

**ADOPTED REGULATION OF THE
COMMISSION ON ETHICS**

LCB File No. R134-10

Effective October 26, 2011

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

AUTHORITY: §§1-51, NRS 281A.290.

A REGULATION relating to the Commission on Ethics; providing procedures for the request and rendering of opinions by the Commission related to the employment of public officers and employees by certain regulated businesses; revising the provisions governing opinions requested by third parties or upon the Commission’s own motion; making various other changes relating to ethics in government; and providing other matters properly relating thereto.

Section 1. Chapter 281A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *“First party request for an opinion” means a request for an opinion filed pursuant to subsection 1 of NRS 281A.440.*

Sec. 3. *“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.

Sec. 4. *The Commission will only consider those requests for an opinion filed pursuant to subsection 6 of NRS 281A.550 that are submitted to the Commission in proper form.*

Sec. 5. *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.*

Sec. 6. *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.*

Sec. 7. 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 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.

Sec. 8. 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.

Sec. 9. NAC 281A.010 is hereby amended to read as follows:

281A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC ~~[281A.015]~~ *281A.020* to 281A.105, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 10. NAC 281A.035 is hereby amended to read as follows:

281A.035 “Hearing” means a hearing concerning:

1. The merits of ~~[an ethics complaint; or~~
- ~~—2. An advisory]~~ *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.*

Sec. 11. NAC 281A.040 is hereby amended to read as follows:

281A.040 “Information related to the ~~[ethics complaint]~~ *third party request for an opinion*” includes, without limitation:

1. ~~[An ethics complaint;]~~ *A third party request for an opinion;*
2. All investigative materials and information related to the ~~[ethics complaint;]~~ *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 ~~[ethics complaint;]~~ *third party request for an opinion*; and
4. The record of the proceedings of ~~[a]~~ *an investigatory* panel related to the ~~[ethics complaint;]~~ *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.

Sec. 12. NAC 281A.050 is hereby amended to read as follows:

281A.050 **1.** “Opinion” means ~~[a]~~ *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.*

Sec. 13. NAC 281A.055 is hereby amended to read as follows:

281A.055 ~~[“Panel”]~~ *“Investigatory panel” or “panel”* has the meaning ascribed to it in NRS ~~[281A.140;]~~ *281A.108*.

Sec. 14. NAC 281A.060 is hereby amended to read as follows:

281A.060 “Party” means the subject ~~[of the request]~~ and any other person who the Commission *reasonably* determines will be treated as a party in ~~[the]~~ *a* matter before the

Commission. ~~[The term does not include the requester of an ethics complaint unless the Commission, in its discretion, determines otherwise.]~~

Sec. 15. NAC 281A.075 is hereby amended to read as follows:

281A.075 “Proceedings of ~~[a]~~ *an investigatory* panel” means ~~[a]~~ :

1. A review and determination by ~~[a]~~ *an investigatory* panel ~~[of the recommendation of the Executive Director concerning an ethics complaint]~~ *pursuant to NAC 281A.405* as to whether the Commission has jurisdiction over ~~[an ethics complaint or]~~ *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 ~~[exists]~~ for the Commission to render an opinion ~~[pursuant to subsection 2 of NRS 281A.440.]~~ *on a matter presented in a third party request for an opinion.*

↪ For the purposes of this chapter, the proceedings of ~~[a]~~ *an investigatory* panel do not constitute a hearing.

Sec. 16. NAC 281A.085 is hereby amended to read as follows:

281A.085 “Record of the proceedings of ~~[a]~~ *an investigatory* panel” means written or audio documentation memorializing the deliberations of ~~[a]~~ *an investigatory* panel during ~~[its]~~ *the* proceedings ~~[]~~ *of the investigatory panel.*

Sec. 17. NAC 281A.090 is hereby amended to read as follows:

281A.090 “Requester” means a person or group of persons who file with the Commission ~~[an ethics complaint pursuant to subsection 2 of NRS 281A.440.]~~ *a third party request for an opinion.*

