

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON LEGISLATIVE OPERATIONS AND ELECTIONS**

**Seventy-Sixth Session
February 10, 2011**

The Committee on Legislative Operations and Elections was called to order by Chair Tick Segerblom at 1:41p.m. on Thursday, February 10, 2011, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Tick Segerblom, Chair
Assemblywoman Lucy Flores, Vice Chair
Assemblyman Richard (Skip) Daly
Assemblyman Pete Goicoechea
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William Horne
Assemblywoman Marilyn Kirkpatrick
Assemblyman Richard McArthur
Assemblyman John Ocegura
Assemblyman James Ohrenschall
Assemblywoman Debbie Smith
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

Assemblyman Marcus Conklin (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Adrian Viesca, Committee Manager
Terry Horgan, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Caren Jenkins, Executive Director, Commission on Ethics

Chair Segerblom:

[Roll was taken.] I am Assemblyman Tick Segerblom, and I want to thank everyone for agreeing to serve on the Committee. We will move on to our Committee introductions so, please, state your name. If you have any particular reason why you wanted to serve on this Committee, please tell us.

Assemblyman Ocegueda:

I represent Assembly District No. 16 in Clark County.

Assemblywoman Smith:

I represent Assembly District No. 30 in Washoe County, and I really enjoy legislative operations.

Assemblywoman Flores:

I represent the northeast area of Las Vegas in Assembly District No. 28.

Patrick Guinan, Committee Policy Analyst:

I am nonpartisan staff with the Research Division, and this will be my third session as Policy Analyst with this Committee.

Assemblyman Goicoechea:

I represent Assembly District No. 35 in rural Nevada.

Assemblyman Grady:

I represent Assembly District No. 38, which includes Lyon County, Storey County, part of Churchill County, and part of Carson City.

Assemblyman Stewart:

I represent Assembly District No. 22 in Clark County.

Assemblyman McArthur:

I represent Assembly District No. 4, which is in the northwest part of Las Vegas. I am here because I asked to be on this Committee, and I am looking forward to it.

Assemblyman Hardy:

I represent Assembly District No. 20, which encompasses the rural communities in Clark County.

Assemblyman Hickey:

I am from Reno and represent Assembly District No. 25.

Assemblyman Daly:

I represent Assembly District No. 31, which is located in Sparks and central Reno. I volunteered for this Committee and am happy to be here.

Assemblyman Ohrenschall:

I am from Assembly District No. 12 in Clark County, representing the old Huntridge neighborhood in Las Vegas and up to Sunrise Mountain. I served on this Committee my first two sessions when it was called the Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Assemblyman Horne:

I represent Assembly District No. 34 in Clark County.

Assemblywoman Kirkpatrick:

I represent Assembly District No. 1 in Clark County.

Chair Segerblom:

Thank you very much. Now I would like to introduce my staff. We have a top-notch staff with lots of experience and ability. Patrick Guinan, who already introduced himself, is our Policy Analyst. How many sessions have you been with this Committee?

Patrick Guinan:

This will be my third session on the Committee. I came in at the same time as Mr. Ohrenschall, and I am pleased to be back again. I am also glad that there are so many enthusiastic members with us.

Chair Segerblom:

Adrian Viesca is the Committee Manager and this is his second time with the Legislature. If anyone needs anything, he knows how to find it or get it done. He is a really great resource.

Terry Horgan, who is our Committee Secretary, has been with the Committee for three sessions. She knows the history and if you need anything, she can help you.

Also with us is Michael Smith our Committee Assistant. Ravi Chanderraj is the Committee Extern, and Derek Travis, who is not present this afternoon, is our Committee Intern. Our Committee Counsel is Eileen O'Grady, who is also a fantastic attorney.

Next, we have the adoption of Committee standing rules, but I gather we have adopted standard rules for all the committees, so unless anyone has any specific questions, we will assume the Committee's rules have been adopted by the full Assembly.

