

# PROPOSED REGULATION OF THE COMMISSION ON ETHICS

## LCB File No. R102-00

July 19, 2000

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

AUTHORITY: §§1-88; NRS 281.471.

**Section 1.** Chapter 281 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 72, inclusive, of this regulation.

**Sec. 2.** *“Advisory opinion” means a confidential opinion rendered by the commission upon the request of a public officer or public employee pursuant to subsection 1 of NRS 281.511.*

**Sec. 3.** *“Candidate” has the meaning ascribed to it in NRS 281.4323.*

**Sec. 4.** *“Commission counsel” means the legal counsel to the commission appointed by the commission pursuant to NRS 281.464.*

**Sec. 5.** *“Compensation” has the meaning ascribed to it in NRS 281.4327.*

**Sec. 6.** *“Complaint” means a request for an opinion submitted by a third party to the commission pursuant to subsection 2 of NRS 281.511, or pursuant to NRS 294A.345 or 294A.346.*

**Sec. 7.** *“Complaint concerning campaign practices” means a complaint or request for an opinion concerning campaign practices filed with the commission pursuant to NRS 294A.345 or 294A.346.*

**Sec. 8.** *“Decision” has the meaning ascribed to it in NRS 281.433.*

Sec. 9. *“Ethics complaint” means a request for opinion submitted by a third party to the commission pursuant to subsection 2 of NRS 281.511.*

Sec. 10. *“Executive director” has the meaning ascribed to it in NRS 281.4333.*

Sec. 11. *“Information related to the complaint” includes, without limitation:*

- 1. An ethics complaint;*
- 2. All investigative materials and information related to the ethics complaint; including, without limitation, any investigation report;*
- 3. Each document in the possession of the commission or its staff related to the ethics complaint; and*
- 4. The record of the proceedings of a panel related to the ethics complaint.*

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

Sec. 12. *“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.*

Sec. 13. *“Nevada Ethics in Government Law” means NRS 281.411 to 281.581, inclusive.*

Sec. 14. *“Opinion” means a quasi-judicial decision rendered by the commission pursuant to NRS 281.477 or 281.511.*

Sec. 15. *“Panel” has the meaning ascribed to it in NRS 281.4357.*

Sec. 16. *“Proceedings of a panel” means a review by a panel of the recommendation of the executive director concerning an ethics complaint as to whether just and sufficient cause exists for the commission to render an opinion pursuant to subsection 2 of NRS 281.511. For*

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*the purposes of NAC 281.005 to 281.121, inclusive, and sections 2 to 72, inclusive, of this regulation, the proceedings of a panel do not constitute a hearing and seldom require the testimony of witnesses.*

**Sec. 17.** *“Proper form” means a form, available from the office or website of the commission, which is created by the commission for the intended purpose of the form and is submitted to the commission with all required information clearly and legibly printed or typed on the form.*

**Sec. 18.** *“Public employee” has the meaning ascribed to it in NRS 281.436.*

**Sec. 19.** *“Public officer” includes:*

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

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

**Sec. 20.** *“Record of the proceedings of a panel” means written documentation memorializing the deliberations of a panel during its proceedings.*

**Sec. 21.** *“Requester” means a person or group of persons who file with the commission a complaint concerning campaign practices pursuant to NRS 281.477 or an ethics complaint pursuant to subsection 2 of NRS 281.511.*

**Sec. 22.** *“Statement of acknowledgement” means the form required to be filed with the commission by a public officer pursuant to NRS 281.552 which acknowledges that the public officer has received, has read and understands the Nevada Ethics in Government Law.*

**Sec. 23.** *“Statement of disclosure of agency representation” means the statement of disclosure required to be filed with the commission pursuant to NRS 281.491.*

**Sec. 24.** *“Statement of financial disclosure” means the form which each candidate for public or judicial office, and each public or judicial officer, who would be or is entitled to*

*receive compensation for serving in office must file with the commission pursuant to NRS 281.561.*

**Sec. 25.** *“Subject” means:*

*1. A public officer or public employee against whom an ethics complaint has been filed pursuant to subsection 2 of NRS 281.511; or*

*2. A candidate against whom a complaint concerning campaign practices has been filed pursuant to NRS 294A.345 or 294A.346.*

**Sec. 26.** *As used in NRS 281.561, the commission will interpret “entitled to receive compensation” to mean entitled to receive any remuneration, not including any reimbursement for lodging, meals, travel or any combination thereof, which a candidate for a public or judicial office, or a public or judicial officer, has a right to receive for serving in the office in question.*

**Sec. 27.** *For the purposes of the Nevada Ethics in Government Law, the commission will consider a vexatious purpose or action to include, without limitation, any purpose or action which is intended to mislead or deceive or which is misleading or deceptive.*

**Sec. 28.** *The commission will elect a chairman from among its members at its first meeting of each new fiscal year.*

**Sec. 29.** *The chairman:*

*1. Shall preside over the meetings and hearings of the commission.*

*2. May delegate assignments of work to the staff of the commission as necessary and appropriate.*

**Sec. 30.** *The commission will elect a vice chairman from among its members at its first meeting of each new fiscal year.*

*Sec. 31. If the office of chairman becomes vacant, the vice chairman shall serve as the acting chairman until the next meeting of the commission, at which time the commission will elect a successor to fill the unexpired term of the chairman.*