Sec. 18. NAC 281A.100 is hereby amended to read as follows:

281A.100 “Subject” means a public officer or public employee:

1. ~~[Against]~~ *With respect to* whom ~~[an ethics complaint]~~ *a third party request for an opinion* has been filed ; ~~[pursuant to subsection 2 of NRS 281A.440; or]~~
2. Who files a *first party* request for an ~~[advisory]~~ opinion ~~[pursuant to subsection 1 of NRS 281A.440.] ; or~~
3. *Who files a request for an opinion pursuant to subsection 6 of NRS 281A.550.*

Sec. 19. NAC 281A.155 is hereby amended to read as follows:

281A.155 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.

Sec. 20. NAC 281A.185 is hereby amended to read as follows:

281A.185 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 ~~[ethics complaint and advisory matter]~~ *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.

Sec. 21. NAC 281A.255 is hereby amended to read as follows:

281A.255 1. Each written communication or document filed with the Commission must:

- (a) Be in proper form;
- (b) Be clearly and legibly typed or printed on 8 1/2- by 11-inch paper, on one side only;
- (c) Be addressed to the principal office of the Commission; and

(d) Include any duplicate copy required to be included with the form, as specified on the form.

2. Except as otherwise provided in ~~[NAC 281A.615:~~
~~—(a) The]~~ *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.

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

Sec. 22. NAC 281A.265 is hereby amended to read as follows:

281A.265 1. Motions related to ~~[an ethics complaint]~~ *a third party request for an opinion* may only be made:

(a) After ~~[a]~~ *an investigatory* panel has made a ~~[final]~~ determination that *there is* just and sufficient cause ~~[exists]~~ 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 ~~[at and]~~ *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.

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 ~~{matter}~~ *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 ~~{final}~~ opinion of the Commission is served.

Sec. 23. NAC 281A.275 is hereby amended to read as follows:

281A.275 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,}~~ *a third party request for an opinion*, the Commission may, in lieu of holding a hearing, resolve a matter before the Commission with a ~~{stipulated agreement,}~~ *stipulation, agreed settlement, consent order or default as authorized pursuant to NRS 233B.121*. Such a ~~{stipulated agreement}~~ *resolution* must be in writing or made by oral statement on the record.

Sec. 24. NAC 281A.285 is hereby amended to read as follows:

281A.285 1. A subject of ~~[an ethics complaint]~~ *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. A subject of ~~[an ethics complaint]~~ *a third party request for an opinion* 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 281A.300 must be made in the manner provided by Rule 45 of the Nevada Rules of Civil Procedure.

Sec. 25. NAC 281A.300 is hereby amended to read as follows:

281A.300 A subject may retain legal counsel to represent ~~[his]~~ *him* or her ~~[interest]~~ during:

1. Any investigation of ~~[an ethics complaint;]~~ *a third party request for an opinion;* or
2. Any hearing.

Sec. 26. NAC 281A.350 is hereby amended to read as follows:

281A.350 The Commission will only consider ~~[those requests]~~ *a first party request for an opinion filed* by a public officer or public employee ~~[for an advisory opinion which are]~~ *that is* submitted to the Commission in proper form.

Sec. 27. NAC 281A.353 is hereby amended to read as follows:

281A.353 1. Except as otherwise provided in subsection 2, a *first party* request for an opinion ~~[pursuant to subsection 1 of NRS 281A.440]~~ will be heard by the Commission within 45 days after receipt of the *first party request for an opinion* by the Commission.

2. If a public officer or public employee who ~~[requests]~~ *files a first party request for* an opinion ~~[pursuant to subsection 1 of NRS 281A.440]~~ 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. ~~[Such a]~~ 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.

Sec. 28. NAC 281A.355 is hereby amended to read as follows:

281A.355 At any time before the Commission renders an ~~[advisory]~~ opinion ~~[pursuant to NRS 281A.440,]~~ *relating to a first party request for an opinion*, the public officer or public employee who filed the *first party* request for ~~[the advisory]~~ *an* opinion may withdraw the *first party* request *for an opinion* by providing a notice of withdrawal to the Commission.

