once a third-party request for an opinion has been filed with the Commission pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440, the requester may only withdraw the third-party request for an opinion with the consent of the Executive Director.

5. A request to withdraw a third-party request for an opinion filed 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 third-party request for an opinion.

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 forms of proof that support a reasonable belief in the truth of the allegation made in the third-party request for an opinion. 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 as the only evidence to support the allegation.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.186)

The section does not identify what constitutes the proper form. The Commission has developed forms for Third-Party RFOs which are required to be filed by a requester and which contain instructions on where and how to file the form.

NAC 281A.403 Recommendation to initiate request upon motion of Commission.
(NRS 281A.290)

1. If the Executive Director receives evidence that leads the Executive Director reasonably to 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 a third-party request for an opinion 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 forms of proof that support the recommendation. Such forms of 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 as the only evidence to support the recommendation.]

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 a third-party request for an opinion upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.

(Added to NAC by Comm'n on Ethics by R084-08, eff. 9-18-2008; A by R134-10, 10-26-2011)

NAC 281A.405 Duties of Executive Director; review of determination regarding jurisdiction. (NRS 281A.290)

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

(a) The Commission has jurisdiction concerning a third-party request for an opinion filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440; and

(b) The third-party request for an opinion was properly filed with the Commission in accordance with NAC 281A.400.

2. ~~If the~~ *The* Executive Director and Commission Counsel ~~determine~~ *shall notify:*

(a) The requester and the subject regarding a determination that the Commission has jurisdiction concerning the third-party request for an opinion and that the third-party request for an opinion was properly filed pursuant to NAC 281A.400, ~~the Executive Director shall investigate and proceed in the matter pursuant to NRS 281A.440.~~

~~3. The Executive Director shall notify the~~.

(b) The requester ~~if the Executive Director and Commission Counsel determine~~ *regarding a determination* that:

(a) The Commission lacks jurisdiction concerning the third-party request for an opinion pursuant to subsection 1; or

(b) The third-party request for an opinion was not properly filed with the Commission in accordance with NAC 281A.400.

~~4.~~ *3.* A person who receives a notice pursuant to ~~paragraph (a) of~~ subsection ~~3~~ *2* may request a review of the determination regarding jurisdiction *and proper filing* by *the Commission* ~~an investigatory 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 Chair will appoint an investigatory panel to conduct the review of the determination regarding jurisdiction.~~

~~5.~~ *4.* ~~If an investigatory panel appointed pursuant to subsection 4~~ *If a requester or subject requests that the Commission review a determination by the Executive Director and Commission Counsel pursuant to subsection 2, the Executive Director shall notify the opposing requester or subject, as applicable, regarding the request for opinion, the determination of the Executive Director and Commission Counsel pursuant to subsection 1 and the request for review by the Commission pursuant to subsection 3. The Executive Director shall provide an opportunity for the requester or subject, as applicable, to file a written response to the request for review not less than 5 business days before the Commission makes a determination pursuant to subsection 5.*

5. The Commission shall review a determination regarding jurisdiction and proper filing upon a request filed pursuant to subsection 3 and determine ~~is that the Commission~~ *whether the third-party request for opinion was received in proper form and the Commission will accept jurisdiction regarding the matter. If the Commission determines that it:*

(a) Did not receive the third-party request for opinion in proper form, the Commission may dismiss the matter without prejudice;

(b) Lacks jurisdiction regarding the third-party request for opinion, the Commission may dismiss the matter; or

- (c) ~~Has~~ *Received the third-party request for opinion in proper form and will accept jurisdiction* ~~[concerning a]~~ *regarding the* third-party request for an opinion ~~[filed pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440]~~, the Executive Director shall *notify the subject and requester of the determination and* investigate and proceed in the matter pursuant to NRS 281A.440. ~~[Upon conclusion of the investigation, the Executive Director shall, to the extent possible, submit his or her recommendation regarding whether there is just and sufficient cause for the Commission to render an opinion to the same investigatory panel that determined that the Commission has jurisdiction concerning the third-party request for an opinion.]~~

5. A determination regarding jurisdiction and proper filing by the Commission pursuant to subsection 5 is a final decision.

