

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

**Eightieth Session  
February 7, 2019**

The Committee on Legislative Operations and Elections was called to order by Chair Sandra Jauregui at 4 p.m. on Thursday, February 7, 2019, 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/App/NELIS/REL/80th2019](http://www.leg.state.nv.us/App/NELIS/REL/80th2019).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Sandra Jauregui, Chair  
Assemblyman Ozzie Fumo, Vice Chair  
Assemblyman Skip Daly  
Assemblyman John Hambrick  
Assemblyman Glen Leavitt  
Assemblyman William McCurdy II  
Assemblywoman Brittney Miller  
Assemblywoman Daniele Monroe-Moreno  
Assemblyman Tom Roberts  
Assemblywoman Selena Torres

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Carol Stonefield, Committee Policy Analyst  
Kevin Powers, Committee Counsel  
Christopher Roske, Committee Manager  
Catherine Bodenstein, Committee Secretary  
Melissa Loomis, Committee Assistant



**OTHERS PRESENT:**

Yvonne M. Nevarez-Goodson, Esq., Executive Director, Commission on Ethics

**Chair Jauregui:**

[Roll was called.] We have a quorum. Good afternoon, everyone. I welcome everyone to the first meeting of the Assembly Committee on Legislative Operations and Elections. I am Assemblywoman Sandra Jauregui representing Assembly District No. 41. This is my second session serving at the Legislature, and I am humbled that I get to be a part of the legislative process once again.

I have spent my career in the housing industry, both in the public and private sectors. I spent most of it in the front lines helping Nevadans create a pathway to stay in their homes during the foreclosure crisis as the foreclosure mitigation lead for then-U.S. Senate Majority Leader Harry Reid and for former Attorney General Catherine Cortez Masto's Home Again Nevada Homeowner Relief Program. I have transitioned over to the private sector in the real estate industry where I now get to educate and coach new real estate agents in business development.

It is my honor to chair this Committee. I am an advocate for voting rights. Voting is the fundamental right of every citizen, and I look forward to the work we will do here to help every Nevadan access democracy. My goals for this session are to run a committee that is fair and respectful to everyone and to give thoughtful and just consideration to every bill scheduled for a hearing. I look forward to working with everyone as we shape the policies and laws of our state.

I would like to take the opportunity now to have every member of our Committee introduce themselves and give a fun fact about themselves as well. I would like to start with our Vice Chair, Assemblyman Ozzie Fumo.

**Assemblyman Fumo:**

Good afternoon, everyone. My name is Ozzie Fumo. I am an attorney and have been practicing law in Nevada for the last 25 years. I practice in both state and federal courts, mainly doing criminal defense and personal injury. I am also an adjunct professor of law at William S. Boyd School of Law at the University of Nevada, Las Vegas (UNLV). I teach trial advocacy, and I teach opening statements and closing arguments. A fun fact about myself is that I am a grandfather. When I was 46, my daughter asked me what I wanted the kids to call me. I said, "Mr. Fumo." I cannot wrap my brain around that to this day. I have an eight-year-old and a seven-year-old who call me Mr. Fumo. When they are playing soccer, they will call out, "Hey, Mr. Fumo is here." That is a neat little fact about me.

**Assemblywoman Monroe-Moreno:**

I am Assemblywoman Daniele Monroe-Moreno. I represent Assembly District No. 1, and as everyone up here knows, it is the best district in the state. That is why it is number one. This is my second session in the Legislature and my second session on this Committee. I chair the

Committee on Growth and Infrastructure. I am the Assistant Majority Floor Leader. I am a grandma and my grandchildren call me "Grandma." A fun fact is, I was Rodeo Queen in middle school.

**Assemblyman Daly:**

I am Skip Daly representing Assembly District No. 31. This will be my fourth term and third time on this Committee. I served on it during my first term in 2011, and then last session and now this session. I do not know that I have any fun facts. I am a habitual speeder. I do not know.

**Assemblyman Roberts:**

My name is Tom Roberts. I am a freshman legislator from Assembly District No. 13 which is next to the best district in Nevada, number one. My background is 34 years in law enforcement. I did 9 1/2 years in the United States Air Force and then almost 25 years with the Las Vegas Metropolitan Police Department, where I retired as assistant sheriff. I have a master's degree in human relations, a bachelor's degree in education from UNLV, and an associate's degree in criminal justice. I am a consultant now that I am retired and a full-time legislator. A fun fact is, I spent a little time in Turkey so I still speak a little Turkish.

**Chair Jauregui:**

Thank you, Assemblyman Roberts, and thank you for your service. You and Assemblywoman Monroe-Moreno have something in common. You both served in law enforcement.

**Assemblyman Leavitt:**

I am Glen Leavitt. I live down south in Assembly District No. 23, the southern tip of Nevada, south Henderson down to Laughlin before you get to the California border. I work full-time for the Regional Transportation Commission of Southern Nevada (RTC). I work in government and now I am up here in government. It is interesting that when my boss comes to lobby me, I am her boss now, I guess. That is kind of nice—not really. A fun fact about me is that my kids do not call me "Mr. Leavitt." I was a professional snowboard instructor years ago. That is always fun.

**Assemblywoman Torres:**

My name is Assemblywoman Selena Torres. I am also from southern Nevada. My district is Assembly District No. 3, which I like to say is the heart of southern Nevada. I am a high school teacher. I am a graduate from the University of Nevada, Reno, so go Wolf Pack. I am currently a UNLV student as well. I am getting my master's degree in education. As a high school English teacher, I have about 200 students and 100 percent of them call me "Mrs. Torres." A fun fact about me is, I enjoy paddleboarding.

**Assemblyman McCurdy:**

Good afternoon, everyone. Thank you, Madam Chair. I am looking forward to serving on this Committee under your leadership. I am William McCurdy II. I represent Assembly District No. 6, which is literally in the central part of southern Nevada. I work as a state

political director for Service Employees International Union. I have been there for about four years now. I am a father of two: William and Charles. A fun fact about myself is that I play the piano and I play the drums. I am very much looking forward to serving on this Committee and for the residents of Nevada.

**Chair Jauregui:**

On day 120 we will have you give us a live performance.

**Assemblyman Hambrick:**

I have been in this body since 2009. You are looking at probably the oldest person in the room, other than maybe Assemblyman Daly. I was on this Committee a number of years ago when Ellen Koivisto was Chair of this Committee and Assemblyman Harvey Munford enjoyed being in this room. I am very much looking forward to it. There are a lot of good things this Committee can do. A fun fact that maybe you will not believe: I was the White House Santa Claus during the Nixon Administration. My children grew up with their dad being the White House Santa Claus. Madam Chair, I truly look forward to serving on this Committee. I have been in this room a long time. We can accomplish many things. I look forward to your leadership.