I have a Committee bill draft request (BDR) to be introduced. It is BDR 24-684 and deals with the dates for certain municipal elections. This bill is not controversial and almost passed last session.

BDR 24-684—Revises provisions governing the dates for certain elections. (Later introduced as [Assembly Bill 132](#).)

ASSEMBLYWOMAN FLORES MOVED FOR COMMITTEE
INTRODUCTION OF BDR 24-684.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CONKLIN WAS ABSENT
FOR THE VOTE.)

Mr. Guinan, will you make your presentation concerning our Committee, please.

Patrick Guinan, Committee Policy Analyst:

I am a member of the Legislative Counsel Bureau's nonpartisan staff. I work with the Research Division, and as was noted a few minutes ago, it will be my distinct pleasure to return for a third time with the Elections Committee. As Mr. Ohrenschall noted, if you are looking for past information about the Committee, you will need to look up the Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments. That is where records from the past couple of sessions can be found for this Committee.

I know you have all been through several committee briefs this week, so I asked the Chair if it would be all right if I simply went through a couple of high points related to the Committee. I will not reiterate what you have already heard.

My primary duty with the Committee is to assist the Chair in making sure the Committee runs smoothly and to also assist the Committee Manager in that task. We handle research in a nonpartisan and confidential manner for everyone on the Committee. If you want work done that is Committee-related—for instance, if you are going to ask that a bill be introduced through the Committee, or that the Committee take a certain action, and you want me to do work on the matter—those kinds of requests need to come through the Chair. However, if you want research done by me on any topic that the Committee might be tackling or any bill of your own that you are working on, that is why we are here. We work equally with all members of the Assembly. Again, all our work is confidential unless you decide to make it not confidential. Please, feel free to contact me early and often, and I will do everything I can to help you get what you need.

I will run briefly through what the jurisdiction of the Committee has been in the past. As you all know, jurisdiction is up to Assembly Leadership, so I cannot give you an exact list of what the jurisdiction is, but I can tell you that in the past this Committee has handled the following:

- Elections.
- Campaign practices.
- The Nevada Legislature (anything dealing with how the Legislature functions).
- The Commission on Uniform State Laws.
- Statutory revision.
- Public officers and employees.
- Ethics in government.
- Constitutional amendments.

We have also been given jurisdiction over matters relating to legislative personnel. As you probably noticed during your first days on the floor, this Committee handles the appointment of attachés and all the employees of the Assembly. As you also may know, the reason so many Leadership members are here for this session is because this Committee has been tasked with handling redistricting and reapportionment.

To give you a sense of how busy the Committee is and what it tackled, in 2009 a total of 72 measures came through the Committee. Forty-six were from the Assembly; 26 were from the Senate. Forty-eight of those were approved by the Committee; 18 of the bills that came through the Committee were ultimately signed into law; 19 of the resolutions that came through the Committee were filed with the Secretary of State. We will be seeing a couple of those resolutions back this session. A couple of them were defeated in the 2010 General Election.

For instance, we have Assembly Joint Resolution No. 1 of the 75th Session, which is a measure relating to petition districts for initiatives. That will be coming back again this time. We also have Assembly Joint Resolution No. 5 of the 75th Session coming back this time, which is a resolution that would allow the Legislature to call itself into special sessions under very special circumstances.

During the interim Chair Segerblom chaired the Committee to Study the Requirements for Reapportionment and Redistricting. That committee is no longer in existence, so the responsibility of handling reapportionment and redistricting has now been divided between the Senate Committee on Legislative Operations and Elections and this Committee.

Right now, we are waiting for data to be delivered to us from the United States Census Bureau. They have until April 1 to deliver the county data to us that we need in order to start loading things into computers so we can get rolling. We are hoping that the data will come to us sooner rather than later. A weekly list of the states receiving data dumps is published, and Nevada is not on the list for next week. I will keep you apprised of the progress there.