(Added to NAC by Comm'n on Ethics by R111-03, eff. 10-30-2003; A by R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.1865)

Previously, the subject of a Third-Party RFO has not been authorized to appeal a jurisdictional determination of the ED/CC to an investigatory panel. The Commission has therefore received a few “jurisdictional” motions from subjects circumventing this regulatory oversight. Because a question of jurisdiction is a legal determination that may be raised at any time by the Subject, and an investigatory panel is statutorily designed only to consider whether credible evidence supports a finding of just and sufficient cause to render an opinion, the Commission would prefer to authorize a requester and the subject to appeal a determination of jurisdiction by the staff directly to the Commission. The Commission would also prefer to make the process fair and open to both parties to participate regarding questions of jurisdiction. Normally, if the Commission staff denies jurisdiction, the only party notified is the requester to preserve his right to seek a review by the Commission. If the Commission (panel) does not overturn staff determination, the Subject never learns that an RFO was filed against him. Because the Commission dismisses many RFOs pursuant to this process, we do not want to invite a requirement to notify the subject of a dismissed RFO unless the requester appeals the determination. These appeals are not as common and would not inundate the Commission with a requirement to file unnecessary notices.

NAC 281A.410 Notification of subject; filing of response. (NRS 281A.290)

1. Once a third-party request for an opinion 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 third-party request for an opinion, the Executive Director shall forthwith notify the *requester and the* public officer or public employee who is the subject of the third-party request for an opinion and provide the public officer or public employee an opportunity to respond to the allegations contained in the third-party request for an opinion. Such a notification must be in writing and sent to the subject of the third-party request for an opinion 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 a third-party request for an opinion *to the Subject* made pursuant to this section must include, without limitation:

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

(b) ~~1A copy of chapter 281A of NRS;~~

~~(c) A copy of this chapter;~~

~~(d) 1~~ An outline of the process used by the Commission to resolve third-party requests for opinions; and

~~(e) 1~~ (c) A form prescribed by the Commission for waiving the time limits set forth in subsections 4, 5 and 6 of NRS 281A.440.

3. The subject of a third-party request for an opinion may, within the time limit set forth in subsection 3 of NRS 281A.440, file with the Commission a written response to the allegations contained in the third-party request for an opinion. If the subject of a third-party request for an opinion files with the Commission a waiver of the time limits set forth in subsections 4, 5 and 6 of NRS 281A.440, the Executive Director may, for good cause shown, authorize one or more extensions, of not more than 30 days each, of the time limit set forth in subsection 3 of NRS 281.440 for the subject to file a written response to the allegations contained in the third-party request for an opinion.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.188)

The Commission would like to refer the Subject to the provisions of NRS 281A and NAC 281A on its Website and reduce the cost of providing hard copies.

NAC 281A.415 Investigation of additional issues and facts by Executive Director; provision of additional notice to subject. (NRS 281A.290)

1. The Executive Director may investigate relevant issues and facts beyond those presented in a third-party request for an opinion in determining his or her written recommendation of whether there is just and sufficient cause for the Commission to render an opinion on the third-party request for an opinion.

2. If the Executive Director includes issues and facts beyond those presented in the third-party request for an opinion in his or her written recommendations which are not included in the notice issued to the subject pursuant to NAC 281A.410, the Executive Director ~~1must~~ **shall** provide additional notice to the subject of the additional issues and facts and provide the subject with the same opportunity to respond to such issues and facts that is set forth in subsection 3 of NRS 281A.440.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.189)

NAC 281A.420 Confidentiality and availability of information. (NRS 281A.290)

1. Except as otherwise provided in **this section and** NRS 281A.440, until the conclusion of the proceedings of an investigatory 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 a third-party request for an opinion 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 the third-party request for an opinion in the possession of the Commission and its staff is confidential.

2. Upon the conclusion of the proceedings of an investigatory panel on a third-party request for an opinion, ~~the~~ *any* information related to the third-party request for an opinion *other than the investigatory file of the Commission* is a public record available for public review during normal business hours at the principal office of the Commission.