**Assemblywoman Miller:**

I am Assemblywoman Brittney Miller, and I represent Assembly District No. 5 in southern Nevada, which is actually the best, as everyone knows. I absolutely adore my district, my area, and my constituents. It is next to Assemblyman Hambrick's. We share the same Senate district. My background is more diverse in the fact that I spent 15 years in program development for everything from welfare to work programs, public schools, prisoner reentry. I also have banking experience where I was a classroom trainer for everything from sales to customer service, all of the different machines and technologies used in banking as well as all the federal policies, procedures, laws, and regulations that go around it. Eight years ago I became certified and became a teacher. Now I teach at the Clark County School District, and I am up here serving you all. As a fun fact, I am so fun. I cannot speak of one fact. Just know I am fun. That is all I can say.

**Chair Jauregui:**

Thank you, Assemblywoman Miller. I am sure we will find out that fun fact throughout the remainder of the session. Thank you to all of the Committee members. We certainly could not do the work or be successful without the support of our phenomenal Committee staff. They often work behind the scenes, but they are the engine that keeps us moving. I trust that you will always treat the staff with the respect that they deserve. I would like to let them introduce themselves. We will start with our chief litigation counsel, Kevin Powers. You can feel free to give us a fun fact as well.

**Kevin Powers, Committee Counsel:**

Thank you, Madam Chair. With that invitation, I actually will. For the record, Kevin Powers, chief litigation counsel, Legal Division, Legislative Counsel Bureau (LCB). I have been an attorney for 25 1/2 years, 22 1/2 of those with the Legislative Counsel Bureau, Legal

Division. If you ever do not see me in Committee, it is probably because I am involved with litigation and that sometimes takes up my time, but I will certainly try to be here every Committee meeting. A fun fact, which the Chair learned last night, is my three favorite food groups are the three Cs: cookies, candies, and cake. If you ever want to please me, feel free to give me any of those food groups and I will be very thankful. There are times when I have had those food groups, I have actually broken into song, Cookie Monster's theme song, "C Is for Cookie," and that is good enough for me.

**Chair Jauregui:**

Next I would like to introduce our committee policy analyst, Carol Stonefield.

**Carol Stonefield, Committee Policy Analyst:**

For the record, I am Carol Stonefield. I am the deputy research director for LCB. I have been with LCB since 2002. This is my fifth session staffing a Legislative Operations and Elections committee. A fun fact: several years ago I was asked about what the most exciting thing that I had ever done was, and to my dismay, I could not think of anything that I would classify as exciting. There were fun things and satisfying things. In order to remedy that, I decided to take skydiving lessons and go skydiving. So I can attest to the fact that that is the most exciting thing I have ever done.

**Chair Jauregui:**

Very brave. There are a few other people in the room I would like to acknowledge. If you would stand up so everyone knows who you are and I will read a little bit about you.

I would like to start by introducing our committee manager, Christopher Roske, who is also my attaché. Chris is a third-generation Nevadan. He was born in Las Vegas in 1990. Chris graduated with a bachelor's degree in philosophy from UNLV in 2014. He enjoys hiking, music, and the outdoors. He is engaged to a wonderful woman who is currently completing her Ph.D. He is still considering returning to law school and becoming an attorney like both of his parents. A fun fact about Chris: his dad has argued before the United States Supreme Court and he has two awesome cats.

This is our committee secretary, Catherine Bodenstein. Catherine's family ventured to the Nevada Territory in the 1860s. Though she personally has lived on three continents and traveled throughout five, she continues to return to her roots in northern Nevada. Having paused her training to become a commercial pilot, Catherine is thrilled and grateful to have the opportunity to serve her beloved country by serving this Committee as our secretary. During this, her first legislative session, her sincere intent is to accurately reflect, in the written record, our comments and legislative intent as well as the input of those who testify. Thank you, Catherine.

Our committee assistant, Melissa Loomis, and I have this in common: we are both returning for our second session at the Legislature. Melissa is a retired state employee from the Division of Tourism within the Department of Tourism and Cultural Affairs. Melissa said that back in the Stone Age, she earned her bachelor's degree in communications at UNLV,

but her biggest accomplishment is her son, who recently became an airman in the U.S. Air Force. Melissa says that she is also addicted to Netflix. Melissa wanted me to remind everyone not to forget to sign in or give her your business card if you are testifying. She thanks you in advance.

Although he is not in the room, I would like to acknowledge Jameson Smith, our network services specialist from LCB's Information Technology Services help desk who works effortlessly to make sure that the technology in the Committee room is always running smoothly.

Jan Brase, research policy assistant, supports the work of our policy analyst. Thank you to the committee staff for the work you have done and the work that you will do throughout this 80th Session.

I would like to start with some housekeeping items. I would like to start concerning live broadcasts and remind everyone that this meeting is being recorded. In addition, this meeting is also being broadcast live on the Internet, both in audio and visual formats. For those of you who would like to listen to meetings on the Internet, you may access the Legislature's website, click on the link "Calendar of Meetings," find the appropriate meeting, and click on "View."

The Assembly Committee on Legislative Operations and Elections meets on Tuesdays and Thursdays at 4 p.m. The Senate Committee on Legislative Operations and Elections meets on Mondays and Wednesdays at 4 p.m.

If you wish to testify, please provide the committee assistant with your business card prior to the beginning of the meeting. Please also place your name on the sign-in sheet. I use this information for witnesses to testify.

Please turn off or set your phones to silent mode when entering the committee room. Use common courtesy when taking phone calls during the committee time by stepping out of the room. Please take all private conversations out of the committee room.

If submitting amendments and exhibits, it is requested that you provide your materials to the committee manager by 4 p.m. the day before the hearing so that he can upload them to the Nevada Electronic Legislative Information System (NELIS). We are starting our fifth session using NELIS. All presenters, including legislators and legislative staff, are expected to provide exhibits, such as testimony and handouts and amendments, ahead of the meeting. Everyone will have access to the exhibits by visiting NELIS. Please also continue to bring at least 20 hard copies for the public's use. The committee assistant will not make copies for you.

Please be aware that proposed amendments must be submitted electronically in PDF format to the Committee no later than the day before the meeting. The proposed amendment must include the bill or resolution number, a statement of intent, and the name and contact

information of the amendment's sponsor. All of this information including the email address, is on the Committee's agenda.

One last comment I would like to make to those here in our meeting room and to those viewing online, please keep in mind that members will be using their laptops to view handouts and other documents as well as to take notes. This should not be viewed as a sign of disrespect or inattention.

As most of you know, the Assembly's committee rules are incorporated into the Assembly Standing Rules, which we adopted this last Monday, February 4, 2019. In addition to the Assembly Standing Rules, each committee also adopts committee policies for the session. You can find our Committee Standing Policies on NELIS under exhibits for today's meeting ([Exhibit C](#)). These are policies we intend to adopt for the Committee. We have already covered the majority of them under housekeeping, but there are a few I would like to highlight. Bullet point number one speaks to professionalism and decorum in the Committee. I want to point out that we do not refer to anyone by his or her first name once we enter the committee room. The bullet point that is third to the last, I want to reiterate this for our policy assistant and secretary, is that when testifying please remember to turn the microphone on, and before testifying please remember to state your name.

