

PROPOSED REGULATION OF THE COMMISSION ON ETHICS

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption, Amendment, and Repeal
of Regulations of the Nevada Commission on Ethics

The Nevada commission on Ethics will hold a public hearing at 9:00 a.m. on March 20, 1998 at the Las Vegas City Council Chambers, 400 East Stewart Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption, amendment, and repeal of regulations that pertain to Chapter 281 of the Nevada Administrative Code.

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

- 1. Need for and the purpose of the proposed regulation:** The regulation is needed to improve the efficiency and effectiveness of the Commission by providing a comprehensive set of practice procedures for matters before the Commission.
- 2. Description of the subjects and issues to be involved:** The regulation provides a set of practice rules for the Commission.
- 3. Estimated economic effect of the regulation on regulated business and the public:** The Commission does not regulate any business, and these regulations will have no economic effect on the public that the Commission serves.
- 4. Estimated cost to the Commission for enforcement of the regulation:** There will be no additional cost to the Commission resultant from these regulations.
- 5. Overlapping regulations:** The proposed regulations will not duplicate or overlap any regulations of any other agency.
- 6. Federal Law requirement:** The proposed regulations are not required by any federal law, and, thus, are not more or less stringent than any federal law.
- 8. New fees or increases of existing fees:** The proposed regulations set no new fees and do not raise any existing fees.

Persons wishing to comment upon the proposed action of the Nevada Commission on Ethics may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Nevada Commission on Ethics, The Metcalf Building, 755

North Roop Street, No. 104, Carson City, Nevada 89701-3197. Written submissions must be received by the Nevada Commission on Ethics on or before March 2, 1998.

If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Commission on Ethics may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended, and repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted, amended, and repealed will be available at the Nevada Commission on Ethics at the address above, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The notice and the text of the proposed regulation are also available in the state of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, on the Internet at <http://www.let.state.nv.us>. Copies of this notice and the proposed regulation will be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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

This notice of hearing has been posted at the following locations:

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| 1) State Capitol Building | -- | Carson City |
| 2) State Legislature | -- | Carson City |
| 3) Kinkead Building | -- | Carson City |
| 4) Blasdel Building | -- | Carson City |
| 5) Carson City Courthouse | -- | Carson City |
| 6) State Library Building | -- | Carson City |
| 7) Bradley Building | -- | Las Vegas |
| 8) Washoe County Courthouse | -- | Reno |
| 9) Washoe County Administration Building | -- | Reno |
| 10) Grant Sawyer Office Building | -- | Las Vegas |

PROPOSED REGULATIONS
FOR
THE NEVADA COMMISSION ON ETHICS

Proposed Rules of Practice

Section 1. SCOPE AND CONSTRUCTION.

These practice rules govern all practice and procedure before the Nevada Commission on Ethics for all hearing held by the commission pursuant to NRS chapter 281.

Section 2. DEFINITIONS.

As used throughout these practice rules, the words and terms defined in this section have the meanings ascribed to them in this section.

1. "Commission" means the Nevada Commission on Ethics.
2. "First-person request" is the request of a public employee or officer who has requested that the commission render an opinion regarding the propriety of his or her own past, present, or future conduct.
3. "Opinion request" or "request", or "request for opinion" means a request for an opinion before the commission concerning the past, present, or future conduct of a public officer or employee or former public officer or employee and includes first-person and third-party requests.
4. "Own-motion request" means a request for an opinion initiated by the commission on its own motion.
5. "Person" means a natural person, partnership, association, corporation, or other entity, public or private.
6. "Practice rules" means these rules
7. "Requesting committee" means a specialized or local ethics committee.
8. "Subject" is the public employee or officer about whom and whose conduct an opinion has been requested.
9. "Third-party request" is the request of a person or person requesting that the commission render an opinion regarding the past or present conduct of a public officer or employee or former public officer or employee.

Section 3. CONSTRUCTION.

These practice rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the commission.

Section 4. SEVERABILITY.

Each provisions of these practice rules is hereby declared to be separable and the invalidity of any provision does not affect the validity of any other provision.

Section 5. DEVIATIONS.

Upon a showing of good cause and a showing that a deviation will not materially effect the interests of any subject of a request, the commission will permit deviation from these practice rules.

Section 6. COMMUNICATIONS.

Formal written communications and documents must be addressed to the commission and will be deemed to be filed only when received by the office of the commission.

Section 7. REQUESTS: FORM.