Sec. 29. NAC 281A.360 is hereby amended to read as follows:

281A.360 The Executive Director shall confer with the Commission Counsel to determine jurisdiction concerning ~~[requests]~~ for *a first party request for* an ~~[advisory]~~ opinion. If the Commission Counsel determines that the Commission lacks jurisdiction in the matter, the Executive Director shall so notify the requesting public officer or public employee. A public officer or public employee who receives a notice pursuant to this section may request the Commission to review the determination regarding jurisdiction. Such a request must be submitted to the principal office of the Commission in writing not later than 10 days after the date on which the public officer or public employee received notification.

Sec. 30. NAC 281A.365 is hereby amended to read as follows:

281A.365 1. The Chair or presiding officer of a hearing concerning a *first party* request for an ~~advisory~~ opinion shall:

(a) Ascertain whether the subject of the *first party* request for an ~~advisory~~ 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 ~~advisory~~ opinion and all persons whose testimony will be taken.

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

3. The Chair or presiding officer shall allow the subject of the *first party* request for an ~~advisory~~ 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 ~~advisory~~ 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 ~~advisory~~ 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 ~~advisory~~ 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 ~~[advisory]~~ opinion on the matter; and

(c) Submit a copy of the ~~[advisory]~~ opinion to the subject.

7. The ~~[advisory]~~ opinion rendered by the Commission shall be binding upon the subject of the ~~[advisory]~~ *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 ~~[advisory]~~ opinion and the information presented during the proceedings set forth in this section must be kept confidential, unless the subject of the ~~[advisory]~~ opinion acts in a manner set forth in subsection 7 of NRS 281A.440 to waive the confidentiality of such information.

Sec. 31. NAC 281A.400 is hereby amended to read as follows:

281A.400 1. The Commission will only consider ~~[ethics complaints submitted]~~ *a third party request for an opinion filed* pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 which ~~[are filed]~~ *is submitted* in proper form with the Executive Director at the principal office of the Commission.

2. ~~[An ethics complaint submitted]~~ *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 ~~[an ethics complaint]~~ *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. ~~[An ethics complaint submitted]~~ *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 ~~[ethics complaint]~~ *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 ~~[an ethics complaint]~~ *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 ~~[of the ethics complaint]~~ may only withdraw the ~~[ethics complaint]~~ *third party request for an opinion* with the consent of the Executive Director.

5. A request to withdraw ~~[an ethics complaint submitted]~~ *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 ~~[ethics complaint.]~~ *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 ~~[ethics complaint.]~~ *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 ~~[by itself.]~~ *as the only evidence to support the allegation.*

Sec. 32. NAC 281A.403 is hereby amended to read as follows:

281A.403 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 ~~[an ethics complaint]~~ *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 ~~[by itself.]~~ *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 ~~[an ethics complaint]~~ *a third party request for an opinion* upon its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.

Sec. 33. NAC 281A.405 is hereby amended to read as follows:

281A.405 1. The Executive Director shall confer with the Commission Counsel to determine whether:

(a) The Commission has jurisdiction concerning ~~[an ethics complaint submitted]~~ *a third party request for an opinion filed* pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440; and

(b) The ~~[ethics complaint]~~ *third party request for an opinion* was properly filed with the Commission in accordance with NAC 281A.400.

2. If the Executive Director and Commission Counsel determine that the Commission has jurisdiction concerning the ~~[ethics complaint]~~ *third party request for an opinion* and that the ~~[ethics complaint]~~ *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 requester if the Executive Director and Commission Counsel determine that:

(a) The Commission lacks jurisdiction concerning the ~~[ethics complaint]~~ *third party request for an opinion* pursuant to subsection 1; or

(b) The ~~[ethics complaint]~~ *third party request for an opinion* was not properly filed with the Commission in accordance with NAC 281A.400.

4. A person who receives a notice pursuant to paragraph (a) of subsection 3 may request a review of the determination regarding jurisdiction by ~~[a]~~ *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 ~~[a]~~ *an investigatory* panel to conduct the review of the determination regarding jurisdiction.