Does anyone have any questions regarding the committee standing policies? If not, I would entertain a motion to approve.

ASSEMBLYMAN MCCURDY MADE A MOTION TO APPROVE THE  
COMMITTEE STANDING POLICIES.

ASSEMBLYMAN ROBERTS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Next, we will be hearing about the Committee Brief. Carol Stonefield, our committee policy analyst, will present the Committee Brief and an overview of the likely work of this Committee.

**Carol Stonefield:**

For the record, my name is Carol Stonefield. I am going to present for you the Assembly Committee on Legislative Operations and Elections Committee Brief ([Exhibit D](#)). In keeping with the title, I will try to be brief. You should have a paper copy in front of you. There are copies by the door, and it is also on NELIS. I will quickly walk you through this. The purpose of a Committee Brief, as you have probably learned in other committees, is just to acquaint you with the work of the committee and what this Committee considered in the past 2017 Session.

On page 3 is a list of staff people. We have just gone through that, so I will not spend any time on that. The next section on page 3 is the jurisdiction of the Committee. Generally, this

Committee considers bills and resolutions relating to elections, ethics, and legislative business.

You may have noticed that this Committee serves as the sponsor to many of the Assembly resolutions. For example, Assembly Resolution 1 adopts the Standing Rules of the Assembly for the 80th Session of the Legislature, Assembly Resolution 2 provides for the appointment of Assembly attachés, and Assembly Resolution 3 provides allowances for periodicals, stamps, stationery, and communications. This year Assembly Concurrent Resolution 1 adopts the Joint Standing Rules of the Senate and Assembly for the 80th Session of the Legislature, and Assembly Concurrent Resolution 2 authorizes additional reimbursement for travel. This Committee is listed as and identified as the sponsor of those. Also, this Committee serves as the temporary committee on credentials, as you probably noticed.

On page 4, I would like to point out to you that because many of the Committee's bills propose interim studies or relate to legislative matters, they are often exempt from the deadlines, which is provided in the Joint Standing Rule No. 14.6. For that reason, this Committee is often busier after the deadlines and toward the end of the session because some of those measures will be introduced in May or close to the end of the session.

You have, on the top of page 4, a table showing you that there were 63 measures that were considered in this Committee last session, and that is a pretty typical workload. About half of those measures are resolutions and will be proposed amendments to the *Nevada Constitution*, messages to the United States Congress, and also the establishment of interim committees and other sorts of studies.

In 2017 the major issues included constitutional amendments and, as you know, the *Nevada Constitution* requires that a proposed constitutional amendment must pass in exactly the same form in two consecutive sessions of the Legislature. These seven measures were passed in 2017 and have been returned to the 2019 Session. Assembly Joint Resolution 2 of the 79th Session, Assembly Joint Resolution 5 of the 79th Session, and Assembly Joint Resolution 14 of the 79th Session were heard in this Committee in 2017 and have, in fact, been rereferred to this Committee. There are four Senate joint resolutions that have been listed here as well. Only one of them, Senate Joint Resolution 3 of the 79th Session, the voters' bill of rights, has been referred to the Senate Committee on Legislative Operations and Election. The others, Senate Joint Resolution 1 of the 79th Session, has been referred to the Senate Committee on Judiciary, Senate Joint Resolution 6 of the 79th Session to the Senate Committee on Commerce, Labor and Energy, and Senate Joint Resolution 14 of the 79th Session has been referred to the Senate Committee on Revenue and Economic Development. Those are in the Senate. They might come to this Committee if they make it over here to the Assembly.

In 2017 there were two issues that were placed on the 2018 General Election ballot. Initiative Petition 1 of the 79th Session, as you know, established automatic voter registration. That was approved. It was Ballot Question No. 5. And



Senate Joint Resolution 17 of the 78th Session is commonly thought of as Marsy's Law. It established a victims' bill of rights. That was Ballot Question No. 1. Both of those passed.

There were two bills that were considered in this Committee and passed and two vetoed bills. Relating to vote centers and early voting hours, Assembly Bill 272 of the 79th Session [was returned with the Governor's veto message to the Assembly; the bill was read and placed on the Chief Clerk's desk on May 29, 2017, and no further action was taken]. Assembly Bill 403 of the 79th Session authorizes LCB's Legislative Commission to suspend or nullify certain administrative regulations and was read on Wednesday, February 6, 2019, and placed on the Chief Clerk's desk.

At the bottom of page 5 is a table showing you the prefiled, now filed, bills that have been referred to this Committee. They are listed there.

Finally, on page 6 of the Committee Brief, we have identified some of the possible issues for this session, including the recall of public officers. I believe there are two Senate bills relating to that. Voter registration is another issue. Election security is a national issue and has been making a lot of headlines. We may have some legislation on that. The ethics bill this year, Bill Draft Request 23-191, has been filed as Senate Bill 129.

I would also like to mention to you something that happens only every ten years and that is preparations for redistricting. As you know, the census in 2020 requires that we take that information and redistrict and reapportion the state. Typically, the Legislature establishes in the preceding interim. There is likely to be an interim study in 2020 that will consider personnel, guidelines, hardware, and software to enable the Legislature in the 2021 Session to consider redistricting plans. The Interim Committee in this next interim is likely to make recommendations to the 2021 Legislature on those kinds of issues.

I would like to conclude, Madam Chair, by saying that any request on behalf of this Committee may be made by the Chair, staff, anyone else in this Committee, or anyone in the Legislature. It is certainly appropriate for you to make requests of the Research Division. Your requests are confidential and all of us would be more than happy to help you with your research issues.

You do also have a list of key contacts ([Exhibit E](#)) that lists the officers and staff from the Office of the Secretary of State. These people work on elections issues. As you know, the Secretary of State is the Chief Elections Officer. You also have listed the county election official in each of the 17 counties and contact information for the Commission on Ethics. Unless there are any questions, I thank you, Madam Chair.

**Chair Jauregui:**

Does the Committee have any questions for Ms. Stonefield? [There were none.] Thank you, Ms. Stonefield.

Oversight of ethics in government is one of the responsibilities of this Committee. Today we have a presentation by Yvonne M. Nevarez-Goodson, executive director of the Commission on Ethics. Her handout should be available on NELIS ([Exhibit F](#)). Hard copies have been distributed to the members and are available in the back of the room for the public. Mrs. Nevarez-Goodson, thank you for being here. Please proceed.

**Yvonne M. Nevarez-Goodson, Esq., Executive Director, Commission on Ethics:**

Good afternoon, Madam Chair, members of the Committee. I serve as the executive director of the Commission on Ethics. I have been with the commission now for about ten years. Prior to my tenure as the executive director, I served as its commission counsel.