1. All requests for an opinion must be in writing on a form provided by the commission. the form shall include just before the requester's signature line a statement that affirms that:

- (a) The accusation or information contained in the request is true;
- (b) The requester did not submit the request in bad faith or with a vexatious purpose; and
- (c) The requester understands that the commission may impose penalties upon him pursuant to NRS 281.551 if it determines that the accusation or information is false and was submitted in bad faith, with a vexatious purpose, or in connection with a request for an opinion that the commission determines to be without merit.

2. Upon receipt of a request to the commission, the commission's staff shall assign the request a number and shall acknowledge in writing the receipt of and assignment of a number to the request to the opinion requester and the subject. The commission shall include with its acknowledgment letter to the subjects of a third-party request a photocopy of the request submitted to the commission.

3. All requests shall be accompanied by all evidence and materials reasonably available to the requester that support or would assist in the assessment of the request by the commission. If the opinion requester has knowledge of other people who could provide testimonial evidence, he or she shall submit a list of the names, addresses, and telephone numbers for each such person.

Section 8. REQUESTS: MERGED REQUESTS.

The commission may merge, in whole or in part, matters deemed to share common issues and facts into one proceeding.

Section 9. REQUEST: DETERMINATION OF JUST AND SUFFICIENT CAUSE FOR THIRD-PARTY REQUESTS.

1. All third-party requests for opinion shall be reviewed by the commission to determine whether there is just and sufficient cause exists to proceed to a hearing on the merits and render an opinion regarding the matter. In determining whether just and sufficient cause exists to proceed with a matter, the commission may consider the following nonexhaustive list of factors;

- (a) Whether the commission has jurisdiction over the matter;
- (b) Whether the commission has a previous opinion regarding an analogous matter;
- (c) Whether the matter presents important or novel questions of fact or law,
- (d) Whether the matter presents important or novel questions of public interest or public policy.

2. In making its just and sufficient cause determination, the commission will allow the subject to present evidence and argument as long as the subject has made a written request to allow such presentation which must be received by the commission office no later than ten days before the hearing. The commission may limit the evidence and argument in its discretion. The commission will not review evidence or testimony from anyone other than the subject beyond

the information provided in and with the request form unless the commission allows it in the commission's discretion.

3. The commission may choose to postpone or defer its just and sufficient cause determination pending receipt of further information necessary to make a reasoned decision.

4. In addition to determining whether just and sufficient cause exist to proceed with a matter, the commission may direct commission staff to assist in the preparation and presentation of the matter at further proceedings.

5. If the commission determines that just and sufficient cause does exist to proceed with a hearing on the merits of a request, the commission shall notify the requester and subject. This notice shall include an identification by the commission of the questions and issues that the commission intends to review. If the commission directs staff to assist in the preparation and presentation of a request, it shall so inform the subject. If the commission determines to decline to proceed with a request, it shall notify the requesting party and the subject of the reasons why just and sufficient cause was not found.

6. The commission shall retain two separate and segregated sets of request files: (1) files in which confidentiality has been waived by the subject and third-party request; and (2) files in which confidentiality has not been waived by the subject.

7. The commission may reformulate or add issues additional to the issues presented by a requester as the investigation and evidence may show.

Section 10. REQUESTS: DETERMINATION OF JUST AND SUFFICIENT CAUSE FOR OWN-MOTION REQUESTS

1. The commission may examine the conduct of a public officer or employee if a majority of the commission determines in a confidential session to begin such a proceeding. If the commission determines to go forward on its own motion, the commission shall notify the subject of the scope and general allegations that the commission will review at the hearing to determine whether just and sufficient cause exists to proceed with the matter to a hearing on the merits. The notice will also explain that the hearing to determine whether just and sufficient cause exists will be confidential unless the subject waives his or her confidentiality according to NRS 281.511(4)(b) and (c).

2. The subject may file written argument and evidence for the commission to review before the hearing to determine whether just and sufficient cause exists, as long as such written argument and evidence is received no later than ten days before the date of the hearing.

3. In determining whether just and sufficient cause exists to proceed with a matter on its own motion, the commission may consider the following nonexhaustive list of factors:

- (a) Whether the commission has jurisdiction over the matter;
- (b) Whether the commission has a previous opinion regarding an analogous matter;
- (c) Whether the matter presents important or novel question of fact or law,
- (d) Whether the matter presents important or novel question of public interest or public policy.

4. If the commission determines that just and sufficient cause exists to proceed to a hearing on the merits and render an opinion regarding a matter taken on the commission's own motion, the commission shall notify the subject of the questions and issues it intends to examine. This notice shall include an identification by the commission of the questions and

issues that the commission intends to review and a statement that the matter is no longer confidential.

Section 11. REQUESTS: INVESTIATION.

The commission may investigate any request either before or after it has rendered a just and sufficient cause determination regarding the request. The investigation shall be conducted according to those methods deemed appropriate and necessary in light of the circumstances of each request and may go beyond the issues presented by a third-party requester.