3. *As used in this section, “investigatory file” has the meaning ascribed to it in subsection 16 of NRS 281A.440.*

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.191)

SB 228 amended NRS 281A.440(8), (9) and 16 to protect the Commission’s Investigative File as confidential.

NAC 281A.425 Confidentiality of proceedings of investigatory panel. (NRS 281A.290) The proceedings of an investigatory panel to determine whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion are confidential and closed to all persons except the ~~parties to the third-party request for an opinion and any other person the investigatory panel deems necessary to the proceedings of the investigatory panel.~~ *Commission staff.*

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.192)

The Investigatory Panel has the duty of “concluding” the investigation conducted by Commission staff. Upon receiving a report and recommendation from the ED, the panel may require the ED to engage in additional investigation before issuing its decision. NRS 281A.440(5) Because this process may still involve confidential investigation now protected by NRS 281A.440, the panel proceeding should not be available to the Subject.

NAC 281A.430 Considerations of investigatory panel. (NRS 281A.290) At the proceedings of an investigatory panel on a third-party request for an opinion, the investigatory panel shall consider:

1. The results of the investigation of the Executive Director and the recommendation of the Executive Director regarding whether there is just and sufficient cause for the Commission to render an opinion;
2. The third-party request for an opinion 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 third-party request for an opinion.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.193)

NAC 281A.435 Basis for finding by investigatory panel; unanimous finding required for determination that there is not just and sufficient cause to render opinion. (NRS 281A.290)

1. A finding by an investigatory panel as to whether there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be based on credible evidence.

2. A finding by an investigatory panel that there is not just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be unanimous.

3. As used in this section, “credible evidence” means the minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, that supports a reasonable belief by an investigatory panel that the Commission should hear the matter and render an opinion on the third-party request for an opinion. The term does not include a newspaper article or other media report if the article or report is offered as the only evidence to support the allegation.

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.194)

NAC 281A.440 Recording and contents of determination by investigatory panel that there is just and sufficient cause to render opinion. (NRS 281A.290) A determination issued by an investigatory panel pursuant to NRS 281A.220 which specifies that there is just and sufficient cause for the Commission to render an opinion on a third-party request for an opinion must be recorded in writing and include, without limitation:

1. The findings of the investigatory panel; and
2. The statutes upon which the investigatory panel based its determination that there is just and sufficient cause for the Commission to render an opinion.

(Added to NAC by Comm’n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision f

or NAC 281.1945)

NAC 281A.445 Record of proceedings of investigatory panel. (NRS 281A.290) The Executive Director shall provide and make arrangements for a record to be made of any proceedings of an investigatory panel ~~+~~ *by written or audio documentation memorializing the deliberations of the investigatory panel during the proceedings of the investigatory panel.*

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.195)

This language is taken from earlier definition in NRS 281A.085 that was deleted.

NAC 281A.450 Hearings: Advance written notice. (NRS 281A.290)

1. Before the Commission holds a hearing concerning a third-party request for an opinion, the Commission ~~+~~ *shall* serve the subject with advance written notice of the hearing at least 10 days before the date on which the hearing is scheduled to commence which includes the date, time and location of the hearing.

2. The written notice required pursuant to this section must comply with:

- (a) The requirements for notice set forth in subsection 10 of NRS 281A.440; and
- (b) Except as otherwise provided in this chapter and chapter 281A of NRS, the requirements for notice set forth in provisions concerning the adjudication in contested cases in chapter 233B of NRS.

3. A written record of the final determination of the investigatory panel issued pursuant to NAC 281A.440 may serve as the written notice required pursuant to this section if it includes the date, time and location of the hearing and otherwise complies with the requirements set forth in this section.

4. Notice shall be deemed complete upon delivery personally to the subject or by mailing the notice by certified mail or overnight delivery service to the last known address of the subject.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.197)

NAC 281A.455 Hearings: Continuance. (NRS 281A.290) The procedures for obtaining and granting a continuance of a hearing concerning a third-party request for an opinion 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.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.199)

NAC 281A.460 Hearings: Conduct; action by Commission. (NRS 281A.290)

1. The Chair or presiding officer of a hearing concerning a third-party request for an opinion 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 281A.280 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 Chair or presiding officer may request all witnesses not to discuss the case with any person 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 third-party request for an opinion, the response to the third-party request for an opinion by the subject and the determination of the investigatory panel concerning whether there is 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, present any evidence on behalf of the Commission concerning the third-party request for an opinion, and allow any member of the Commission to question such witnesses.