*Sec. 32. If both the chairman and vice chairman are disqualified or recused from participating in a matter, the commission may appoint a temporary acting chairman or vice chairman, or both, for the matter.*

*Sec. 33. The executive director shall, as necessary and appropriate, schedule, make arrangements for and provide notice of meetings and hearings of the commission and proceedings of a panel.*

*Sec. 34. In addition to any other duties of the executive director required by the Nevada Ethics in Government Law or NAC 281.005 to 281.121, inclusive, and sections 2 to 72, inclusive, of this regulation, or as otherwise imposed by the commission, the executive director shall:*

*1. Pursuant to paragraph (e) of subsection 1 of NRS 281.4635, create a curriculum for training and conduct training for public officers and employers of public employees on the requirements of NAC 281.005 to 281.121, inclusive, sections 2 to 72, inclusive, of this regulation, chapter 281 of NRS and the rules and previous opinions of the commission.*

*2. At the first meeting of the commission of each new fiscal year, report to the commission on the state of the affairs of the commission for the prior fiscal year and on the goals for the commission for the new fiscal year.*

*Sec. 35. In addition to any other duties imposed on him by the commission, the commission counsel shall, in a timely manner, prepare a written opinion for each complaint and advisory matter heard by the commission.*

*Sec. 36. Each written communication or document filed with the commission must be clearly and legibly typed or printed on 8½ by 11 inch paper, on one side only, and addressed to the office of the commission. The commission will consider a written communication or document to have been filed with the commission on the date on which the communication or document is received at the office of the commission.*

*Sec. 37. 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.*

*Sec. 38. 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 an ethics complaint, the commission may, in lieu of holding a hearing, resolve a matter before the commission with a stipulated agreement. Such a stipulated agreement must be in writing or made by oral statement on the record.*

*Sec. 39. The chairman and vice chairman, including an acting chairman and acting vice chairman, if any, may administer oaths. In their absence, a court reporter present at meetings and hearings may administer oaths.*

*Sec. 40. 1. A subject of an ethics complaint may request that a subpoena be issued by filing a written request for a subpoena at the office of the commission. A subject of an ethics complaint who requests the issuance and service of a subpoena pursuant to this section shall pay all expenses related to the issuance and service of the subpoena.*

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

*Sec. 41. A witness before the commission shall testify in person, except that the commission may, for good cause shown, allow the witness to testify by telephone or videoconference.*

*Sec. 42. 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.*

*Sec. 43. The commission will only consider those requests by a public officer or public employee for an advisory opinion which are submitted to the commission in proper form.*

*Sec. 44. At any time before the commission renders an advisory opinion pursuant to NRS 281.511, the public officer or public employee who filed the request for the advisory opinion may withdraw his request by filing a written notice of withdrawal with the commission. The notice of withdrawal may be in the form of a letter to the commission.*

*Sec. 45. The executive director shall confer with the commission counsel to determine any questions of jurisdiction concerning requests for an advisory opinion. If the commission counsel determines that the commission lacks jurisdiction in the matter, the executive director shall so notify the requesting public officer or public employee in writing, by certified mail, return receipt requested. A public officer or public employee who receives a notice pursuant to this section may request the commission to review the determination regarding jurisdiction. Such a request must be submitted to the office of the commission in writing not later than 10 days after the date on which the public officer or public employee received the notice.*

**Sec. 46.** *Unless a public officer or public employee who requests an advisory opinion waives the confidentiality relating to his request expressly or by conduct described in subsection 5 of NRS 281.511, his request for the advisory opinion, the advisory opinion issued by the commission pursuant to that request and any motion, determination, evidence or record of a hearing relating to that request are confidential.*

**Sec. 47. 1.** *If the confidentiality of an advisory opinion rendered by the commission has not been expressly or impliedly waived, the commission will:*

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

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

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

**Sec. 48.** *The commission will only consider those ethics complaints which are filed in proper form with the executive director at the office of the commission. Once an ethics complaint has been filed with the commission, the requester of the ethics complaint may not withdraw the complaint without the consent of the commission. A request to withdraw an ethics complaint must be in writing and set forth the specific reasons for requesting the withdrawal of the ethics complaint.*

**Sec. 49.** *The commission may, in a closed session, initiate an ethics complaint against a public officer or public employee on its own motion pursuant to paragraph (c) of subsection 2 of NRS 281.511.*

**Sec. 50. 1.** *Once an ethics complaint has been properly filed with the commission by a requester or initiated on the motion of the commission, the executive director shall forthwith notify the public officer or public employee who is the subject of the ethics complaint and provide the public officer or public employee an opportunity to respond to the allegations contained in the ethics complaint. Such a notification must be in writing and sent to the subject of the ethics complaint by certified mail, return receipt requested.*

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

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

**(b)** *A copy of the Nevada Ethics in Government Law;*

**(c)** *A copy of NAC 281.005 to 281.121, inclusive, and sections 2 to 72, inclusive, of this regulation; and*

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

**3.** *The subject of an ethics complaint must, not later than 10 days after the date on which he receive the notice of the ethics complaint, file a written response with the commission. The executive director may extend the time for an additional 10 days for good cause shown.*

**Sec. 51.** *The executive director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the commission to render an opinion on the ethics complaint.*

**Sec. 52. 1.** *Except as otherwise provided in NRS 281.511, until the conclusion of the proceedings of a panel to determine whether there is just and sufficient cause for the commission to render an opinion in the matter:*