The Chair has been very proactive in determining a potential schedule for public outreach and joint meetings, and we will conduct those as we are able. Today, the only other note I would make about redistricting is that you can find the rules governing Committee operations for redistricting in the joint rules that were adopted by the Senate and Assembly. Rule No. 13 covers it, so it would be a good idea to familiarize yourselves with those rules before we get moving on reapportionment and redistricting.

In reference to the 120-Day Calendar, the most important deadline for this Committee is passage of bills from the first house, which is April 15. The deadline for passage from the second house for committees is May 20. Those are crucial deadlines and we will be very busy around both of those deadlines.

In the Committee Brief ([Exhibit C](#)) posted on the Nevada Electronic Legislative Information System (NELIS), probably the most valuable piece of information to you is on pages 5 and 6. It is the listing of election officials in Nevada and their contact information. Those people know what they are doing inside and out. They are incredibly helpful, and you will meet a lot of them through the course of the session. Next week, the Secretary of State's Office and a couple of the clerks and registrars are coming in—Alan Glover from Carson City and Larry Lomax from Clark County. If you have any information needs, you can always come to me first, but if you want to talk directly to them, the clerks and

registrars are always very helpful, and having their contact information handy will be very useful.

Also listed in the Brief is the Nevada Commission on Ethics, and you will be hearing from its executive director, Caren Jenkins, shortly. They are a good group to know how to contact as well.

You will also see in the Committee Brief that I have put together a list of bills or measures that may be referred to the Committee. It is a pretty long list and "may" is a big word. You can glance through that list to see the kinds of things we may or may not get. That list was developed based on where this Committee has gone before, so I am hoping it is fairly accurate but I cannot make any promises.

That is all I have, Mr. Chairman, other than to remind everyone that I am here at your service. I am more than happy and eager to do whatever I can to help make this Committee run smoothly for everyone and get you the information you need. Again, we do work on a confidential and nonpartisan basis, so please let me know if you need anything.

Chair Segerblom:

Are there any questions? [There were none.] With respect to redistricting, the best information we have is that we will get the census data around the end of the month, hopefully. The staff says it will probably take a couple of weeks to get that information into the computer system and get it up and running so people can actually start manipulating the maps using the current data. We will keep you advised at every meeting.

During the interim, we approved having two meetings outside Carson City. One would be a rural meeting, and our thought was to hold it in Fallon but if anyone has a different idea, we would be happy to hear it. The other meeting would be in Las Vegas. Those will be joint committee meetings with the Senate Elections Committee. We are looking at sometime in late March or April, but we will let everyone know as soon as possible what dates we are looking at. We are also talking about having one in Washoe County and will let you know about that, too. The Las Vegas meeting and the rural meeting would be held on Saturdays.

Now, we will hear from Caren Jenkins, who is the Executive Director of the Commission on Ethics.

Caren Jenkins, Executive Director, Commission on Ethics:

The Commission on Ethics has had its ups and downs in the legislative process since it was created in 1977. Most recently there has been some feedback

about the effectiveness of the Commission, the jurisdiction of the Commission, and the constitutionality of some of the statutes regarding our Commission.

It is important that this body have some context by which to receive testimony about *Nevada Revised Statutes* (NRS) Chapter 281A, which is the entirety of the ethics in government laws. Before the annotations are included, it is 17 pages of statute. Those 17 pages regulate the conduct of elected and appointed public officers and every public employee in the State of Nevada, from the sprayer for the Fallon vector mosquito abatement and weed control district all the way up to the Governor. Every state, county, city, and improvement district employee falls within NRS Chapter 281A with regard to ethics in government.

In my handouts today, I want to start with the two pages that say "Nevada Commission on Ethics" at the top ([Exhibit D](#)). They provide a breakdown of where our requests for opinion (RFOs) originate—the cities, counties, state Legislative or Executive Branches—that ask the Commission on Ethics to evaluate the conduct of a public officer and adjudicate or provide advice about the nature of that conduct with regard to the ethics in government laws.