2. The subject may remain present during 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 Chair or presiding officer shall request the subject to proceed with the introduction of evidence and calling of witnesses on his or her 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 Chair 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.

8. Upon a finding of a willful violation of any of the provisions of chapter 281A of NRS, the Commission may impose any civil penalties authorized pursuant to NRS 281A.480 and will impose any other statutory remedies required pursuant to NRS 281A.480.

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

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.201)

NAC 281A.465 Hearings: Admission and exclusion of evidence. (NRS 281A.290)

1. In conducting any hearing concerning a third-party request for an opinion, the rules of evidence of the courts of this State will be followed generally but may be relaxed at the discretion of the Commission.

2. The Chair or presiding officer may exclude immaterial, incompetent, cumulative or irrelevant evidence or order that the presentation of such evidence be discontinued.

3. A subject may object to the introduction of evidence if the subject:

(a) Objects to such evidence promptly; and

(b) Briefly states the grounds of the objection at the time the objection is made.

4. If an objection is made to the admissibility of evidence, the Chair or presiding officer 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 any subsequent ruling of the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.203)

NAC 281A.470 Failure of subject to appear at hearing or reply to notice. (NRS 281A.290) If a subject fails to appear at a hearing concerning a third-party request for an opinion which is 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 presence 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 reply to the notice provided pursuant to NAC 281A.410, the alleged violations specified in the determination of the investigatory panel that there is just and sufficient cause for the Commission to render an opinion may be considered as true.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006; A by R134-10, 10-26-2011)—(Substituted in revision for NAC 281.205)

Opinions Concerning Employment of Certain Former Public Officers or Employees by Regulated Businesses

NAC 281A.475 Proper form required for requests. (NRS 281A.290) The Commission will only consider those requests for an opinion filed pursuant to subsection 6 of NRS 281A.550 that are submitted ~~to~~ *in the form prescribed by* the Commission ~~in proper form~~.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

The section does not identify what constitutes the proper form. The Commission has developed forms for RFOs which are required to be filed by a requester and which contain instructions on where and how to file the form.

NAC 281A.480 Hearings. (NRS 281A.290)

1. Except as otherwise provided in subsection 2, a request for an opinion filed pursuant to subsection 6 of NRS 281A.550 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 6 of NRS 281A.550 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 or she cannot appear before the Commission for the hearing and, if applicable, requesting a waiver of the 45-day period within which the hearing must be held. Such a request must be received not later than 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.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.485 Withdrawal of request. (NRS 281A.290) At any time before the Commission renders an opinion on a request for an opinion filed pursuant to subsection 6 of NRS 281A.550, the public officer or public employee who filed the request for the opinion may withdraw the request by providing a notice of withdrawal to the Commission.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.490 Determination of jurisdiction: Duties of Executive Director; request for review. (NRS 281A.290) The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning a request for an opinion filed pursuant to subsection 6 of NRS 281A.550. 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 filed 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.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

NAC 281A.495 Conduct of hearings; action by Commission; confidentiality. (NRS 281A.290)

1. The Chair or presiding officer of a hearing concerning a request for an opinion filed pursuant to subsection 6 of NRS 281A.550 shall:

(a) Ascertain whether the subject of the request for an opinion and all persons requested by the subject to testify 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 281A.280, to the subject of the request for an opinion and all persons whose testimony will be taken.

2. The subject of the request for an opinion ~~must~~ *shall* be present at the hearing.

3. The Chair or presiding officer shall allow the subject of the request for an opinion to:

(a) Present opening comments;

(b) Present any evidence on his or her own behalf; and

(c) Examine any witnesses on his or her own behalf.

4. The subject of the request for an opinion, any witnesses or any counsel retained by the subject may be questioned by any member of the Commission at any time during the proceeding.