*(a) The commission will not confirm or deny whether an ethics complaint has been filed by a requester, or initiated upon the motion of the commission, against a public officer or public employee; and*

*(b) All information related to an ethics complaint in the possession of the commission and its staff is confidential.*

**2.** *Upon the conclusion of the proceedings of the panel on an ethics complaint, a confirmation of the existence of the ethics complaint, the finding of the panel regarding just and sufficient cause and all information related to the complaint is open for public review.*

**Sec. 53.** *The proceedings of a panel to determine whether just and sufficient cause exists for the commission to render an opinion on an ethics complaint are confidential and closed to all persons except the parties to the complaint and any other person the panel deems necessary to the proceedings.*

**Sec. 54.** *At its proceedings on an ethics complaint, a panel shall consider:*

**1.** *The recommendation of the executive director regarding just and sufficient cause;*

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

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

**Sec. 55. 1.** *A finding by a panel as to whether just and sufficient cause exists for the commission to render an opinion on an ethics complaint must be based on credible evidence.*

2. *A finding by a panel that no just and sufficient cause exists for the commission to render an opinion on an ethics complaint 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 a panel that the commission should hear the matter and render an opinion. The term does not include a newspaper article or other media report if the article or report is offered by itself.*

**Sec. 56.** *The executive director shall provide and make arrangements for a record to be made of any proceedings of a panel.*

**Sec. 57.** *If the commission holds a hearing on an ethics complaint, the executive director shall notify the subject of the hearing of the place and time of the hearing by the commission on the matter.*

**Sec. 58.** *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.*

**Sec. 59.** *Except as otherwise provided in NRS 281.477 and 281.511, the commission will determine, as it deems appropriate, the order of proceedings for the hearing and will inform the parties thereof before the hearing commences.*

**Sec. 60.** *All testimony received at a hearing before the commission must be given under oath or affirmation.*

**Sec. 61. 1.** *Except as otherwise provided in NRS 281.511, a party to a hearing before the commission may, to the extent required by the commission, appear and testify before the commission and participate in the hearing. The subject of the hearing may be represented by counsel, hear the evidence presented to the commission, respond and present evidence and testimony on his own behalf, examine and cross-examine witnesses, and make arguments.*

**2.** *The commission will question witnesses at the hearing.*

**Sec. 62.** *The commission will consider only those complaints concerning campaign practices which are submitted to the office of the commission in proper form. A complaint concerning campaign practices must be filed with the executive director at the office of the commission and be accompanied by all evidence and argument to be offered by the requester concerning the issues related to the complaint.*

**Sec. 63.** *Upon receiving a complaint concerning campaign practices, the executive director shall notify the subject of the complaint by the most expedient means possible. If verbal notice is given, written notice must also be provided by facsimile or overnight delivery no later than the next calendar day after the receipt of the complaint. The notice must include the time and place of the hearing on the matter by the commission.*

**Sec. 64.** *The commission counsel shall prepare, for the signature of the chairman, a written opinion for each ethics complaint and complaint concerning campaign practices rendered by the commission.*

**Sec. 65. 1.** *A written opinion of the commission must plainly state:*

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

*(b) The determination of the commission with regard to each allegation; and*

*(c) The applicable findings of fact and conclusions of law.*

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

*Sec. 66. A candidate for a public and judicial office, and a public or judicial officer, who is entitled to receive compensation for his office must file a statement of financial disclosure in proper form with the commission. The form for a statement of financial disclosure is available at the office, and on the website, of the commission.*

*Sec. 67. Every public officer shall, pursuant to NRS 281.552, file with the commission a form acknowledging that the public officer has received, read and understands the Nevada Ethics in Government law. The form for a statement of acknowledgement is available at the office, and on the website, of the commission.*

*Sec. 68. The commission will retain each statement of acknowledgment filed with the commission pursuant to NRS 281.552 for at least 6 years after the date on which the statement was filed.*

*Sec. 69. Any legislator or public officer who, during the previous calendar year, has represented or counseled a private person and is required to file with the commission a disclosure of such representation pursuant to subsection 3 of NRS 281.491 shall file the disclosure using the form for such a disclosure that is available at the office, and on the website, of the commission.*

*Sec. 70. The commission will retain all statements of disclosure of agency representation filed with the commission for at least 6 years from the date of filing.*

*Sec. 71. All forms for statements of financial disclosure, statements of acknowledgement and statements of disclosure of agency representation are available for public inspection at the office of the commission.*

**Sec. 72.** *The commission will maintain the following files:*

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

**Sec. 73.** NAC 281.005 is hereby amended to read as follows:

281.005 As used in NAC 281.005 to ~~[281.185,]~~ *281.121*, inclusive, *and sections 2 to 72, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 281.011 to 281.021, inclusive, *and sections 2 to 25, inclusive, of this regulation*, have the meanings ascribed to them in those sections.