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

Sec. 34. NAC 281A.410 is hereby amended to read as follows:

281A.410 1. Once ~~[an ethics complaint]~~ *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 ~~[ethics complaint.]~~ *third party request for an opinion*, the Executive Director shall forthwith notify the public officer or public employee who is the subject of the ~~[ethics complaint]~~ *third party request for an opinion* and provide the public officer or public employee an opportunity to respond to the allegations contained in the ~~[ethics complaint.]~~ *third party*

request for an opinion. Such a notification must be in writing and sent to the subject of the ~~[ethics complaint]~~ *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 ~~[an ethics complaint]~~ *a third party request for an opinion* made pursuant to this section must include ~~[:]~~, *without limitation*:

(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 chapter 281A of NRS;

(c) A copy of this chapter; ~~[and]~~

(d) An outline of the process used by the Commission to resolve ~~[ethics complaints;]~~ *third party requests for opinions*; and

(e) A form prescribed by the Commission for waiving the time limits set forth in subsections ~~[3 and]~~ 4, 5 and 6 of NRS 281A.440.

3. The subject of *a third party request for an* ~~[ethics complaint]~~ *opinion* may, *within the time limit set forth in subsection 3 of NRS 281A.440*, file *with the Commission* a written response to the ~~[ethics complaint with the Commission. Except as otherwise provided in this subsection, if the subject of an ethics complaint files a response with the Commission, the response must be filed not later than 10 days after the date on which he received the notice of the ethics complaint.]~~ *allegations contained in the third party request for an opinion*. If the subject of ~~[an ethics complaint]~~ *a third party request for an opinion* files with the Commission a waiver of the time limits set forth in subsections ~~[3 and]~~ 4, 5 and 6 of NRS 281A.440, the Executive

Director may , *for good cause shown*, authorize ~~[the response to be filed not later than 20 days after the date on which the subject of an ethics complaint received the notice of the ethics complaint.]~~ *one or more extensions, of not more than 30 days each, of the time limit set forth in subsection 3 of NRS 281A.440 for the subject to file a written response to the allegations contained in the third party request for an opinion.*

Sec. 35. NAC 281A.415 is hereby amended to read as follows:

281A.415 1. The Executive Director may investigate relevant issues and facts beyond those presented in ~~[an ethics complaint]~~ *a third party request for an opinion* in determining his or her written recommendation of whether *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion on the ~~[ethics complaint.]~~ *third party request for an opinion.*

2. If the Executive Director includes issues and facts beyond those presented in the ~~[ethics complaint]~~ *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 must 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 ~~[NAC 281A.410.]~~ *NRS 281A.440.*

Sec. 36. NAC 281A.420 is hereby amended to read as follows:

281A.420 1. Except as otherwise provided in NRS 281A.440, until the conclusion of the proceedings of ~~[a]~~ *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 ~~[an ethics complaint]~~ *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 ~~[ethics complaint]~~ *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 ~~[the]~~ *an investigatory* panel on ~~[an ethics complaint,]~~ *a third party request for an opinion*, the information related to the ~~[ethics complaint]~~ *third party request for an opinion* is a public record available for public review during normal business hours at the principal office of the Commission.

Sec. 37. NAC 281A.425 is hereby amended to read as follows:

281A.425 The proceedings of ~~[a]~~ *an investigatory* panel to determine whether *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion on ~~[an ethics complaint]~~ *a third party request for an opinion* are confidential and closed to all persons except the parties to the ~~[complaint]~~ *third party request for an opinion* and any other person the *investigatory* panel deems necessary to the proceedings ~~[:]~~ *of the investigatory panel.*

Sec. 38. NAC 281A.430 is hereby amended to read as follows:

281A.430 At ~~[its]~~ *the* proceedings ~~[on an ethics complaint, a]~~ *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 ~~[ethics complaint]~~ *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 ~~[ethics complaint]~~ *third party request for an opinion.*

Sec. 39. NAC 281A.435 is hereby amended to read as follows:

281A.435 1. A finding by ~~{a}~~ *an investigatory* panel as to whether *there is* just and sufficient cause ~~{exists}~~ for the Commission to render an opinion on ~~{an ethics complaint}~~ *a third party request for an opinion* must be based on credible evidence.