5. Upon the conclusion of the presentation of evidence by the subject of the request for an opinion and the examination of any witnesses, the Chair or presiding officer shall allow the subject to present closing comments.

6. Upon the conclusion of the closing comments by the subject of the request for an opinion, the Commission will:

(a) Deliberate the issues of fact presented at the hearing, make a final determination of the findings of fact and apply the applicable law to the findings of fact;

(b) Render an opinion on the matter; and

(c) Submit a copy of the opinion to the subject.

7. The Commission may waive any provision of this section if the Commission determines that such a waiver is necessary to expedite the hearing or is in the interest of justice.

8. The request for an opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the request for an opinion acts in a manner set forth in subsection 7 of NRS 281A.550 to waive the confidentiality of such information.

(Added to NAC by Comm'n on Ethics by R134-10, eff. 10-26-2011)

General Procedures for Hearings

NAC 281A.500 Executive Director to provide information to Commission. (NRS 281A.290) At least 1 week before the date on which the Commission is scheduled to hold a hearing on a matter, the Executive Director shall provide to the Commission:

1. A statement of the matter that sets forth the issues to be determined at the hearing;

2. A list of any witnesses and their expected testimony; and

3. Any other information which the Executive Director deems necessary to assist the Commission in hearing the matter.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.213)

NAC 281A.505 Motion to disqualify member of Commission for good cause. (NRS 281A.290)

1. A subject may submit a motion to disqualify a member of the Commission from participating in a hearing for good cause.

2. Except as otherwise provided in this subsection, a motion to disqualify a member of the Commission must comply with the procedures concerning motions before the Commission which are set forth in NAC 281A.265. A motion to disqualify a member of the Commission which is submitted pursuant to subsection 1 must be ruled upon by the Commission as a whole.

3. In considering a motion to disqualify a member of the Commission, the Commission will consider any grounds that would justify the disqualification of a judge pursuant to Canon 3E of the Nevada Code of Judicial Conduct.

4. If the Commission approves a motion to disqualify a member of the Commission, the necessary quorum to act upon and the number of votes necessary to act upon a matter before the Commission is reduced as though the member who is disqualified was not a member of the Commission.

(Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.214)

NAC 281A.510 Commission to determine order of proceedings. (NRS 281A.290) Except as otherwise provided in NRS 281A.440 and NAC 281A.365, 281A.460 and 281A.495, the Commission will determine, as it deems appropriate, the order of proceedings for a hearing and will inform the parties thereof before the hearing commences.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.215)

NAC 281A.515 Testimony: Oath or affirmation required. (NRS 281A.290) All testimony received at a hearing before the Commission must be given under oath or affirmation.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000)—(Substituted in revision for NAC 281.217)

NAC 281A.520 Participation by subject of hearing; questioning of witnesses. (NRS 281A.290)

1. Except as otherwise provided in NRS 281A.440 and NAC 281A.365, 281A.460 and 281A.495, the Commission will provide the subject of a hearing before the Commission 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 or her own behalf, examine and cross-examine witnesses, and make arguments.

2. The Commission will question witnesses at the hearing.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.219)

Miscellaneous Provisions

NAC 281A.550 Written opinions: Contents; dissemination. (NRS 281A.290)

1. *The Commission may direct the Commission Counsel to prepare:*

(a) A written opinion of the Commission regarding a first-party request for opinion, third-party request for opinion or request for opinion submitted pursuant to subsection 6 of NRS 281A.550; and

(b) An abstract opinion of any written opinion which is confidential pursuant to subsection 7 of NRS 281A.440 or subsection 7 of NRS 281A.550. As used in this paragraph, an “abstract opinion” means a written opinion which redacts or amends information provided in a confidential written opinion to protect the identity of the requester.

