

Nevada Ethics in Government Law



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updated 2011.10.10

Nevada Commission on Ethics Vision & Mission Statement

VISION

Principled public servants preserving
the public trust.

MISSION

To enhance the public's faith and confidence in government by ensuring that public officers and public employees uphold the public trust by committing themselves to avoid conflicts between their private interests and their public duties.

updated 2011.10.04

Nevada Commission on Ethics



updated 2011.10.04

Nevada Commission on Ethics

- Interprets and provides guidance on the provisions of the Ethics in Government Law
- Investigates and adjudicates requests for opinion
- Accepts filings of financial disclosure statements and other written disclosures required from certain public officers

updated 2011.10.04

But why do we need
an Ethics Commission at all?

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Because power corrupts, “[s]ociety’s demands for moral authority and character increase as the importance of the position increases.”

- John Adams, American Founding Father and second U.S. president (1735-1826)

updated 2011.10.04

Required Disclosures for Board & Commission members

Financial Disclosure Statement (FDS)

If you are 1) appointed to a position, 2) elected, or 3) appointed to an elective office, and are entitled to receive annual compensation of \$6,000 or more, you must file an FDS annually on or before January 15th.

updated 2011.10.04 NRS 281A.60 and NRS 281A.610

Required Disclosures for Board & Commission members

Acknowledgment of Statutory Ethical Standards (ACK)

Every public officer shall acknowledge that he has received, read and understands the statutory ethical standards at the beginning of his term and every even numbered year thereafter.

updated 2011.10.04 NRS 281A.500.1

Required Disclosures for Board & Commission members

Agency Representation Disclosure (ARD)

Any public officer who has represented or counseled a private person for compensation before a state agency of the Executive Branch shall make a disclosure of each such representation on a form prescribed by the Commission not later than January 15th of every year.

updated 2011.10.04 NRS 281A.410.3

Commission Practices-opinions & complaints

- Advisory opinions about past, present, or future conduct of public officers/employees (confidential first-party requests)
- Ethics complaints from the public about conduct of public officers/employees (third-party requests)

updated 2011.10.04

Advisory Opinion

“It would be impossible to draft an ethics legislation that would cover every possible case, but [] the saving grace of this legislation is that the individual in a ‘twilight’ area can request an opinion before taking an action.”

~ Senator Richard Bryan, Sponsor of SB 351 in the 1977 Session of the Nevada Legislature which allowed for first party opinion requests.

updated 2011.10.04

Citations for Ethics Complaints

Nevada’s Ethics in Government Laws are found in Chapter 281A of Nevada Revised Statutes. (NRS 281A.010 through 281A.660)

updated 2011.10.04

Commission Jurisdiction

Public officer:

- ✓ Elected or appointed to position established by Constitution, state statute, charter or ordinance of any county, city or other political subdivision.
- ✓ Exercises public power, trust, or duty
 - Exercises administrative discretion or formulates policy;
 - Expends public money; **and**
 - Administers laws and rules of a state, county, city or other political subdivision.

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NRS 281A.160

Commission Jurisdiction

- “State Legislator” or “Legislator” means a member of the Senate or Assembly of the State of Nevada.
- “Member of a local legislative body” means a member of a governing body of any political subdivision who introduces, votes upon or otherwise acts upon any matter of a permanent or general character which may reflect public policy and which is not typically restricted to identifiable persons or groups.

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Exclusions:

Public officer does not include:

- Judge or officer of the court
- Person serving in an advisory capacity
- County health officer
- State Legislators for the purposes of NRS 281A.420 (disclosure, abstention and related matters)

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Commission Jurisdiction

Public employees:

- ✓ Perform public duties for compensation from the state, county, city or political subdivision.
- ✓ Act under the direction or control of a public officer.

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NRS 281A.150

Commission Jurisdiction

Former public officers and employees:

as long as the commencement of proceedings against a former public officer or employee concerning the alleged violation is not time-barred by the TWO YEAR statute of limitations (after the alleged violation or reasonable discovery of the alleged violation).

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NRS 281A.280

“Nobody should be trying to line their pockets by serving in a public office.”

*– Assemblyman Joseph E. Dini, Jr.
Sponsor of AB 450 1977 Legislative Session.*

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Ethics in Government – Prohibitions

- Accepting gifts, services, favors, employment, economic opportunities, etc. which would tend to improperly influence a reasonable person.
- Using a public office to secure unwarranted privileges, preferences, exemptions, or advantages for yourself or others.

updated 2011.10.04 NRS 281A.400(1) and (2)

When I once asked a policeman how some of his colleagues got started on the downward path, he replied, 'It generally began with a cigar.'