Of the 185 requests for opinion processed in 2008-2009 and 2009-2010, 73.51 percent of them came from local government. That means a little over 73 percent of the work of the Ethics Commission has been related to the conduct of a public employee or public officer employed by a city, county, or other political subdivision. Only 26.5 percent of those requests for opinion were derived from the conduct of an employee or public officer of state government.

That breakdown is applied to the funding sources for this agency. Every biennium our agency compiles this document and provides that information to the Governor and the Fiscal Analysis Division. Now, 74 percent of our funding will be derived from contributions from local government and 26 percent of our budget will be derived from the State General Fund. We are not wholly a General Fund agency. We are truly funded by the people who use us. In the last biennium the split was 35-65, so we are finding an ever-increasing demand from local government. In the prior biennium, the split was 40-60 based on actual requests for opinion received.

That includes complaints, which are requests for opinion from a third party about the conduct of a public officer or public employee, as well as first-party advisory opinion requests. Any public officer or public employee who says, "I am contemplating this conduct and wonder how it might intersect with NRS Chapter 281A," can come to the Commission and, in essence, receive

declaratory relief, which is very disfavoring in a judicial environment. It is available at the Commission on Ethics because we look at our role as much as being educators and facilitators as being adjudicators and as a quasi-judicial body. We take very seriously our education and outreach, so any of you or any public employee in the State of Nevada can, on a confidential basis, request an opinion.

For instance, someone could come to us stating, "I live in Carlin and sit on the town council. I am thinking of going into the chain-link fencing business because the nearest chain-link fence provider is several miles away in Elko, and I want to contract with the town because it needs chain-link fence." That individual can come to the Commission and ask whether there is a prohibition on contracting with the government entity that he serves on. He is not planning to vote, but is there a conflict of interest that violates NRS Chapter 281A?

The Commission will gather all the information it needs, apply the facts to the law, and provide a written advisory opinion saying, "You are just fine," or "That is not such a great idea," or "It will be okay if you do X," because there are exceptions for places like Carlin where supplies are limited or geographically distant, et cetera.

With that piece of paper, a public officer or public employee can proceed knowing an imprimatur has been placed on his or her conduct by the Commission. If someone challenges the behavior, that individual can show the letter from the Ethics Commission. That is a wonderful resource for you. Even after all the hearings I have been through, I still contend that 99.44 percent of the public officers serving our state are really great people trying to do the best they can.

There are always a few bad apples, but all of you are more likely to misstep into an ethics violation than intentionally find yourselves in one, so that advisory opinion resource is huge. Because I am a speaker and a teacher, I toured the state last March and April and gave 27 presentations. As a result, a wave of requests for advisory opinions came into the office. That was not the intended result. The intended result was to give everyone an idea of where the line is, so if they are going to cross it, they do so intentionally and with their eyes open. Anyway, outreach and education is a big component of what we do. And, if we find we have a public officer or public employee who has either violated or alleged to have violated provisions of NRS Chapter 281A, there is a procedure we go through as a result of our statutory duty and our regulatory authority. The procedure is outlined in what is known as the "Nevada Ethics in Government Manual" ([Exhibit E](#)), which I put together in July. This manual is available online. In chapter 4, it enumerates what kinds of requests for opinion

can be made and the process by which the Commission undertakes requests for opinion about the conduct of a public official or employee.

This is what happens: I get a piece of paper in the mail stating an elected official violated NRS Chapter 281A in some way. The first thing I do is look at the alleged conduct and whether it falls in NRS Chapter 281A. If it has to do with the open meeting law, or if someone says an official is not returning phone calls or that he was speeding in a school zone, I do not have any authority over those complaints. So the first review is purely jurisdictional: Does it allege a violation of NRS Chapter 281A, and if it does, is there the minimal level of credible evidence to support the allegation?