With the indulgence of the Committee, I would like to recognize a couple of people who have joined me here today. The first is one of our newer commissioners, Kim Wallin, who is certainly not new to public service. She served as our State Controller at one time. She is now serving on the Commission on Ethics, so I thank her for her participation and involvement today. Next to Ms. Wallin is our new commission counsel—well, she is not new anymore; she has been with us for almost five years—Tracy Chase. She is here. She is my colleague and partner at the commission. You will probably likely be seeing one or both of us during session when we come to present our bill, which is going to be Senate Bill 129.

For today's purposes, I would like to give an overview of the Commission on Ethics: what we do, who we are, and also to some extent, what we do not do because there has been some misconception not just by legislators, but also by members of the public who often are seeking our services in terms of wanting to file complaints and maybe misconstruing the role of the commission. It is our goal to give you a big overview of everything the Ethics Commission does and then when it comes to our bill, which is a rather lengthy bill this session, it will hopefully make more sense as to what we are asking for and why we are seeking the proposed changes.

With that in mind, what I would like to do is tell you a little bit about the commission. The commission is an eight-member public body. We are half appointed by the Governor and half appointed by the Legislative Commission. The goal of the appointments of the commission, historically, was to create a neutral and independent body. By that token, the criteria for appointment to the Commission on Ethics includes that no more than four members can be from the same political party; no more than four members can be residents of any one county in this state; we have to have certain members who are attorneys because they are interpreting and enforcing the law against public officers and public employees in this state; and we also have to have a certain number who have at one time served in a position, much like you, as either a public officer or a public employee. The thought behind this goal is that they are in the situation in which you find yourselves, one of serving the public, so they would best understand this notion of conflicts of interest and why we are interpreting these provisions and enforcing these provisions against our state public officers and public employees.

A grand overview of the Ethics Commission: out of the Nixon Administration came this notion of how to tackle circumstances in which we want to regulate public officers and public employees in terms of potential conflicts of interest. Out of that, the federal government as well as all the states got together and said we need to have oversight committees or commissions or boards. Most of the states, if not all of them, collectively at the end of the 1970s created ethics commissions statewide. We are a result of that. We were created originally, I want to say in 1978, and we have evolved tremendously since that time. Probably most significantly, I would say, in the last ten years. I would be happy to talk about the growth we have achieved in the last ten years and where we expect to go from here. The goal coming out of the 1970s was this notion of whether or not there is corruption in government and how to tackle it. That was really not so much about corruption. We are always going to have the ability to tackle those severe cases where there are significant things going on. Really what we are working on is the notion of conflicts of interest.

Every commission opinion and every statute that we interpret and enforce really governs the concept of a conflict between our public duties and our private interests. I have a road map for you today. I want to talk about what it means under the law to have a conflict. What is a public duty versus what is a private interest for purposes of the law? Every statute we are going to talk about is always going to relate back to one of those two issues. What is the personal interest at stake to trigger the implication of this statute?

Moving beyond our mission, I want to talk about the jurisdiction of the commission [page 4, ([Exhibit F](#))]. The commission's jurisdiction is to enforce and interpret the Ethics in Government Law, which is set forth in *Nevada Revised Statutes* (NRS) Chapter 281A and governs all public officers and public employees in state and local government, with certain exceptions. The exceptions that are included are, for one, judges. Judges are subject to the jurisdiction of the Commission on Judicial Discipline. Standards of conduct applicable to judges are different than those which are applicable to public officers and public employees.

We also do have limited jurisdiction over state legislators, those of you in this room, as well as your colleagues here in the Legislature. To the extent your conduct is a core legislative function or is conduct that would be protected by a legislative privilege and immunity, that conduct would be overseen by your own respective house committees on ethics. Where we would continue to have jurisdiction over the conduct of a state legislator might be with respect to improper use of government resources or something to that effect, which I will get into in much more detail as we pursue some of these statutes.

The other exceptions include a lot of community members who serve on advisory bodies at the local level. Those advisory body members are not deemed to be public officers subject to the Ethics in Government Law. Virtually everyone else is covered. The last data we had from the Department of Employment, Training and Rehabilitation tells us that we have about 145,000 public officers and public employees in this state. That is all the way down to our general improvement districts and you name it. I am still learning sometimes that there are agencies I did not realize were government agencies. I feel like we need to get a handle sometimes on just how many people are actually subject to the Ethics in Government Law.

The commission really performs three main functions [page 5]. The first function is our advisory and outreach. That is where we are going to interpret and provide guidance regarding the provisions of the Ethics in Government Law. We do that in two main ways. The first is that we can issue an advisory opinion pursuant to a request for an advisory opinion. That is an entirely confidential process whereby any public officer or public employee can request the advice of the commission about whether they have a conflict of interest, and secondly, whether that conflict is disqualifying for them.

The other side of our interpretation and guidance is the outreach function. Part of my responsibilities as the executive director are to provide outreach and training presentations throughout this state to our elected officials all the way down to our public employees. To be honest with you, it is a very difficult challenge to reach 145,000 public officers and public employees. Last year, I think I accomplished reaching 42 different agencies with as many presentations across the state, and that did not even really touch the surface.

One thing we will be looking at as a commission that we have been trying to pursue for many years is the budgetary resources to do some sort of digital outreach to be able to reach all of our folks across the state. Primarily, where we are getting access to our public officers and public employees is through the agency legal counsel. We are partnering with them or giving them a lot of information. We are sharing our published opinions with them so they are in a better position to share information and advise their clients.

The second function of the Ethics Commission is our enforcement and investigatory function. Any member of the public is able to file an ethics complaint alleging that a public officer or public employee has violated the ethics law. With various procedural mechanisms in place throughout our statute, the commission will, in appropriate cases, direct my office to conduct an investigation. There are a multitude of opportunities for us to resolve a case, through an investigation, through what is known as a review panel, and then all the way up to the commission through a final adjudicatory hearing, which is essentially a mini administrative trial. I will note that our provisions are administrative. They are not criminal, but we do have the opportunity to impose various terms and conditions on future conduct as well as issue monetary penalties for violations of the Ethics in Government Law.

Our final main priority here at the Ethics Commission is that all public officers are required to file a Nevada Acknowledgement of Ethical Standards for Public Officers form with the commission. It is essentially a form acknowledging that you have read and understand that you are subject to the Ethics in Government Law and that you will remain apprised of amendments that occur to that law throughout your tenure as a public officer.