**Sec. 74.** NAC 281.016 is hereby amended to read as follows:

281.016 ~~["Hearing on the matter" and "hearing" mean]~~ *"Hearing" means* a hearing on the merits of ~~[a request for an opinion that is conducted for a purpose other than to determine whether there is just and sufficient cause to render an opinion in the matter.]~~ *an ethics complaint or a complaint concerning campaign practices held by the commission.*

**Sec. 75.** NAC 281.017 is hereby amended to read as follows:

281.017 "Party" ~~[includes:~~

- ~~1. The requester, as defined in NAC 281.128 or 281.143;~~
- ~~2. The]~~ *means the* subject of the request ~~[, as defined in NAC 281.131 or 281.146; and~~

~~—3. Any~~ *and any* other person who the commission determines will be treated as a party in the matter ~~{ }~~ *before the commission. The term does not include the requester of an ethics complaint unless the commission, in its discretion, determines otherwise.*

**Sec. 76.** NAC 281.018 is hereby amended to read as follows:

281.018 “Person” means a natural person, ~~[any form of business or social organization, or any public or private entity, including, but not limited to:~~

~~—1. A government, governmental agency or political subdivision of a government; or~~

~~—2. A corporation, partnership, association, trust or unincorporated organization.] a business entity or a social organization.~~

**Sec. 77.** NAC 281.024 is hereby amended to read as follows:

281.024 1. The provisions of NAC 281.005 to ~~{281.185,}~~ *281.121*, inclusive, *and sections 2 to 72, inclusive, of this regulation*, are hereby declared to be severable.

2. If any provision of NAC 281.005 to ~~{281.185,}~~ *281.121*, inclusive, *and sections 2 to 72, inclusive, of this regulation*, is held invalid, or if the application of any such provision to any person, thing or circumstance is held invalid, such invalidity does not affect any other provision of NAC 281.005 to ~~{281.185,}~~ *281.121*, inclusive, *and sections 2 to 72, inclusive, of this regulation*, that can be given effect without the invalid provision or application.

**Sec. 78.** NAC 281.025 is hereby amended to read as follows:

281.025 The commission will ~~[, at its first meeting and annually thereafter,]~~ elect a vice chairman from among its members ~~{ }~~ *at its first meeting each new fiscal year.*

**Sec. 79.** NAC 281.035 is hereby amended to read as follows:

281.035 If the office of the ~~chairman or~~ vice chairman becomes vacant, a successor will be elected by the commission at its next meeting to fill the unexpired term of ~~the chairman or~~ the vice chairman.

**Sec. 80.** NAC 281.045 is hereby amended to read as follows:

281.045 ~~1.~~ The vice chairman shall perform the duties of the chairman during the ~~chairman's absence.~~

~~2. The chairman may delegate, with the concurrence of the commission, assignments to members of the commission or the commission's staff.]~~ *absence of the chairman.*

**Sec. 81.** NAC 281.085 is hereby amended to read as follows:

281.085 *1. A meeting of the commission will not proceed without a quorum present.*

Except as otherwise provided in NAC 281.005 to ~~281.185,~~ *281.121*, inclusive, *and sections 2 to 72, inclusive, of this regulation*, a majority vote of the members present *and eligible to vote* at a meeting is sufficient for all business of the commission.

*2. As used in this section, "quorum" means a majority of the appointed and sworn members of the commission.*

**Sec. 82.** NAC 281.093 is hereby amended to read as follows:

281.093 *1.* Except as otherwise provided in subsection ~~2,~~ *3*, the provisions of NAC 281.093 to ~~281.153,~~ *281.108*, inclusive, *and sections 36 to 41, inclusive, of this regulation*, govern all practice and procedure before the commission . ~~[for all proceedings related to a request for an opinion, and those provisions will be liberally construed to secure the]~~

*2. The commission will liberally construe the provisions of NRS 281.093 to 281.108, inclusive, and sections 36 to 41, inclusive, of this regulation, to determine all matters before*

*the commission in a* just, speedy and economical ~~[determination of all issues related to a request for an opinion:~~

~~—2. The commission will allow deviation]~~ *manner.*

3. *For good cause shown, the commission may deviate* from the provisions of NAC 281.093 to ~~[281.153, inclusive, if the person seeking the deviation shows:~~

~~—(a) Good cause for the deviation; and~~

~~—(b) That]~~ *281.108, inclusive, and sections 36 to 41, inclusive, of this regulation, if* the deviation will not materially affect the interests of the party who is the subject of the request.

**Sec. 83.** NAC 281.103 is hereby amended to read as follows:

281.103 1. All motions related to ~~[a request for an opinion]~~ *an ethics complaint* must be made before the hearing on the matter unless the cause for the motion arises at and during the hearing on the matter.

2. A motion that is made before the hearing on the matter must be in writing and must be filed at the office of the commission not later than 12 days before the date of the hearing. ~~[In addition, the]~~

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. ~~[, including, but not limited to, any person whom the commission has determined will be treated as a party in the matter.~~

~~—3.— The chairman shall rule upon a motion that is made before the hearing on the matter and shall issue a written order containing his ruling.~~

~~—4.— Before ruling upon a motion that is made before the hearing on the matter, the chairman, in his discretion, may direct a party or any other person interested in the matter to respond to the motion.~~

~~—5.— At the hearing on the matter, the commission may allow a party whose motion was decided by the chairman to argue his motion for consideration and ruling by the commission.~~

~~—6.— The commission may deny a motion that is made at the hearing on the matter without considering its merits, if the commission determines that the motion could have been made before the hearing.]~~

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

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

*6. The chairman, in his discretion, may rule upon a motion on a matter at any time before, during or after the hearing by the commission on the matter.*

*7. A motion for rehearing or the reconsideration of an opinion on a matter issued by the commission must be filed with the commission not later than 15 days after the date on which the final opinion of the commission is served.*