There has to be some credible evidence to support the allegation and it is a very low standard. If I find that it falls within NRS Chapter 281A and that there is some minimum level of evidence, I give it to my Commission counsel, who is also a lawyer. If she agrees with me, I hand it to our one investigator.

Our investigator takes the allegations in the complaint, and we give the subject an opportunity to file his response. It does not involve a complaint and a response as you would see in court. It is more the telling of a story—a recitation of their side, their perspective on things.

The requester and the subject both weigh in. Our investigator talks to everyone, does independent research, and gives a report to the executive director. I take a look at the facts the investigator has uncovered, apply it to NRS Chapter 281A, and make a report with recommendations to a two-member panel of the eight-member Commission. Of the eight members of the Commission, no more than four are from any one political party, and there are no more than four from any one county. Four are appointed by the Legislative Commission, and four are appointed by the Governor. We are a Legislative/Executive Branch agency. We have authority over the Governor, so we cannot be a purely Executive Branch agency.

The complaint goes before a two-member panel of the eight-member Commission. The two members are from two different parties. We do not attempt to get geographic variety; we just use whoever is available. The two-member panel evaluates the investigator's report, the subject's response, and the report and recommendations of staff. The panel decides whether there is just and sufficient cause, based on a minimum level of credible evidence, to send this matter to the full Commission for a hearing with witnesses, subpoenas, and documents—the entire package. If the Commission disagrees, the issue will go to a hearing, but it has to be a unanimous decision of "No" for the issue to go away, so we always err on the side of a public hearing because

no longer is it the requester's issue. That way, if there is a personal vendetta, we do not represent that individual. We represent the people of the State of Nevada, and our duty is to uphold the public trust. The requester is not a party. We give the information to our investigator and ask the requester to basically go away. Some people are very dissatisfied with that, but it keeps the process pure.

If the complaint does go forward to a full Commission hearing, I no longer have a role. The Commission counsel just facilitates the next step. The counsel is not a prosecutor. It is not a criminal matter; it is an administrative hearing. Our sanctions include the imposition of fines, ranging from \$5,000 to \$25,000, and referral to a body for removal from office on a finding of three willful violations. This does not happen very often. Only twice in my history with the Commission has it gone to the removing body for removal from office. One occasion was when Kathy Augustine stipulated to three willful violations of the ethics statutes and was referred to the Senate for impeachment proceedings. In the other instance, the individual's term had ended, so it was moot to ask for that individual to be removed from office.

There is a benefit and also a detriment. In order to refer a public officer for removal, one must find "willful violations." In the last session, the willfulness standard was changed so as to make it almost impossible for the Commission to find a willful violation. I am not saying the change was a good or bad one. It used to be whether the subject knew, or should have known, that his or her conduct would violate the ethics in government laws. It was changed in 2009 to a violation where a person acted "intentionally and knowingly." It is very difficult to prove intent. Knowledge is somewhat easier to prove because they sign those forms acknowledging statutory ethical standards.

Assemblyman Hickey:

What are the criteria for a complaint against a public employee to be brought before the Commission? Is it an agency head?

Caren Jenkins:

It is any public employee. "Public officer" and "public employee" are defined in statute in NRS Chapter 281A. Basically, a public employee is anyone who is paid by a government to do a job. So, any public employee is a part of upholding the public trust whether driving a snowplow, mowing a lawn, counting ballots, or lifeguarding at the recreation center. Public officers are held to a higher standard because certain of our ethics in government statutes apply to public officers only, while others apply to public officers and public employees.

Right now, as we speak, there is a hearing being conducted concerning an allegation regarding the Washoe County District Attorney. Several allegations were made, an investigation took place, it went to the panel, the panel forwarded some of the allegations to the full Commission for hearing, and that hearing is taking place today.