When I started to give you a road map, I wanted to better explain to you this nuanced difference between the types of private interests that you might have in your private life versus those that trigger conflicts under the law. When we talk about a conflict between a public duty and a private interest, a public duty is essentially going to be any decision or activity or conduct you are able to engage in by virtue of your public position. Essentially,

but for your elected position or appointed position, are you able to make this decision or engage in whatever conduct? That is going to be a public duty. Whenever those duties or those issues come before you that have the potential to affect your private interests, you do have a conflict. Not all conflicts are going to be disqualifying and certainly—I can see your faces looking at me in terms of what disqualifies us in certain circumstances—from the perspective of disclosures and abstentions, I leave that to your capable counsel because that is going to qualify as something that would be a core legislative function. That is going to be the type of conduct that is not going to fall within our jurisdiction. For every other public member of a governing body, those are going to be types of issues that we will attribute toward them, so these provisions may not apply as specifically to you for purposes of disclosure and abstention, but for our other statutes it is relevant for you to understand these provisions.

The two private interests the statute lays out that trigger conflicts under the law include our pecuniary interests, or our financial interests, and also relationship-based conflicts [page 6]. I will spend a little bit of time giving you the headline view of what that means. Most of us know financial interests. We know if we are being asked to vote on a matter or decide on an issue that has the potential to affect our financial bottom line. Those are primarily usually pretty tangible interests. Short of the more sophisticated and diverse business circumstances that we are seeing, most people can readily understand when they have a financial interest at stake.

The most overlooked private interest at stake are these relationship-based conflicts of interest. We refer to them in the statutes as a "commitment in a private capacity" to the interests of another person. It is a mouthful, but I will boil it down to this. The Legislature, through this legislation and through this chapter, has essentially decided for us, as public officers and public employees, that we have relationships with certain persons and certain entities that are so close and personal in nature that the law is going to impute their interests to become our interests to create the conflict. The persons that are identified in this statute include certain family members. These are going to be family members within the third degree of consanguinity. We do have a chart to help you navigate who falls inside and outside of the third degree ([Exhibit G](#)). Essentially, it is our parents, our grandparents, our children, grandchildren, siblings, nieces, and nephews. It is not our cousin. That is not the third degree of consanguinity. Hold that thought because it very well might be your cousin in the right circumstances, and I will get to that here in a minute as well.

Beyond our family members, it is also our employers. Persons who employ us can trigger conflicts for us because presumably they hold our financial interests in their hands. We are triggered by their private interests to potentially affect how we might vote or decide on public issues.

The third category is business interests: persons with whom we share substantial and continuous business relationships. That is very easily understood in the context of business partnerships, firm types of circumstances, but also there are very nuanced ways that we have

business relationships with individuals. We have to understand sometimes that creates conflicts for us.

The next category is members of our household. And then, of course, we have this category of relationships which is called a "substantially similar relationship" to those categories which I have just described. The reason this becomes important is because we might look at the relationship one has with a cousin. If the relationship is such that because of your family dynamics you say, My cousin grew up in my household and therefore we interacted like siblings, we might say that is the nature of relationship that is so close and personal it is substantially similar to one you would have with a sibling to trigger the conflict. We have to be careful about how we evaluate the nature of our various relationships and how we disclose those to be able to ascertain whether it is really triggering a conflict of interest for us.

The last category of relationships I want to identify for your consideration is one that the commission has seen more than probably ten times in the last few years. It has to do with public officials' and public employees' interactions with nonprofit organizations and other types of business entities. The commission has held over and over again that if a person serves as a member of a board of directors or has some other significant tie to a business entity or nonprofit organization, he or she has a commitment in a private capacity to that entity. The terminology of commitment in a private capacity to the interests of other persons is not just natural persons; it could include a business organization if you hold a fiduciary relationship to that organization or other significant relationship.

I appreciate your indulgence on spending a little bit of time on those two issues because it will essentially make every statute that we interpret and enforce make a little bit more sense. Does anybody have any questions yet about the nature of relationship-based conflicts or pecuniary interests before I go forward?

**Chair Jauregui:**

Committee, does anyone have any questions? [There were none.] Also, you will be receiving by email this chart ([Exhibit G](#)) that our policy analyst, Ms. Stonefield, will be emailing out which gives you the third degrees of separation for easy identification. Please proceed.

**Yvonne Nevarez-Goodson:**

What I would like to do is take you through the handful of statutes that we have in NRS Chapter 281A that govern conflicts of interest, otherwise referred to as prohibited conduct. These are the statutes that tell us what we cannot do as public officers and public employees.

The first statute we have governs prohibited gifts [page 8, ([Exhibit F](#))]. As a matter of course, I know there are some rules that are distinct for legislators. As a matter of course under our statutes, we are prohibited as public officials and public employees from accepting any gift of any value from any person that would tend to improperly influence a person similarly situated. The governing language of that particular statute questions if this is the type of gift that would improperly influence a reasonable person in your situation. We do not

give a definition to that or put a dollar sign on that, although some agencies attempt to do so. We are really trying to look at the nature of the circumstances and identify what the reason is that this person is offering you this gift. Is it because they have the potential to appear before you in the next week or the next month or even a year from now? Is that the type of gift that is improperly influencing a decision or some kind of conduct?

We have seen this in a lot of ways. One more recent decision we had involved a situation with a public employee. This was a state employee whose job position was to effectively serve as the liaison between her agency and private vendors who were seeking contracts with the agency. That particular employee had developed a personal relationship with one of the vendor representatives. That vendor representative had purchased some lunches and given the employee a purse during a course of an open competitive contract bidding circumstance. The commission said that although the cost of the lunches was fairly nominal, the circumstances involving a competitive business environment were such that that was a significant appearance of an intent to influence that employee to give the vendor better opportunity to get the contract. The commission imposed a pretty hefty fine against that public employee and referred her for disciplinary action.

With that in mind, I will move on. The next statute is what we refer to as our catchall statute [page 9]. This is a statute that essentially states that as public officials and public employees, we are prohibited from using our positions in any way that would secure or grant an unwarranted benefit to ourselves or to a person to whom we have one of these legal relationships that we talked about. The triggering words in this particular statute concern the type of benefit, privilege, or opportunity that is unwarranted. It might be something that is not unwarranted or something that you or the person to whom you are committed will uniquely benefit from. That may make it not unwarranted, or there may be a policy in place that authorizes certain opportunities or privileges. We will take a look at all the surrounding circumstances to ascertain whether there has effectively been a misuse of one's position to acquire private benefits.

The next statute that we have—there are multiple statutes in our chapter that deal with prohibited contracts—is a unique statute [page 10]. You will see this presented to you in S.B. 129 for some amendments that we will talk about later in the session. As it stands now, there are many exceptions to this general rule, but generally speaking, most public officers and public employees are prohibited from having contracts in their private life with any governmental entity—that is any state entity or local government entity. Although there are exceptions in place for the open competitive bidding or relief to be granted by the commission, there are concurrent statutes outside the Ethics in Government Law that make it criminal to have financial interests in certain government contracts. This often causes this odd balance for the commission when someone comes to us for relief or whether an exception applies for us to be able to say, from an ethics perspective we might grant you relief because we do not believe there is any improper influence or opportunity to interfere with a contracting process by virtue of your position. But then we have to say, there are also criminal statutes that prohibit this kind of contract and we cannot advise or interpret those



provisions. We often leave public officials and public employees in a state of, How do we mirror these two provisions?