2. A finding by ~~{a}~~ *an investigatory* panel that ~~{no}~~ *there is not* just and sufficient cause ~~{exists}~~ for the Commission to render an opinion on ~~{an ethics complaint}~~ *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 ~~{a}~~ *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 ~~{by itself.}~~ *as the only evidence to support the allegation*.

Sec. 40. NAC 281A.440 is hereby amended to read as follows:

281A.440 A ~~{final}~~ determination issued by ~~{a}~~ *an investigatory* panel pursuant to NRS 281A.220 which specifies that *there is* just and sufficient cause ~~{exists}~~ for the Commission to render an opinion ~~{pursuant to an ethics complaint}~~ *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 ~~{existed}~~ for the Commission to render an opinion.

Sec. 41. NAC 281A.445 is hereby amended to read as follows:

281A.445 The Executive Director shall provide and make arrangements for a record to be made of any proceedings of ~~[a]~~ *an investigatory* panel.

Sec. 42. NAC 281A.450 is hereby amended to read as follows:

281A.450 1. Before the Commission holds a hearing concerning ~~[an ethics complaint,]~~ *a third party request for an opinion*, the Commission must 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 ~~[subsection]~~ *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 ~~[subsection]~~ *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.

Sec. 43. NAC 281A.455 is hereby amended to read as follows:

281A.455 The procedures for obtaining and granting a continuance of a hearing concerning ~~[an ethics complaint]~~ *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.

Sec. 44. NAC 281A.460 is hereby amended to read as follows:

281A.460 1. The Chair or presiding officer of a hearing concerning ~~[an ethics complaint]~~ *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 ~~[ethics complaint,]~~ *third party request for an opinion*, the response to the ~~[ethics complaint]~~ *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 ~~[ethics complaint,]~~ *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.

Sec. 45. NAC 281A.465 is hereby amended to read as follows:

281A.465 1. In conducting any hearing concerning ~~[an ethics complaint,]~~ *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.

Sec. 46. NAC 281A.470 is hereby amended to read as follows:

281A.470 If a subject fails to appear at a hearing concerning ~~[an ethics complaint]~~ *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 ~~[final]~~ determination of the *investigatory* panel that *there is* just and sufficient cause ~~[exists]~~ for the Commission to render an opinion may be considered as true.

Sec. 47. NAC 281A.510 is hereby amended to read as follows:

281A.510 Except as otherwise provided in NRS 281A.440 and NAC 281A.365 and 281A.460, *and section 7 of this regulation*, 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.

Sec. 48. NAC 281A.520 is hereby amended to read as follows:

281A.520 1. Except as otherwise provided in NRS 281A.440 and NAC 281A.365 and 281A.460, *and section 7 of this regulation*, 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.

Sec. 49. NAC 281A.550 is hereby amended to read as follows:

281A.550 1. A written opinion of the Commission must plainly state:

(a) If the opinion concerns ~~[an ethics complaint,]~~ *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 ~~[advisory]~~ 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, ~~or~~ question ~~or~~ *fact*, as applicable; and

~~(d)~~ (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 ~~advisory~~ opinion.

2. Each written opinion must be numbered, dated and signed by the Chair or presiding officer.

3. The Commission will:

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

(b) Post a copy of each written 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.

Sec. 50. NAC 281A.615 is hereby amended to read as follows:

281A.615 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. ~~and~~

~~—(c) A statement of financial disclosure required pursuant to NRS 281A.600.]~~

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

~~{3. A document specified in subsection 1 will be deemed to be filed with the Commission:
—(a) On the date that the statement of financial disclosure document was mailed if it was sent by certified mail; or
—(b) On the date that the statement of financial disclosure document was received by the Commission if the statement document was sent by regular mail, transmitted by facsimile machine or electronic means, or personally delivered to the Commission at the principal office of the Commission.}~~

Sec. 51. NAC 281A.015, 281A.030, 281A.095 and 281A.610 are hereby repealed.