How often do we hold adjudicative hearings? As often as we need to. An awful lot of these requests for opinion that go beyond the panel stage are resolved by stipulation—admission by the public officer or public employee of his conduct, so we do not have to prove it—and imposition of stipulated penalties or sanctions. Those sanctions go to the General Fund; they do not come to my agency, so we have no desire or benefit in levying large fines on people.

That is the request for opinion process in a nutshell—the first-party requests for advisory opinion, and the third-party requests for opinion by members of the public about the conduct of public officers or public employees. Note, the Legislature has given the Commission on Ethics the authority to initiate a complaint on its own motion, but we choose not to exercise that authority because that activity would chill the desire of most of our public officers to come forward for an advisory opinion. We want you to come and ask us, in confidence, about your expected conduct. It also includes your past conduct, so you can come to us and say "Mea culpa" and we will tell you whether you did something or not, but we will not initiate a complaint on our own motion if we learn of your conduct. We are not going to persecute rather than prosecute public officers; we want to encourage people to come and tell us what is going on. We might tell you, "Yes, you are right. You probably crossed the line. Here is what you can do to mitigate the damage to the public. Here is what you can do to regain the public trust. Here is what you can do to minimize the harm." If a member of the public makes an allegation within the two-year statute of limitations, we may find you had a violation, but no one will learn about it from us. That is the policy decision of the Commission on Ethics. I hope you agree that it is a great way to encourage those advisory opinion requests, and they are much more important than taking people down, in my opinion. Frankly, third-party requests for opinion have the largest impact time-wise on the five-member staff of the Commission. The five members include an executive director, a counsel, a paralegal, an executive assistant, and an investigator.

Moving to the other handout ([Exhibit F](#)), in fiscal year 2010-2011 it is expected that we will have 138 requests for opinion, based on the first six months' activity. That is a significant increase over 109 during this last fiscal year and a 10 percent increase over 2008. Going back to 2007, the

increase in the workload of the Commission on Ethics is 45 percent. Our budget is at a net decrease of 6 percent from 2007, so there is a downtrend of 6 percent in money and staff and an uptrend of 35 percent of workload. It is becoming more difficult to be able to do our jobs, so instead of trying to take one issue at a time we are being responsive to the new requests for opinion we receive. We turn those requests around, give those people advice, and hold hearings as quickly as possible. What is falling to the back burner is the writing of dispositions, the opinions, and updating of the annotations to the statutes, and the creation of a digest of opinions—all of which are statutorily required of our agency but we cannot get to them. What is more important: getting out the current opinion or giving advice to someone who needs to make a decision today? We have opted to respond today. You will see that we have 46 total outstanding opinions as of February 1. Without opinions written there cannot be digests; without digests there cannot be annotations; and there is no way for a member of the public, or a lawyer or legislator, to know the current state of the law based on the interpretation and application by the Commission.

Other helpful information is the time between when a request for an advisory opinion is filed with our agency and the date the people get a hearing and advice. That has dropped from 41 days on average in 2007-2008 to 22 days on average currently. Our quickest turnaround was five days. If there is a reason you need an answer to your request for advisory opinion immediately, we will convene a telephonic hearing. It is much more expensive to do so than to wait until our next regularly scheduled monthly meeting, but we will do it if it is required based on the circumstances. Being responsive is the only way we can be; otherwise our advice may not be valuable.

The average number of days from filing to the disposition of a third-party request for opinion—and these are only those requests that go to a hearing—has dropped from 215 to 106 days. I do not think we can get the time frame much tighter than those three and a half months. The timeline for the subject's response is 30 days. There is the investigation, the panel deliberates and presents its written determination, and then there are the due process requirements of preparing for hearing. I think about 100 days is the best we are going to do, and we are doing very well.