~ Paul H. Douglas, Former U.S. Senator
"Ethics in Government" (Harvard University Press 1952)

updated 2011.10.04

Ethics in Government – Prohibitions

- Participating as an agent of government in the negotiation or execution of contracts with a business in which the person has a pecuniary interest.
- Accepting a salary or other compensation from a private source for performing public duties.

updated 2011.10.04 NRS 281A.400(3) and (4)

Ethics in Government – Prohibitions

- Using any information, acquired through public duties or relationships, which by law or practice is not at the time available to people generally to further one's pecuniary interest or that of others.

- Suppressing governmental reports or documents which might tend to unfavorably affect a pecuniary interest.

NRS 281A.400(5) and (6)
updated 2011.10.04

Ethics in Government – Prohibitions

- Using governmental time, property, equipment, or other facility to benefit a personal or financial interest. Some personal use is allowed if four specific criteria are met:

NRS 281A.400(7)(a)

updated 2011.10.04

Limited Personal Use of Government Property – Criteria

1. Use is authorized by the responsible public officer or the use is necessary in an emergency;
2. Use does not interfere with the performance of public duties;
3. Cost or value of use is nominal; **AND**
4. Use does not create the appearance of impropriety.

State Legislators are subject to similar restrictions set forth in NRS 281A.400(8).

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Ethics in Government – Prohibitions

- Attempting to benefit a personal or financial interest by influencing subordinates.
- Seeking other employment or contracts through the use of the public office.

updated 2011.10.04
NRS 281A.400(9) and (10)

Additional standards for public officers

- One-year to two-year cooling off period after leaving public service. There are specific provisions outlined for PUC and Gaming Control Board. (NRS 281A.550)
- No contracts between government agencies and business entities in which public officer has a pecuniary interest. (NRS 281A.400(3) and NRS 281A.430; criminal statutes also may be implicated)

updated 2011.10.04

Additional standards for public officers

- No honoraria for performing public duty (NRS 281A.510)
- May not cause a governmental entity to make expenditures to support or oppose a ballot question or candidate (NRS 281A.520)

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Criminal statutes applicable to public officers

- Anti-nepotism provisions (NRS 281.210)
- Prohibited contracts (NRS 281.221)
- No personal profits from public office (NRS 281.230)

These statutes are not within the jurisdiction of the NCOE; however, some statutes within the Ethics in Government Law can trigger these criminal statutes and referral to the AG or DA for prosecution.

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Disclosure and Abstention Requirements for Public Officers and Employees

Walking the Disclosure & Abstention tightrope



What is a
'conflict of interest' anyway?

updated 2011.10.04

“Wherever government controls a business, it becomes inevitable that the business should try to control the government”

- Paul H. Douglas, Former U.S. Senator
“*Ethics in Government*” (Harvard University Press 1952)

updated 2011.10.04

Conflict of Interest

A real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.

~ Black’s Law Dictionary, Eighth Edition

updated 2011.10.04

Appearance of Impropriety

Conduct which would create *in a reasonable person’s mind* a perception that the public officer’s/employee’s ability to carry out his or her responsibilities with integrity, impartiality, and competence is impaired.

updated 2011.10.04

Lined area for notes, consisting of 18 horizontal black lines.

Who is this “Reasonable Person”?

A hypothetical person used as a legal standard ... a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests. The reasonable person acts sensibly, does things without serious delay, and takes proper but not excessive precautions.

~Black's Law Dictionary, Eighth Edition

updated 2011.10.04

Discussion on a “Reasonable Person”

“The reasonable [person] connotes a person whose notions and standards of behavior and responsibility correspond with those generally obtained among ordinary people in our society at the present time, who seldom allows [] emotions to overbear [] reason and whose habits are moderate and whose disposition is equitable. He is not necessarily the same as the average man—a term which implies an amalgamation of counter-balancing extremes.”

- R.F.V. Heuston, *Salmond on the Law of Torts* 56 (17th ed. 1977).

updated 2011.10.04

Voting, Disclosing, & Abstaining

- Disclosure is mandatory for any interest created by:
 - ✓ A gift or loan
 - ✓ A pecuniary interest
 - ✓ A commitment in a private capacity to the interests of others (will be discussed in a minute)
- Disclosure must be made at the time the measure is considered.

updated 2011.10.04

NRS 281A.420(1)

Voting, Disclosing, & Abstaining

A public officer is not required to disclose:

- Campaign contributions that were reported in a timely manner pursuant to NRS 294A.125; or
- Contributions to a legal defense fund that are reported in a timely manner pursuant to NRS 294A.286.

updated 2011.10.04 NRS 281A.420(2)

7 Suggestions to Avoid Conflicts

- Disclose
- Disclose
- Disclose
- Disclose
- Disclose
- Disclose
- Disclose

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Voting, Disclosing, & Abstaining

- Abstention is required only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected.