Section 12. HEARINGS: STIPULATIONS.

1. With the approval of the commission, the requester and subject may stipulate to any fact at issue by written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record. Any such stipulation is binding upon all parties to it and may be treated as evidence at the hearing.

2. The commission may demand proof beyond the stipulation by requiring evidence of facts stipulate.

Section 13. HEARINGS: CONFIDENTIALITY.

In any proceeding related to a first-party request, the name of the subject or other identifying information not relevant to the proceedings shall be kept confidential, and only the number of the request shall appear for identification on the agency for such a meeting. All matters that are confidential shall be held in proceedings closed to the public. The requester and subject and any counsel representing either may be present throughout the proceedings affection their request, except that the deliberations of the commission may be conducted with only the presence of the commissioners and commission staff in the commission's discretion. Any witnesses required will be allowed to be in the hearing only through the period in which they are testifying, and the witnesses will be admonished that though they may speak publicly about their own testimony, they may not speak publicly about the comments made by the commission or any other people present at the time of their testimony.

Section 14. HEARINGS: ORDER OF PROCEEDINGS:

The commission shall determine the order of proceedings as it deems appropriate to a given request. The commission may notify the parties in advance of a hearing the order of proceedings for that hearing and shall assure that the requester and subject acknowledge an understanding of the order of proceedings before proceeding with the hearing.

Section 15. HEARINGS: RIGHTS OF PARTIES.

At any hearing on the merits, the requester and subject may enter appearances, be represented by counsel, introduce evidence and testimony, examine and cross-examine witnesses, make arguments, and generally participate in the proceeding.

Section 16. HEARINGS: OATHS.

All testimony to be considered in hearings will be taken under oath.

Section 17. HEARINGS: CONDUCT OF PERSON.

1. Every requester and subject at a hearing, his counsel, and all spectators shall conduct themselves in a respectful and orderly manner.
2. No person may smoke at a hearing in session unless permitted by the chairperson.

Section 18. HEARINGS: FAILURE OF A PARTY TO APPEAR.

If a requester or a subject fails to appear at a hearing on a request when and where scheduled, the commission may:

1. Draw negative inferences from the party's failure to appear as are reasonable under the circumstances of the matter; and
2. May hear the evidence or witnesses who have appeared and may proceed to consider the request and dispose of it on the basis of the evidence thus presented.

Section 19. HEARINGS CONTINUANCES.

For good cause, the commission may, before or during a hearing, grant continuances.

Section 20. HEARINGS: DOCUMENTS AND TRANSCRIPTS.

1. Persons desiring public records from the commission's files shall pay \$.10 per page for each page. All requests for documents from the commission must be made in writing except when the person making the request appears in person at the commission's office. The actual cost or an estimate by commission staff must be received before the commission will provide the copies unless commission staff, in its discretion based upon its experience with a given person requesting a document, allows that payment be made after the documents are provided.

2. The commission may waive some or all of the costs of providing records if the commission receives a written request for such a waiver and the commission determines that the person making the request does not have the financial ability to pay the full cost of the records that the records requested are reasonable in quantity, and the person making the request is a party to a matter before the commission.

3. If a person requests a transcript regarding a matter that was recorded by the commission and that has already been transcribed by the commission's staff, the commission shall provide the record as provided in this section. If a person requests a transcript regarding a matter that was recorded by the commission and that has not already been transcribed, then the commission staff will provide the tape to a court reporter under contract with the commission for transcription and shall notify the requesting party that all further arrangements regarding receiving and paying for the transcript must be made through the court reporter. If a person requests a transcript regarding a matter that was transcribed by a court reporter retained by the commission, then the commission shall notify the person making the request that he or she must make the arrangements regarding receiving and paying for the transcript directly with the court reporter. The court reporter may not provide any transcript or documents without first receiving written permission from the commission to do so.

Section 21. HEARINGS: MOTIONS

1. Unless the cause for a motion arises at and during a hearing, all motions shall be made before a hearing. Motions made before a hearing must:

- a. Be in writing;

b. Contain a brief statement of facts, points and authorities, a description of the relief sought, and a certificate of mailing indicating that the motion was served upon any other parties (e.g. the requester, the subject, or any other person allowed by the commission to be treated as a party) in the matter;

c. Be received by the commission's office and the commission's counsel at least 12 days before the hearing of the matter.

2. Motions made before a hearing shall be ruled upon by the chairperson. If the chairperson deems it necessary, he may direct any other party or person interested in the matter to respond to the motion. The chairperson shall issue a written order containing his ruling.