TEXT OF REPEALED SECTIONS

281A.015 “Advisory opinion” defined. (NRS 281A.290) “Advisory opinion” means an opinion rendered by the Commission upon the request of a public officer or public employee pursuant to subsection 1 of NRS 281A.440.

281A.030 “Ethics complaint” defined. (NRS 281A.290) “Ethics complaint” means a request for an opinion submitted to the Commission pursuant to paragraph (a) or (b) of subsection 2 of NRS 281A.440 or initiated by the Commission on its own motion pursuant to paragraph (c) of subsection 2 of NRS 281A.440.

281A.095 “Statement of financial disclosure” defined. (NRS 281A.290) “Statement of financial disclosure” means the form which a public officer who is appointed to an office must file with the Commission pursuant to NRS 281A.600.

281A.610 “Entitled to receive annual compensation” interpreted. (NRS 281A.290) As used in NRS 281A.600, the Commission will interpret “entitled to receive annual compensation” to mean entitled to receive any remuneration, not including any reimbursement for lodging, meals or travel, or any combination thereof, which a public officer has a right to receive for serving in the office in question.

NOTICE OF ADOPTION OF REGULATION

The NEVADA COMMISSION ON ETHICS, adopted regulations assigned LCB File No. R134-10, which pertain to Chapter 281A of the Nevada Administrative Code on FEBRUARY 11, 2011. A copy of the regulations as adopted is attached hereto.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 LCB FILE NO. R134-10

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC).

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

The Commission posted a notice of workshop and notice of intent to act upon the proposed regulations, along with a copy of the proposed regulations, on its Website and in various other public locations as required by law to provide the public and other interested persons with access to that information. The locations included each of the State's county libraries, the State Library and Archives and various governmental buildings in northern and southern Nevada. The Commission conducted a public workshop on January 11, 2011 and public hearing on February 11, 2011 in Carson City, Nevada – video-conferenced to a public location in Las Vegas, Nevada. Public comment was solicited in writing or in person before and during each of these meetings. The Commission received no public input.

- 2. The number of persons who:**

Attended workshops:	Zero
Attended hearing:	Zero
Submitted written comments:	Zero

- 3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

The proposed regulations had no impact on businesses. The Commission's jurisdiction is limited to public officers and employees. Any persons affected were able to comment at the public workshop and hearing or in writing.

- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

There were no substantive amendments made to the regulation based upon the public comments made at the workshops, written comments and comments made at the adoption hearing. Rather, a few housekeeping, grammatical corrections and word choices were made to the language drafted by the Legislative Counsel Bureau based on comments made during the public workshop and hearing. The Commission did not adopt any substantive changes to the language proposed by the Legislative Counsel Bureau.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

Business which it is to regulate:

NO IMPACT ON BUSINESS

(1) Both adverse and beneficial effects:

Adverse effects: There are no adverse effects on any business.

Beneficial effects: There are no beneficial effects on any business.

(2) Both immediate and long-term effects:

Immediate effects: There are no immediate effects on any business.

Long-term effects: There are no long-term effects on any business.

Public:

(1) Both adverse and beneficial effects:

Adverse effects: There are no known adverse effects to the public by the adoption of this regulation.

Beneficial effects: The regulations bring the procedures of the Commission into compliance with the changes made to the applicable statutes from the 2009 Legislative Session (Senate Bill 160).

(2) Both immediate and long-term effects:

Immediate effects: There are no known immediate effects to the public.

Long-term effects: There are no known long-term effects to the public.

6. The estimated cost to the agency for enforcement of the adopted regulation.

Zero cost.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the

duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulations do not duplicate or overlap any other state, federal or other governmental agency's regulations.

- 8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

N/A

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulations do not establish any new fees.