One of our efforts coming forward in S.B. 129 is going to say that we are really worried about a contract with the agency that you work for where you could potentially have influence or be directing the specifications of that contract or somehow otherwise influencing the award of that contract. For example, why would it be a problem for a public employee in Nye County who maybe owns a plumbing business on the side to have a contract with a governmental entity here in Carson City? Is there any opportunity for that employee to improperly influence that contracting circumstance? We are going to try to put some additional language to clarify that.

We are also going to clean up the loopholes because sometimes people will want to use to their advantage the fact that it says that you shall not enter into a contract, but what about negotiating or bidding on a contract? Sometimes these nuances with these words are used as loopholes by people trying to get around the intent of those provisions. We are going to try to clean that up a little bit this session.

Next, we have a prohibition against accepting compensation from a private source for doing something we are already required to do in our government position [page 11]. It does not happen all that often where the private sector is out there trying to give us extra money for performing our government job, but if that happens, presumably there is some impropriety going on for them to be wanting to give you extra money for doing your job. There is, generally speaking, a prohibition against that.

The next two provisions I liken, in most respects, to what we understand in the private sector as insider trading [page 12]. As government representatives, employees, and officers, we often have access to nonpublic information even if it is temporarily nonpublic. We should not be utilizing that nonpublic information or suppressing it because it has the potential to be a benefit or a detriment to our personal interests. Again, it is not something we see all that often, but it is certainly a necessary statute for when those circumstances arise.

This next provisional statute, NRS 281A.400, subsection 7, seems to be our most violated statute in all the cases we have seen to date [page 13]. This is a prohibition against the use of government resources for a private purpose. Where we see this with public officials is more in the scope of campaigns, incumbents running for reelection who may not appreciate that that campaign is a private endeavor and they should not be utilizing government resources to pursue that private campaign. Where we see it violated more often is with our public employees. As simple as a thought of the use of a government-issued computer. Perhaps there are government-issued vehicles, depending on the job description that we might have. But the most overlooked government resource is our time as public employees. Our time as public employees is paid by the taxpayers, and it should be dedicated service to the agency for which we work. It is not our time to surf the Internet on the side if we are bored or whatever it might be. That is really a personal interest.



That example leads me in to the limited-use exception. We are not trying to be unreasonable. There are certain circumstances in which use of government resources is not inappropriate. That might include something where the cost would be nominal. The supervisor who has the authority to approve the use has done so pursuant to an established policy in the law. We would also require that it would not be interfering with our public duties and that it would not create an appearance of impropriety.

Now something you will see coming forward in S.B. 129 is an effort to get some clarification on some of these provisions as well, mostly in the exception area because with the established policy language, people will say, Well, if I am the supervisor or the elected official, I have the authority to change the policy at a whim, so I will just change it. We will say, Well, that does not make it an established policy. What we want to see is a written policy that has to be established so that it is objective and we can take a look at it and make sure that it is not something that was changed at the last minute.

Secondly, we are going to attempt to bring some definition to the terminology of what constitutes an appearance of impropriety. That seems to be a cause for some confusion by our public officers where it is pretty understandable to us at the Ethics Commission. It is an attempt to draw some clarity for those who are subject to these provisions.

The next statute is essentially a prohibition against using our position to improperly influence a subordinate, again, for a personal purpose [page 14]. I gave this example yesterday when I gave this presentation, and sometimes the absurd draws the point. I did receive a call a couple of years ago from a public employee who asked whether it was okay that his or her boss was requiring him or her to pick up the boss's dry cleaning and deliver it to the boss's house every week. I said, That certainly seems like a misuse of one's position to improperly influence a subordinate to run personal favors. While that is not the most common type of circumstance we see and not always the type of issue that rises to the full force and effect of the Ethics Commission, it is the type of call I receive on a pretty regular basis about public employees feeling like they are being asked to do personal favors for public officials and things of that nature.

Moving forward, I am just trying to push through some of these sections, and please interrupt me if you have any questions or concerns. Along the same line as gifts, we are prohibited from accepting an honorarium for performing our official duties [page 15]. I do a lot of presentations out in the community. I am doing that in my capacity as the executive director, so I should not be accepting any gifts or honorarium for performing that duty. I also happen to be an attorney, so if I were asked to go to some organization and present something as an attorney completely unrelated to my official duties, presumably I could accept an honorarium for that. I probably would not because my expertise is ethics, and what do they want me to talk about besides that? The caution is for public officials who happen to be called to present not on the basis of their official position. There are a lot of other exceptions set forth in the law about what constitutes an honorarium and what the exceptions are for travel expenses and things like that.

We also have a provision during campaign season. It is not uncommon for various boards and bodies to want to endorse or support a ballot question or particular candidate for office. That is totally appropriate, but what they cannot do, or what any individual public officer or employee cannot do, is cause the government to incur an expense or make an expenditure in support of that ballot question or candidate. Where we see the most examples in this particular area really has to do with local school boards. A lot of local school boards will want to endorse various ballot questions, primarily for funding issues and things of that nature. That is totally appropriate if that is their policy decision they make, but ultimately if the individual staff members of the board or the school district end up sending emails or engaging in activities on staff time, that is not an appropriate expenditure; it is a governmental expenditure at that point.

I will spend a few minutes here on "cooling-off" [page 16]. We are also going to see some potential amendments in S.B. 129 to our cooling-off provisions. "Cooling-off" is a term we use. We also might refer to it as our "revolving door" provisions, if that is something that is familiar to you. Essentially, there is a one-year time-out, a one-year cooling-off period between the time in which we are serving the public versus when we can go into the private sector under certain circumstances. In particular, public officers and public employees—specifically with the Public Utilities Commission of Nevada and the Nevada Gaming Control Board—but all other public officers and public employees who hold certain positions in government, typically higher level positions that are policy-gearred and carrying out public duties and expending public funds, have a prohibition against leaving public service and going into the business or industry that is otherwise regulated by their agency for a one-year period of time. Under the current status of the law, the commission has the opportunity to grant relief from strict application of that particular statute in the appropriate circumstances.

We also have a sister statute, NRS 281A.410, which is a little bit more restrictive. It restricts public officials or public employees from leaving their public service for one year if they are going on to represent or counsel a private person on an issue that was before their agency during their tenure. This is more typical of individuals who may be serving in a professional capacity, an attorney or a CPA, who are going to go on to represent private clients and advise them on issues that were once before their agency. It does not mean that they cannot be employed by that private person or otherwise represent that private person, just not on those issues that were before the agency during their tenure. The commission does not have the authority to grant relief from that particular statute. If the statute applies, you simply cannot do it.