There is currently only one case in post-hearing litigation. That is the *Nevada Commission on Ethics v. Carrigan* case in the United States Supreme Court. We got a date of April 27, 2011, before the United States Supreme Court to make a determination about whether the Legislature is able to include a catchall provision in the definition of a "commitment in a private capacity to the interest of others." That is part of the mandatory disclosure requirement in statute that a public officer, other than a legislator performing core legislative functions,

must undertake in a public meeting. For instance, when a plan checker gets his mother's plans coming across his desk, there is a disclosure requirement. This situation arises if what you are acting on affects the interest of you, your spouse, a member of your family within the third degree of consanguinity, your employer, or others. There are four categories of relationships that might be affected. The fifth category was in regard to other relationships "substantially similar" to those enumerated. The Nevada Supreme Court held that was overbroad and did not give people enough warning about what kinds of relationships must be disclosed.

That it was found to be overbroad, unconstitutional, vague, and not narrowly tailored to affect a compelling government interest is all lawyer speak. But the United States Supreme Court agreed that we need to know where the standard is. Is it a censure of a free speech right—political speech—or is it speech at all? That is what the United States Supreme Court is going to look at on April 27, and that is very exciting. There will be the *Carrigan* standard, which will be important nationwide, because there are jurisdictions where just using a rational basis is okay if you can explain why you are censuring someone, why you are forcing them to abstain and disclose. In other jurisdictions there is a balancing test between the interest of the person versus the interest of the public. There are other states and jurisdictions with Nevada's strict scrutiny standard, so the United States Supreme Court is going to decide what the standard is. That is very exciting, not just for the Commission but for the whole state, being a leader in clarifying a free-speech, constitutional right. That has taken a great deal of our Commission counsel's time and as a result, our digest of opinions and our statute annotations have not been updated since 2004, which is a travesty to the public.

We also accept filings. The financial disclosure statements of elected officials, as you all know, go to the Secretary of State's Office. For years, the financial disclosure statements of appointed public officers who are entitled to receive more than \$6,000 of annual compensation came to the Commission on Ethics. Last legislative session and again this legislative session, a measure will probably come before this Committee about moving the financial disclosure statement filing and consolidating it in the Secretary of State's Office. That is one of the things about efficiencies in government we can deal with so there is no confusion about where to file and there is much more integration of posting of information and enforcement. Currently, the Secretary of State's Office enforces those who file late; the Commission on Ethics accepts the filing but we can do nothing about it. It needs to be consolidated somewhere.

We also accept the filings of acknowledgement of ethical standards forms from every public officer regardless of his or her entitlement to compensation. The

form states that the person has received, read, and understood those 17 pages of statute. How many people in this room received, read, and understood the 17 pages of statute before they put their initials in two places on that form? [Assemblyman Daly indicated he had.] It is like signing a mortgage. When you become a new public officer, they shove a lot of paper at you. You initial here, sign there, and take that stack of paper home with the best intentions of reading it, but it never happens. That is not good enough, and we hope that every public officer will read and understand the ethics in government laws before they acknowledge that they have done so.

When the standard for willfulness was "knew or should have known," you should have known it if you signed that you had received, read, and understood. And that was how it fit together. Currently, with the "intentionally and knowingly" standard, it is not really related.

We also accept filings of an agency representation disclosure form. It is the least-filed form and probably the least-required-to-be-filed form. It relies on self-reporting. When I was an attorney in private practice serving as a commissioner on the Ethics Commission, I had a commercial lease client who asked me to help her before the State Board of Podiatry. I went before the Board and was paid to represent her, as her attorney. Nine months later, January 15 came and went and I thought nothing of it. Around February 15, I was reading my ethics in government statutes, because I was the Chairman, and I realized I had not filed an agency representation disclosure form that I had represented a private person before an agency of the Executive Branch for compensation. It is important that those things get disclosed so the public knows. For instance, if some member of the State Board of Podiatry came before the Ethics Commission, I might have a bias.