3. At a hearing subsequent to the chairperson's ruling on a motion, a majority of the commission may allow a moving party to argue his motion for consideration and ruling by the commission.

4. A motion made at hearing may be denied by the commission if the commission determines that the motion could have been made before the hearing.

Section 22. HEARINGS: SUBPOENAS AND DISCOVERY.

1. The commission may issue subpoenas for its own purposes, including for the purposes of investigation or to compel the attendance of a witness at a hearing. The commission may make a motion that it authorized the chairperson to issue any and all subpoenas he or she deems necessary to further the investigation or the hearing of a matter. Upon such a motion, the chairperson may issue such subpoenas as he or she deems necessary to further the investigation or the hearing of a matter without consultation with the commission.

2. Any party to a matter may request that a subpoena be issued by submitting a written request to the commission and to the commission's counsel.. The request must identify the person subject to the subpoena and any documents sought. The chairperson will issue such a subpoena as expeditiously as possible. The chairperson may decline, in his or her discretion, to issue any subpoena that is unnecessarily burdensome, that seeks material that is irrelevant, immaterial, or redundant, or is otherwise unreasonable.

3. All subpoenas must be served as though the subpoena were issued by a district court.

4. There shall be no discovery, such as is provided in NRCP 26 through 36, unless the chairperson, in his or her discretion, orders otherwise pursuant to a motion made by any party.

Section 23. OPINIONS: PUBLICATION BY COMMISSION.

In any matter involving consolidated first-party and third-party requests concerning the same conduct of a public officer or employee, if the commission determines that there is just and sufficient cause to render an opinion, the commission must open the proceedings to the public and disclose the request for the opinion, the contents of the opinion and any motion, preliminary determination, evidence, or record of a hearing related thereto.

Section 24. OPINIONS: FORM.

The opinion shall be prepared by the commission's staff and shall state plainly the violations alleged against a party, showing the facts that support the allegations and the legal citation for each violation. The opinion shall be signed by the chairperson of the commission.

Section 25. OPINIONS: DISPOSITION.

1. The commission shall issue its opinion within sixty days after a hearing on the merits of a request. The opinion shall include written findings of fact and conclusions of law. Copies of the opinion shall be served by certified mail upon the requester and the subject. The commission may allow additional time for the issuance of an opinion in its discretion, but must make all parties aware of the decision to extend the time.

2. For any opinion issued as a result of a first-party request in which confidentiality was not waived, the commission shall publish the abstract of an opinion within forty-five days after the opinion has been issued.

Section 26. REQUESTS UNDER NRS 281.477, 294A.345, AND 294A.346.

1. All requests for an opinion pursuant to NRS 281.477, 294A.345, and 294A.346 must be in writing on a form provided by the commission, must identify all people who will or could provide testimony supporting the request, and must be accompanied by all evidence and arguments in support of the request. The requester must submit an original and nine copies of the form and the materials required by this paragraph. Any request not on the commission's form, not fully completed, not provided with the requisite number of copies, or without the information required by this paragraph will not be filed by the commission's staff and will be returned to the requester.

2. Upon the filing of a request under this section, the commission's staff shall notify the subject of the request in accordance with NRS 281.477(3). The commission's staff shall also notify the requester of the date, time, and place of the hearing for the matter by telephone, which shall be confirmed by a subsequent written notice. The written notices to the requester and the subject shall also include a copy of the pertinent provisions of these regulations and a copy of NRS 281.477, 281.551, 294A.345, and 294A.346.

3. The commission may refuse to allow any evidence that was not provided with the request and may refuse to allow any testimony from any witness who was not identified in the request.

Section 27. RESPONSE BY SUBJECT TO REQUEST MADE UNDER SECTION 26.

1. The subject of a request made according to section 26 must submit a written response to the request which must be transmitted by facsimile machine to the commission's office or must be placed in overnight mail by the close of the second business day after the subject's receipt of the notice under NRS 281.477(3). The subject must submit the original and nine copies of his response and information required by this paragraph. The subject's response must identify all people who will or could provide testimony supporting the subject's position and must be accompanied by all evidence and arguments in support of the subject's position. Any response submitted without the information required by this paragraph or without the requisite number of copies will not be filed by the commission's staff and will be returned to the subject.

2. The subject shall provide a copy of his response with all information required by the preceding paragraph to the requester by facsimile or overnight mail on the same day that the information is sent to the commission.

3. The commission may refuse to allow any evidence that was not provided with the subject's response and may refuse to allow any testimony from any witness who was not identified in the subject's response.

Section 28. REPEALED SECTIONS.

NAC 281.015, 281.055, 281.075, 281.095, 281.105, 2981.115, and 281.125 are hereby repealed.