**Sec. 84.** NAC 281.106 is hereby amended to read as follows:

281.106 ~~{A party is not entitled to discovery, including, but not limited to, any}~~ *The provisions for civil* discovery set forth in N.R.C.P. 26 to 37, inclusive, ~~{unless the chairman, in his discretion, orders discovery upon his own motion or, for good cause shown, upon a motion~~

~~by a party.]~~ *do not apply to matters before the commission. Upon the request of a party, for good cause shown, the chairman may allow discovery to the extent which he deems appropriate.*

**Sec. 85.** NAC 281.108 is hereby amended to read as follows:

281.108 ~~[Except as otherwise provided in NRS 281.477, before or during a hearing on the matter, the commission may grant a continuance upon its own motion or, for good cause shown, upon a motion by a party.]~~ *Upon the request of the subject of an ethics complaint, the executive director may continue a hearing before the commission concerning the ethics complaint for a period not to exceed 30 days. Upon its own motion, or for good cause shown upon the motion of the subject of an ethics complaint, the commission may continue the hearing in a matter for a period not to exceed 30 days. A notice of continuance must set forth the reason for the continuance and the new hearing date.*

**Sec. 86.** NAC 281.117 is hereby amended to read as follows:

281.117 1. ~~[If an opinion rendered by the commission pursuant to subsection 1 of NRS 281.511 is confidential and there has not been an express or implied waiver of that confidentiality, the commission will publish a hypothetical opinion abstracted from the confidential opinion not later than 45 days after the date that the confidential opinion is issued to the party who requested the opinion.~~

~~—2.—~~ ~~Each] 1.~~ *A copy of a written opinion published by the commission on a matter will be served, by certified mail, upon each party to that matter.*

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

3. *A copy of each* opinion published by the commission will be ~~kept on file in the office of the secretary of state and copies distributed~~ *delivered* to:

(a) *The secretary of state;*

(b) The state library and each law library and public library located in this state;

~~[(b) Each county clerk and city clerk in this state;]~~

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

(d) ~~[The department of personnel of the state government and the corresponding department of each political subdivision of the state, if the opinion relates to the conduct of a public officer or employee of the state or a political subdivision; and~~

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

**Sec. 87.** NAC 281.121 is hereby amended to read as follows:

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

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

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

2. Except as otherwise provided in this section, the cost of obtaining copies of public records from the commission is ~~10~~ 25 cents for each page of the public record that is copied.

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

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

(b) Pay for copies of the transcript pursuant to the provisions of NRS 239.053 or, with the approval of the commission, pursuant to arrangements made directly with the court reporter.  ~~[, if the provisions of paragraph (a) do not otherwise apply.]~~

4. A person may not obtain copies of a transcript concerning a matter that was recorded by the commission unless the contents of the proceedings concerning that matter may be disclosed to that person pursuant to the provisions of NRS 281.411 to 281.581, inclusive, and NAC 281.093 to ~~[281.153, inclusive.]~~ *281.108, inclusive, and sections 36 to 41, inclusive, of this regulation.*

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

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

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

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

**Sec. 88.** NAC 281.019, 281.065, 281.096, 281.098, 281.111, 281.113, 281.116, 281.119, 281.123, 281.126, 281.128, 281.131, 281.133, 281.136, 281.138, 281.141, 281.143, 281.146, 281.148, 281.151, 281.153, 281.175 and 281.185 are hereby repealed.

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**TEXT OF REPEALED SECTIONS**

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**281.019 “Request for an opinion” and “request” defined. (NRS 281.471)** Except as otherwise provided in NAC 281.126 and 281.141, “request for an opinion” and “request” mean a request for an opinion that is made pursuant to NRS 281.511, 294A.345 or 294A.346.

**281.065 Meetings: Scheduling; notification.**

1. Meetings of the commission will be scheduled by the chairman or upon the request of two members of the commission.

2. Each member of the commission must be notified of any meeting at least 3 working days before the meeting.

**281.096 Addressing and filing written communications and documents. (NRS 281.471)**

Each written communication or document sent to the commission:

1. Must be addressed to the office of the commission; and
2. Except as otherwise provided in NAC 281.123 to 281.136, inclusive, shall be deemed to be filed only when the written communication or document is received at the office of the commission.

**281.098 Investigation by commission and staff. (NRS 281.471)**

1. The commission and its staff may conduct an investigation related to a request for an opinion according to those methods that the commission determines are reasonable and necessary under the circumstances surrounding the request.

2. For the purposes of subsection 2 of NRS 281.511:

(a) The commission may conduct an investigation before or after the commission has made a determination that there is just and sufficient cause to render an opinion in the matter; and

(b) The investigation may go beyond the issues or facts presented in the request.

**281.111 Hearings: Order of proceedings; receipt of testimony; participation and conduct by parties and other persons; stipulations; failure to appear. (NRS 281.471)**

1. Except as otherwise provided in NRS 281.477 and 281.511, the commission will determine, as it deems appropriate, the order of proceedings for a hearing on the matter. The commission:

(a) Before the hearing, may notify the parties of the order of proceedings for the hearing; and

(b) At the hearing, will inform the parties of the order of proceedings for the hearing and will ensure that the parties acknowledge an understanding of the order of proceedings before the commission addresses any substantive issues at the hearing.