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

(a) If the opinion concerns a third-party request for an opinion, each violation alleged against the public officer or public employee who is the subject of the third-party request for an opinion;

(b) Except as otherwise provided in subsection 7 of NRS 281A.440, if the opinion concerns a first-party request for an opinion, each question for which the public officer or employee seeks guidance concerning the interpretation of a statutory ethical standard;

(c) If the opinion concerns a request for an opinion filed pursuant to subsection 6 of NRS 281A.550, the relevant facts in the case that do or do not justify relief from the strict application of the provisions of subsection 3 or 5 of NRS 281A.550, as applicable;

(d) The determination of the Commission with regard to each allegation, question or fact, as applicable; and

(e) The applicable findings of fact and conclusions of law and any specific guidance concerning the interpretation of a statutory ethical standard provided by the Commission to a public officer or public employee who is the subject of a first-party request for an opinion.

~~12.1~~ 3. Each written opinion *and abstract opinion* must be numbered, dated and signed by the Chair or presiding officer.

~~13.1~~ 4. The Commission ~~will~~ *shall*:

(a) Provide a copy of each written opinion *and abstract opinion* to each person who is a party;

(b) Post a copy of each written opinion *which is not confidential and abstract opinion* on the website of the Commission at <http://ethics.nv.gov>; ~~and~~

(c) Deliver a copy of a written opinion to any person who requests such a copy~~1~~; and

(Added to NAC by Comm’n on Ethics by R102-00, eff. 8-28-2000; A by R186-05, 5-4-2006; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.223)

NRS 281A.260 authorizes the Commission to assign written opinions to the Commission Counsel. It has been the practice of the Commission to draft abstract opinions of all confidential opinions for publication. There is no statutory requirement for the same. SB 228 removed the requirement that abstract opinions be included in its manual. The Commission seeks to maintain the practice of drafting abstract opinions, in its discretion. Abstract opinions are duplications of the confidential opinion which redact, summarize or amend the information in the opinion to protect the identity of the requester.

NAC 281A.555 Petitions to adopt, file, amend or repeal regulations. (NRS 233B.100, 281A.290)

1. Any person may submit a written petition to the Commission at the principal office of the Commission to adopt, file, amend or repeal any regulation of the Commission.

2. A petition submitted pursuant to subsection 1 must include, without limitation:

- (a) The name and address of the petitioner;
 - (b) A clear and concise statement of the regulation to be adopted, filed, amended or repealed, including, without limitation, the text of the proposed language of the regulation to be adopted, filed, amended or repealed;
 - (c) The reason 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 submitted pursuant to this section if the petition does not contain the information required pursuant to subsection 2.
4. The Commission will:
- (a) Review and make a decision concerning the petition at the next scheduled meeting of the Commission in which consideration of the petition is feasible following the receipt of the petition; and
 - (b) Notify the petitioner in writing of the decision of the Commission concerning the petition within 30 days after the petition is considered by the Commission.
- (Added to NAC by Comm'n on Ethics by R186-05, eff. 5-4-2006)—(Substituted in revision for NAC 281.236)

NAC 281A.560 Obtaining copies of public records or transcripts; payment of costs of public records. (NRS 281A.290)

1. Except as otherwise provided in this section, to obtain copies of public records from the Commission, a person ~~must~~ *shall*:
- (a) File a written request at the principal office of the Commission or appear personally at 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~~ *shall* file a written request at the principal office of the Commission and make arrangements directly with the court reporter.
4. ~~A~~ *The Commission shall not authorize any* person ~~may not~~ to 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 chapter 281A of NRS and NAC 281A.250 to 281A.290, inclusive.
5. A court reporter ~~may~~ *shall* 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.
- (Added to NAC by Comm'n on Ethics by R038-98, eff. 4-17-98; A by R102-00, 8-28-2000; R111-03, 10-30-2003; R186-05, 5-4-2006)—(Substituted in revision for NAC 281.242)

NAC 281A.615 Filing of certain documents in proper form; availability of form.
(NRS 281A.290)

1. The following documents must be filed in proper form:

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

(b) An acknowledgment of the statutory ethical standards required pursuant to NRS 281A.500.

2. The form for each document specified in subsection 1 is available at the principal office of the Commission and on the website of the Commission.

(Added to NAC by Comm'n on Ethics by R102-00, eff. 8-28-2000; A by R111-03, 10-30-2003; R186-05, 5-4-2006; R084-08, 9-18-2008; R134-10, 10-26-2011)—(Substituted in revision for NAC 281.227)