This determination should be made by the public officer and explained on the record.

~~Carer's Rule of Thumb: abstain rarely; disclose often.~~

updated 2011.10.04 NRS 281A.420(4)

Voting, Disclosing, & Abstaining

- Prohibits advocating or voting for the passage or failure of, but otherwise allows participation in the consideration of, a matter with respect to which *the independence of judgment of a reasonable person in the public officer's situation would be materially affected* by:
 - ✓ A gift or loan
 - ✓ A pecuniary interest
 - ✓ A commitment in a private capacity to the interests of others

updated 2011.10.04 **NRS 281A.420(3)**

Pecuniary Interest

- Any monetary interest or an interest that can be valued in money.
- Campaign contributions are not pecuniary interests, and do not require disclosure if they are reported timely and as required under statute. NRS 281A.420(4)(c)

updated 2011.10.04

Voting, Disclosing, & Abstaining

- Voting is permissible if the value the person would accrue from the vote is no greater than the value which accrues to anyone else affected by the matter.

updated 2011.10.04 **NRS 281A.420(4)**

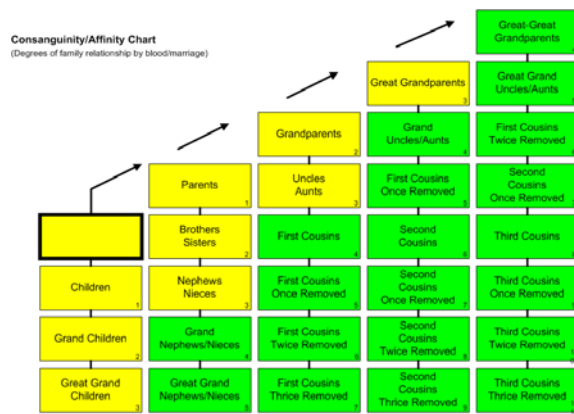
Commitment in a Private Capacity to the Interests of Others

A commitment to a person who:

- Is a member of your household;
- Is related to you by blood, adoption, or marriage within the 3rd degree of consanguinity/affinity;
- Employs you or a household member; or
- With whom you have a substantial or continuing business relationship; **OR**
- **Other similar relationships** (Deemed unconstitutionally overbroad in 2010 by Nevada Supreme Court in *Carrigan v. Commission on Ethics*. OVERTURNED by The Supreme Court of the United States in 2011. Currently pending on remand to NV Supreme Court.)

NRS 281A.420(8)

updated 2011.10.04



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Woodbury Opinion (updated to 2009) : NCOE Opinion No. 99-56

- Disclose sufficient information to inform the public of the potential effect of the action or abstention upon you and/or your private commitments
- Apply the reasonable person standard
- Abstain in clear cases when the private commitment would likely have a material effect on a reasonable person's independence of judgment
- Abstention should not be a safe harbor

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Commission Opinions

- Opinions of the Nevada Commission on Ethics are indexed on the NCOE website:

<http://ethics.nv.gov>

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Penalties

- The Commission is authorized to impose civil penalties for **willful** violations of the Ethics in Government Law.
- A willful violation is a violation where the public officer or employee:
 - acted intentionally & knowingly (no bad intent required); OR
 - was in a situation where NRS 281A imposed a duty to act and the officer intentionally and knowingly failed to act in the manner required by statute.

[NRS 281A.480](#) and [NRS 281A.170](#)

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Penalties

- Not to exceed **\$5,000** for a first willful violation;
- Not to exceed **\$10,000** for a separate act or event that constitutes a second willful violation; and
- Not to exceed **\$25,000** for a separate act or event that constitutes a third willful violation.
- Referral for **removal** from office.

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[NRS 281A.480](#)

Creating ethical conflicts

- Self-dealing
- Accept gifts or benefits
- Peddle influence
- Use public property for private advantage
- Use confidential information
- Seek outside employment
- Engage in post-employment conduct

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5 steps to ethical decision making

when there's no time to do anything else

1. Clarify the situation.
2. Evaluate the facts.
3. Discuss with an objective disinterested party (e.g.: agency/board counsel)
4. Choose your best ethical option. As Dr. Phil says, "You choose the behavior, you choose the consequences."
5. Implement your decision.
6. Review and modify, if necessary.

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