The third nuance I overlooked is about the nature of employment with a contract vendor. If your agency has granted a contract to a particular entity and you were instrumental in awarding that contract, you are prohibited from working for that contract vendor for that one year because otherwise it looks like a sort of pay-to-play kind of scenario.

Some of these provisions apply to state Executive Branch employees, and some of them apply to all public local or state government employees. The first one, which is NRS 281A.550, subsection 3, does not apply to the local governments. That is our general

employment prohibition, but the contract vendor and representation sections do apply to our local government officers and employees.

I will not get too much into it because I know you have a big bill coming at you in the near future, but S.B. 129 is also looking to address some issues with our cooling-off prohibitions and also introducing to you the notion of a reverse cooling-off, wherein a public officer or public employee has the ability to engage in conduct in his or her official capacity—approving a zoning issue, a special use hearing, something like that—and then in their private life within one year benefiting from what they just did in their public role. Again, the appropriate exceptions will be in place if it is not the type of thing that would be unavailable to everyone else similarly situated and things like that. We will get to that when we get to the bill, but hopefully this background will introduce you to the concepts before we get into the bill.

This particular notion of disclosure and abstention is not always entirely applicable to state legislators in terms of the way you vote, but every other public officer and public employee does have the obligation to disclose conflicts of interest and abstain in certain circumstances. This notion of abstention is what I referred to at the outset of my remarks in regard to what types of conflicts are actually disqualifying. The way we get to understand what is disqualifying is through this idea of disclosure [page 18]. Under our law we basically say that to the extent you have a public matter before you that is reasonably affected by either your acceptance of a gift or a loan, a substantial pecuniary interest you might have or the interests of a person to whom you have one of these legal relationships, then you have a duty to disclose the nature of that conflict of interest.

The thing we see more often at the Ethics Commission is a failure to even recognize that there is a conflict in the first place. Our goal with our education is to get our public officials and public employees to understand when the conflict exists and then we help them navigate what circumstances make those conflicts disqualifying. We require a full disclosure of the full nature and extent.

Let me see if I can give you an example in my own life. Part of my responsibilities as the executive director is to investigate ethics complaints that come to the Ethics Commission. With a jurisdiction of 145,000 people, I can tell you that I happen to be related to some of them. It would probably be interesting, to say the least, if I received a complaint involving my sister that I chose to investigate. That is sort of the obvious case, right? Great, I can investigate my own sister's ethics complaint. Certainly, I cannot. That is what we call a *per se* conflict. It happens to involve a person to whom I have a legal commitment. My obligation is to disclose the nature of that conflict to my commission.

I do not serve on a governing board like a lot of our public officers. I report to my eight-member commission. I have a responsibility to tell my commission that this complaint came in, it involves a public officer, it happens to be someone I am related to, and therefore, in that circumstance, it has a material effect on the interest of a person to whom I am related and therefore it triggers the abstention requirements or the disqualification requirements.

Then it would be up to the commission, presumably, to delegate that assignment because, as the director, I would otherwise be delegating to one of my subordinates. That would be presumed to be improper influence of a subordinate for me to delegate a complaint involving my own sister. There are a lot of options and opportunities that a board or a body can implement. My commission would implement a system whereby it may delegate the investigation to one of my subordinates, but it would also put protocols in place. I am not able to have any conversations or communications with my subordinates about that particular case. Perhaps documents need to be password-protected so my interests do not get the best of me to look up what is happening with the course and scope of an investigation and things of that nature.

The reason I give you that example is because that is the type of thing we are asking of our public officers and public employees. It is not just voting on issues before governing bodies; it is also the very work we are doing in the trenches with the public employees. These disclosures are often coming to public bodies and asking them to make decisions about how to avoid those types of conflicts. Where I said there is a reasonable effect on our interests, we must disclose those interests. From members of governing bodies, those disclosures need to be made to the public. For public employees, they need to be made to the supervisory head of the organization.

What the law says about abstention is that only when those interests are materially affected by the issue that is before you do you have the obligation to abstain from voting or acting in your official capacity [page 20]. That is sometimes a difficult issue. Sometimes the public officer in particular will come back and say, If I am disqualified and not able to vote on this particular issue, you have effectively taken away my representative voice in government. The statute expressly states that they recognize that that is a real concern and so only in those clear cases where there is a material conflict are we going to require you to abstain from voting or acting in your official capacity. Sometimes that is a judgment call, but also that is one of the main reasons why we have the Ethics Commission as a resource to provide advisory opinions and our legal counsel to help us navigate those issues. Materiality is sometimes obvious and sometimes it is a close call, but the better we disclose our conflict, the closer we get to ascertaining whether it is material or perhaps whether it is more remote and does not have a material effect on our interests.

The law builds in a presumption that you are deemed to be independent in your judgment and therefore abstention would not be required if the resulting benefit or detriment to you would not be any greater or less than that occurring to anybody else affected by the group [page 21]. A good example, mostly at the local level, might be a public agency that sets utility rates for its community. Presumably those public officials are also residents of that community and so therefore, if they set a utility rate, it is obviously going to affect their own financial interests, but it is going to affect everybody the same and therefore they are deemed to be independent in their judgment.

That is an overview of the substantive provisions of Ethics in Government Law. Procedurally, I will give you a bird's eye view of how we handle these issues. The first, of

course, is our advisory opinion [page 22]. From an advisory opinion perspective, a request for advice is entirely confidential. We are exempt from the Open Meeting Law for purposes of our advisory opinions such that the commission can meet in closed session to deliberate and advise a public officer or public employee about these issues.

In addition to holding a public hearing where the commission will ask that person to come before it and testify and give responses to any questions it might have, we can also give advice based on written submissions in the appropriate cases. If there are not any questions, if it is a pretty clear-cut case, then we can give advice basically on written materials. There is also a nuance, and we are going to try to make it a little more clear in our upcoming bill, between the effect of the commission issuing a decision and issuing a written decision.

We have statutory time frames in our statutes about the time in which we must give this advice. For an advisory opinion, it is 45 days. Often what will happen is by the time we have teed up the information, gotten the commission together and had the hearing, or otherwise given them the information, they are making that decision orally within 45 days. It often takes quite a long time thereafter, anywhere from 30 to 60 days, to when the written opinion is issued. We want to make that clear in statute. We have done that in our regulations, but we think it is more prudent to have that in our statutory provisions.

Finally, the subject has the ability to waive the confidentiality of an advisory opinion, but if he or she chooses not to, then the commission will issue what is known as an abstract written opinion, which is essentially sanitizing the opinion to remove any identifying features of the public official or public employee. All of our written decisions are published on the commission's website, and they are also made available on the Nevada Legislature's Nevada Law Library website, which is a resource utilized by many attorneys who are trying to access the commission's precedent to determine what it may or may not have decided in a prior case.