2. All testimony received at the hearing must be given under oath or affirmation.

3. Except as otherwise provided in NRS 281.477 and 281.511, at the hearing, a party may, to the extent allowed by the commission:

(a) Appear before the commission;

(b) Participate in the proceedings;

(c) Be represented by counsel;

(d) Introduce evidence and testimony;

(e) Examine and cross-examine witnesses; and

(f) Make arguments.

4. Except as otherwise provided in subsection 5, the parties may, with the approval of the commission, stipulate to any fact in issue by:

(a) Introducing a written stipulation in evidence as an exhibit; or

(b) Entering oral statements on the record.

5. The commission may, at any time, demand proof of any facts that have been stipulated by requiring one or more parties to present evidence concerning such facts.

6. If a party fails to appear at the hearing, the commission may:

(a) Draw any negative inferences from the party's failure to appear that are reasonable under the circumstances surrounding the request; and

(b) Proceed to hear the merits of the request and dispose of the request based upon the evidence presented at the hearing.

7. Each party, counsel and all other persons at the hearing shall conduct themselves in a respectful and orderly manner.

8. If the hearing is conducted in a location where smoking is permitted, a person may not smoke at the hearing while it is in session unless permitted by the chairman.

**281.113 Confidentiality of proceedings. (NRS 281.471)**

1. Except as otherwise provided in this section, if the proceedings of the commission are confidential pursuant to NRS 281.477 or 281.511:

(a) The commission will close the proceedings to the public. On the agenda for the meeting of the commission, such proceedings may be identified by the number of the request only, and

the name of the party who is the subject of the request and any other identifying information that is not relevant to the proceedings must be kept confidential.

(b) Each party and counsel for each party may be present at the proceedings unless the proceedings involve the deliberations of the commission and the commission, in its discretion, excludes such persons from the proceedings.

(c) Any witness, other than a party, must be present for only that portion of the proceedings during which the witness is testifying. The chairman shall instruct each such witness that the witness may speak publicly concerning the witness's own testimony, but that the witness may not speak publicly concerning any statement made by a member of the commission or any other person who was present during the testimony of the witness.

2. A party who is the subject of the request may require that any confidential proceedings concerning the request be open to the public, unless the proceedings involve the deliberations of the commission and the commission, in its discretion, determines that those proceedings should not be open to the public.

3. If proceedings concern a request that is made pursuant to subsection 1 of NRS 281.511, the commission will open such proceedings to the public if:

(a) The commission consolidates the request with a request that is made pursuant to paragraph (b) of subsection 2 of NRS 281.511;

(b) The requests concern the same conduct of the party who is the subject of those requests;  
and

(c) The commission determines that there is just and sufficient cause to render an opinion in the matter.

4. If proceedings are opened to the public pursuant to subsection 3, the commission will disclose each request, any motion, evidence or record of a hearing related to each request, and the contents of the opinion rendered in the matter.

**NAC 281.116 Contents of opinion; service upon parties; time for issuing opinions; extensions of time. (NRS 281.471)**

1. If an opinion is rendered by the commission, the commission's staff shall prepare the opinion. Except as otherwise provided in NRS 281.477, the opinion must:

- (a) Include written findings of fact and conclusions of law;
- (b) State plainly each violation alleged against the party who is the subject of the opinion, the legal citation for each such violation and the facts that support each such violation;
- (c) Be numbered and dated and signed by the chairman; and
- (d) Be served, by certified mail, upon the party who requested the opinion and the party who is the subject of the opinion.

2. Except as otherwise provided in NRS 281.477, the commission will issue an opinion, as provided in subsection 1, not later than 60 days after the date of the final hearing on the matter, unless the commission, in its discretion, determines to extend the 60-day period. The commission will notify the parties of any determination to extend the 60-day period.

**NAC 281.119 Maintenance of files. (NRS 281.471)** The commission will maintain the following separate and segregated sets of files related to requests for opinions:

- 1. Files that are confidential pursuant to NRS 281.477 or 281.511; and
- 2. Files that are not confidential pursuant to NRS 281.477 or 281.511 or NAC 281.113 and files for which there has been an express or implied waiver of confidentiality.

**281.123 Definitions. (NRS 281.471)** As used in NAC 281.123 to 281.136, inclusive, unless the context otherwise requires, the words and terms defined in NAC 281.126, 281.128 and 281.131 have the meanings ascribed to them in those sections.

**281.126 “Request for an opinion” and “request” defined. (NRS 281.471)** “Request for an opinion” and “request” mean a request for an opinion that is made pursuant to NRS 294A.345 or 294A.346.

**281.128 “Requester” defined. (NRS 281.471)** “Requester” means a person who makes a request for an opinion pursuant to NRS 294A.345 or 294A.346.

**281.131 “Subject of the request” defined. (NRS 281.471)** “Subject of the request” means a person who is the subject of a request for an opinion that is made pursuant to NRS 294A.345 or 294A.346.

**281.133 Requirements and procedure for filing request; notification of parties; sanctions for failing to include evidence or list witnesses. (NRS 281.471)**

1. To request an opinion pursuant to NRS 294A.345 or 294A.346, a requester must:
  - (a) Make the request, in writing, on a form provided by the commission;
  - (b) Include with the request:
    - (1) All evidentiary materials and arguments in support of the request; and
    - (2) A list containing the name, address and telephone number of each person who will or could provide testimony in support of the request; and
  - (c) File at the office of the commission:
    - (1) The original form and all evidentiary materials required by this subsection; and
    - (2) Nine copies of the original form and all evidentiary materials.