What did I do? I requested a confidential advisory opinion from my own agency. The Commission on Ethics told me to file the form. No one had come looking for it; no one would have known. If within the two-year statute of limitation someone had turned me in, there probably would have been headlines. However, now that the two-year statute of limitations has passed, I can tell you about it and help you know that the form is a self-reporting form. If you are a certified public accountant and you go before the State Board of Equalization with your clients, or if you are an attorney who represents clients before an agency of the Executive Branch, you must file that form and disclose that representation by January 15 of each year. It is the least-known and least-filed form. This past filing season, I received six for the entire state.

We also educate about the conflicts of interest and the statutory ethical standards that are outlined in NRS 281A.400. There are ten subsections, and

they state that you shall not accept a gift, employment, advantage, et cetera, that would tend to improperly influence a public officer to depart from the faithful discharge of his duties. This is part of my training to public officers and public employees throughout the state. I make certain that people are aware of the prohibitions and that it is not just straight statute. I give them stories about people like you and me who have unintentionally fallen into the trap of a violation. I often tell the stories of the intentional ones as well, and people are able to grasp the concepts and the public policy behind the ethics in government laws and be able to apply them to their own conduct. It has been very successful. My phone does not ring fewer than three or four times a day from someone who has attended one of the training sessions who poses a hypothetical or other type of question. My first answer, as the executive director, is that they do not let me vote anymore, so what I think does not matter. But I can tell them about a certain statute or opinion or set of circumstances. I give them resources to look at and tell them to consult with their attorney, because every public body at least has access to an attorney. I also suggest they consult with their colleagues and remind them that they can always come to us for an advisory opinion. Those educational efforts have been very well received.

That, in a nutshell, is the workings of the Ethics Commission. The Ethics Commission has a unique status—being a quasi-Legislative/quasi-Executive Branch body—and as a result, we are like a man without a country. Until this year, in the budget the Commission was under the Governor's Office, and that was completely inappropriate. Most importantly, the issue came to light in preparation for this legislative session. The Commission had submitted an executive bill draft request of 48 pages. Our Commission counsel had worked for the Legal Division of the Legislative Counsel Bureau, was very familiar with bill drafting, and had already drafted a bill for the Commission. It contains mostly cleanup language and some substantive changes. It went to the Governor's Office and was eviscerated down to one provision that mentioned local government's share of our funding. So, all of the substantive improvements and clarifications that we came up with following the sweeping changes of 2009 disappeared.

Patrick Guinan gave you some very important deadlines to keep in mind. I am going to give you another one—February 25, 2011. That is the committee bill draft request deadline. I hope I have encouraged you and piqued your interest enough so that you read those 17 pages of ethical standards. I hope you feel free to contact me as a group or individually to talk about ways we can tweak the statutes to make the process even more open and more supportive of the maintenance and enhancement of the public trust. If the public loses its trust in government, our system fails. Throwing more money at it is not always the

solution. If there are ways you can conceive of that would enhance and improve the work of the Ethics Commission, I would be delighted to spend time with you. Thank you for having me, Mr. Chairman.

Chair Segerblom:

Are there any questions? What is going on in Fernley?

Caren Jenkins:

It is a brand-new city that does not have a history, so it has not had time to adjust or adopt codes. There are people in Fernley who are very earnest about getting it right, and there are people in Fernley who are very disappointed in certain members of the elected and employment corps. So, they brought the situation to our attention, and we are happy to help them.

Chair Segerblom:

If you have that 48-page bill your lawyer drafted, get it to us and we will take a look at it.

Caren Jenkins:

I have it available electronically, and Patrick will have it in half an hour.

Chair Segerblom:

Do any members of the audience wish to speak? Do any Committee members want to say anything further? [There was no response.] We are adjourned [at 2:42 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Legislative Operations and Elections

Date: February 10, 2011

Time of Meeting: 1:41 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Patrick Guinan	Committee Brief
	D	Caren Jenkins	Two-page handout
	E	Caren Jenkins	Nevada Ethics in Government Manual
	F	Caren Jenkins	Three-page handout