2. A request shall be deemed to have not been filed with the commission and will be returned to the requester if the request:

(a) Is not on the form provided by the commission;

(b) Is not fully completed or does not include the evidentiary materials or number of copies required by the provisions of subsection 1; or

(c) Does not otherwise comply with the provisions of subsection 1.

3. If a request is properly filed pursuant to this section, the commission's staff shall:

(a) Notify the subject of the request in accordance with subsection 3 of NRS 281.477;

(b) Notify the requester by telephone of the date, time and place of the hearing on the matter and confirm that notice, in writing, after the telephonic notice; and

(c) Include with the written notices that are provided to the subject of the request and the requester pursuant to this subsection:

(1) Copies of NRS 281.477, 281.551, 294A.345 and 294A.346; and

(2) Copies of the relevant provisions of NAC 281.005 to 281.185, inclusive.

4. At the hearing on the matter, the commission may refuse to allow any evidence that was not included with the request and may refuse to allow any testimony from a person who was not listed as a potential witness with the request.

**281.136 Requirements and procedure for filing response; sanctions for failing to include evidence or list witnesses. (NRS 281.471)**

1. If a request for an opinion is properly filed pursuant to NAC 281.133, the subject of the request shall file a response at the office of the commission in accordance with subsection 4 of NRS 281.477 and the provisions of this section.

2. The response must be in writing and must include:

(a) All evidentiary materials and arguments in support of the response; and

(b) A list containing the name, address and telephone number of each person who will or could provide testimony in support of the response.

3. The original response and all evidentiary materials must be transmitted by facsimile machine, delivered by personal service or placed in overnight mail by the close of business on the second business day following receipt of notice of the request pursuant to subsection 3 of NRS 281.477. In addition, if the original response and evidentiary materials are delivered by personal service or placed in overnight mail, the delivery or mailing must include nine copies of the original response and all evidentiary materials.

4. A response shall be deemed to have not been filed with the commission and will be returned to the subject of the request if the response does not include the evidentiary materials or number of copies required by the provisions of this section or does not otherwise comply with the provisions of this section.

5. The subject of the request shall provide a copy of his response and evidentiary materials to the requester. The copy of the response and evidentiary materials must be transmitted by facsimile machine, delivered by personal service or placed in overnight mail on the same day that the response and evidentiary materials are transmitted, delivered or mailed to the commission.

6. At the hearing on the matter, the commission may refuse to allow any evidence that was not included with the response and may refuse to allow any testimony from a person who was not listed as a potential witness with the response.

**281.138 Definitions. (NRS 281.471)** As used in NAC 281.138 to 281.153, inclusive, unless the context otherwise requires, the words and terms defined in NAC 281.141, 281.143 and 281.146 have the meanings ascribed to them in those sections.

**281.141 “Request for an opinion” and “request” defined. (NRS 281.471)** “Request for an opinion” and “request” mean a request for an opinion that is made pursuant to NRS 281.511.

**281.143 “Requester” defined. (NRS 281.471)** “Requester” means a person who makes a request for an opinion pursuant to NRS 281.511.

**281.146 “Subject of the request” defined. (NRS 281.471)** “Subject of the request” means a person who is the subject of a request for an opinion that is made pursuant to NRS 281.511.

**281.148 Requirements and procedure for filing request; notification of parties. (NRS 281.471)**

1. To request an opinion pursuant to NRS 281.511, a requester must:
  - (a) Make the request, in writing, on a form provided by the commission;
  - (b) Sign the form; and
  - (c) File the form and all evidentiary materials required by this section at the office of the commission.
  
2. If the request is made pursuant to paragraph (b) of subsection 2 of NRS 281.511, the form must include, immediately before the signature line for the requester, a statement indicating to the requester that, by signing the form, he affirms that:
  - (a) The accusation or information contained in the request is true;
  - (b) He did not submit the request in bad faith or with a vexatious purpose; and

(c) He understands that the commission may impose penalties upon him pursuant to NRS 281.551 if the commission 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.

3. In addition to the requirements of subsections 1 and 2, a request must include:

(a) All evidentiary materials reasonably available to the requester that support the request or would assist the commission in reviewing the request; and

(b) If the requester has knowledge of other persons who will or could provide testimony related to the request, a list containing the name, address and telephone number of each such person.

4. Upon receipt of a properly filed request, the commission's staff shall assign a number to the request and shall provide written acknowledgment of receipt of the request and the number assigned to the request to the requester and the subject of the request. If the request is made pursuant to paragraph (b) of subsection 2 of NRS 281.511, the written acknowledgment provided to the subject of the request must include a copy of the request and all evidentiary materials filed by the requester.

**281.151 Determination of just and sufficient cause to render opinion; notification of parties; expansion of scope of matter. (NRS 281.471)**

1. If a request that is made pursuant to paragraph (b) of subsection 2 of NRS 281.511 is properly filed, the commission will review the request to determine whether there is just and sufficient cause to render an opinion in the matter.

2. Before the commission determines whether there is just and sufficient cause to render an opinion in the matter, the subject of the request and counsel may appear at the hearing and, to the

extent allowed by the commission, may present evidence, testimony and argument concerning the request if, not later than 10 days before the date of the hearing, the subject of the request files a written request at the office of the commission to present such evidence, testimony and argument at the hearing.

3. In determining whether there is just and sufficient cause to render an opinion in the matter, the commission:

(a) Will consider the information provided with the request, any information gathered by the commission and its staff, and any evidence, testimony or argument presented by the subject of the request;

(b) Will not consider information, evidence, testimony or argument presented by a person other than the subject of the request unless the commission, in its discretion, allows such information, evidence, testimony or argument to be presented;

(c) May postpone or defer its determination pending receipt of any additional information, evidence, testimony or argument that is necessary to make a reasoned determination; and

(d) May consider, without limitation:

(1) Whether the commission has jurisdiction over the matter;

(2) Whether the commission previously has rendered an opinion concerning an analogous matter;

(3) Whether the matter presents important or novel questions of fact or law; and

(4) Whether the matter presents important or novel questions of public interest or public policy.

4. If the commission determines that there is not just and sufficient cause to render an opinion in the matter, the commission will notify the requester and the subject of the request and

will include with that notice a statement which sets forth the reasons that just and sufficient cause was not found in the matter.

5. If the commission determines that there is just and sufficient cause to render an opinion in the matter, the commission:

(a) Will notify the requester and the subject of the request and will include with that notice a statement which sets forth the questions and issues that the commission intends to consider in its review of the matter; and

(b) May direct its staff to assist in the preparation and presentation of the matter at future proceedings before the commission. If the commission so directs its staff, the commission will inform the requester and the subject of the request of its decision in the notice provided pursuant to paragraph (a).

6. At any time before or after the commission has determined that there is just and sufficient cause to render an opinion in the matter, the commission may reformulate any questions or issues in the matter or add questions or issues to the matter that go beyond the issues or facts presented in the request, if such reformulation of or addition to the questions or issues in the matter is reasonably supported by information gathered during investigation of the matter or evidence or testimony presented during the proceedings. If the commission decides to reformulate or add to the questions or issues in the matter, the commission will provide notice of its decision to the subject of the request.

**281.153 Initiation of request by commission; determination of just and sufficient cause to render opinion; notification of subject of request; expansion of scope of matter. (NRS 281.471)**

1. The commission may, in confidential proceedings and upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281.511, request an opinion concerning the propriety of conduct by a public officer or employee. If the commission initiates such a request, the commission will notify the public officer or employee who is the subject of the request and will include with that notice a statement which:

(a) Sets forth the general allegations that the commission will consider at the hearing to determine whether there is just and sufficient cause to render an opinion in the matter; and

(b) Informs the subject of the request that such a hearing is confidential unless there is an express or implied waiver of that confidentiality by the subject of the request pursuant to NRS 281.511.

2. Before the commission determines whether there is just and sufficient cause to render an opinion in the matter, the subject of the request and counsel may appear at the hearing and, to the extent allowed by the commission, may present evidence, testimony and argument concerning the request if, not later than 10 days before the date of the hearing, the subject of the request files a written request at the office of the commission to present such evidence, testimony and argument at the hearing.

3. In determining whether there is just and sufficient cause to render an opinion in the matter, the commission:

(a) Will consider any information gathered by the commission and its staff and any evidence, testimony or argument presented by the subject of the request;

(b) Will not consider information, evidence, testimony or argument presented by a person other than the subject of the request unless the commission, in its discretion, allows such information, evidence, testimony or argument to be presented;

(c) May postpone or defer its determination pending receipt of any additional information, evidence, testimony or argument that is necessary to make a reasoned determination; and

(d) May consider, without limitation:

(1) Whether the commission has jurisdiction over the matter;

(2) Whether the commission previously has rendered an opinion concerning an analogous matter;

(3) Whether the matter presents important or novel questions of fact or law; and

(4) Whether the matter presents important or novel questions of public interest or public policy.

4. If the commission determines that there is not just and sufficient cause to render an opinion in the matter, the commission will notify the subject of the request and will include with that notice a statement which sets forth the reasons that just and sufficient cause was not found in the matter.

5. If the commission determines that there is just and sufficient cause to render an opinion in the matter, the commission:

(a) Will notify the subject of the request and will include with that notice a statement which sets forth the questions and issues that the commission intends to consider in its review of the matter and which informs the subject of the request that the matter is no longer confidential; and

(b) May direct its staff to assist in the preparation and presentation of the matter at future proceedings before the commission. If the commission so directs its staff, the commission will inform the subject of the request of its decision in the notice provided pursuant to paragraph (a).

6. At any time before or after the commission has determined that there is just and sufficient cause to render an opinion in the matter, the commission may reformulate any questions or issues

in the matter or add questions or issues to the matter that go beyond the issues or facts presented in the request, if such reformulation of or addition to the questions or issues in the matter is reasonably supported by information gathered during investigation of the matter or evidence or testimony presented during the proceedings. If the commission decides to reformulate or add to the questions or issues in the matter, the commission will provide notice of its decision to the subject of the request.

**281.175 Form used to submit statements.** The statement of financial disclosure must be on a form which is substantially the same as Form 0-4738.

**281.185 Filing of statements by public officer who serves at pleasure of appointing authority which has no fixed term of office.** A public officer who serves at the pleasure of an appointing authority which has no fixed term of office shall file a statement of financial disclosure, in addition to the statement initially required:

1. Every 2 years after his appointment; and
2. Within 90 days before the termination of his appointment if he has notice of the termination or, if he is discharged without notice, within 10 days after his discharge.