Moving on to ethics complaints [page 23], I want to give you some insight into what that process looks like. First of all, I think I mentioned any member of the public can file a complaint with the Ethics Commission. The first thing that is undertaken at the commission level is that staff—our commission counsel and I—will review every single complaint for two things. Number one, do we have jurisdiction over this complaint; and secondly, has there been evidence submitted to support the allegations? We are not just going to make a broad-based assertion that there has been a violation. We need something, whether it be a witness, documentary evidence, whatever it might be, to support a reasonable belief that there could have been an ethics violation. We will provide a written recommendation to the commission, and the commission as a body will review and evaluate every single complaint that comes through the body.

That is something that is relatively new after Senate Bill 84 of the 79th Session. We had a lot of strategic and structural changes to our processes back in 2017 to better ensure due process

for the subjects who are before us and also to make our process on the staff side a little bit more streamlined and clear for all the parties involved.

If the commission decides that it is going to direct an investigation, we will pursue what is called a "notice to the subject." The subject will receive a notice that there has been a complaint filed and it is being investigated, and they will have an opportunity to file a written response to those allegations.

To the course and scope of an investigation after all that is done, I, as the executive director, will present a recommendation to what is known as a three-member review panel. It is three members of our eight-member commission who are tasked with reviewing the factual circumstances of a complaint to determine whether there is sufficient evidence from an investigation to warrant just and sufficient cause for the commission to review the case further. Another thing that we accomplished back in 2017, and I know Assemblywoman Monroe-Moreno was part of the committee that looked at that bill, was give the review panel some final decision-making authority over a particular case in a circumstance.

The review panel now has the authority to approve or authorize what is known as a deferral agreement. That is a situation in which the review panel says it does believe there is sufficient evidence to move this case forward, but the type of conduct at issue can be appropriately addressed through a deferral. That is a deferred finding of a violation, so that is nobody agreeing that there has been a violation; instead, that is an agreement by my office and the subject that says we acknowledge that there is conduct at issue here and we are going to address it through various terms and conditions. It might be requiring the subject to attend an ethics training. It might be some sort of corrective action. It might be issuing a public apology or something of that nature, depending on the nature of the circumstances.

If the review panel determines that it is not appropriate for deferral, it will refer the entire matter to the commission. If it is referred to the commission, that is our adjudicatory hearing process at that point [page 24]. At that point, the review member panels are precluded from further participation in the adjudicatory process, and we might endeavor to settle the case at that point. Most of our cases, primarily all of them except for maybe two or three, have been resolved through settlements since 2013. The reason that is a critical time frame is because in 2013 the commission acquired its associate counsel position. That is a position that represents me, as the executive director, in pursuing ethics complaints as a party before the commission. Since we have had that position, we have been able to negotiate a little bit better the ability to resolve most of these cases short of a full adjudicatory hearing. We have had a couple, and we have also had some cases that are resolved by legal motion before the commission. Perhaps the facts are not in dispute, and we will resolve that by legal motion.

With all that said, that is a big overview of how a complaint comes through the doors and all the way through an adjudicatory hearing. Like I said, most cases are resolved through stipulated agreements, deferral agreements, or what I have not mentioned yet is something else we put forth in the bill in 2017, which is a letter of caution or a letter of instruction. That is an available resource to the commission at the jurisdictional phase, the review panel at the

investigatory phase, or even the commission ultimately at the adjudicatory phase to say, We do not have sufficient evidence to warrant a violation, but we nevertheless are going to issue this letter of caution or instruction based on the information that it has.

I wanted to talk a little bit about the penalties. Right now under the ethics law, if the commission determines that there has been a violation, it must make a secondary analysis about whether or not that violation is what we call "willful" [page 25]. If it makes a determination that the conduct is willful, it has the authority under statute to impose monetary sanctions. One of the big things we are looking at in S.B. 129 coming up this session is eliminating the concept of willful violations. As it stands in our statutes right now, the commission is required to evaluate the severity of circumstances to ascertain the nature and severity of the fine it might impose.

We think that the concept of willfulness is very confusing to public officers and public employees and even, frankly, to their counsel because it carries the connotation that there is some sort of bad faith or malicious intent. Under the law, the definition of willfulness simply means that you intentionally and knowingly acted; not that you knew you were violating the law and not that you acted in bad faith. It is a very hard pill to swallow sometimes for a public official to say, I have committed a willful violation of the Ethics in Government Law when perhaps it was not malicious conduct or bad faith conduct.

What the commission would like to do is take away the concept of willfulness and evaluate any violation for the severity of its circumstances and determine whether it will impose a monetary sanction. We think that will be a big solution to some of the hurdles that we face in terms of negotiating settlements and also explaining to public officers how this works.

The broader impact that that willful decision will have is on the effect of our safe harbor provisions [page 27]. This is the term we provide to the statute that we have that basically says any public officer or employee who relies in good faith upon the advice of the attorney, the legal counsel appointed or elected to serve their agency, is given a safe harbor from a finding of a willful violation. What that means under the current law is that if they violated the law, they might get a safe harbor from a willful violation, but we could still find that they violated the law. It could be, in any circumstance even with the new bill, that we will disagree with the legal advice that was given by an agency counsel, but I think that it is totally reasonable for a public employee or public officer to rely upon the legal advice given by their counsel. The caveat is that it must be reasonable advice. You cannot get to go rob a bank on Tuesday as reasonable legal advice. That just does not fly. It also has to be advice that was sought before you engaged in the conduct. If we can reasonably rely on those factors, we do not think that a public officer or employee should be saddled with an ethics violation if those factors are present. Eliminating the "willful" designation will also carry over into the safe harbor provisions, that it will be a safe harbor from any finding of a violation. That does not mean that the commission will necessarily agree with the conduct or agree with what happened and its opinion will reflect that. It will, nevertheless, be an additional protection for the public official or public employee if it is adopted.

With that, I want to highlight some of the progress the commission has had since we met last session. We did adopt an entirely new chapter of regulations as a result of Senate Bill 84 of the 79th Session because it revamped the entirety of how we pursue our ethics complaints procedurally [page 28]. With the assistance of the Legislative Counsel Bureau, the Legal Division helped us rewrite the entirety of the *Nevada Administrative Code* (NAC) Chapter 281A. This, I think, is a much more friendly version for public officers and public employees who need to navigate what to do before the Ethics Commission.

Then, of course, we also had Senate Bill 84 of the 79th Session. What you will see in S.B. 129 coming forward this session is going to clean up some of the problems we have seen implementing Senate Bill 84 of the 79th Session, but I will save all those fun facts for you. I would like the opportunity to meet with each of you individually before the bill is heard. It is a rather extensive bill, so I would appreciate your indulgence of time to summarize those provisions for you and give you an opportunity to answer any questions you might have about that.

With that, Madam Chair, I am happy to answer any questions, and certainly I and my commission counsel, Tracy Chase, are a resource for you during the entirety of the session for issues that come up on ethics in government. Thank you.

**Chair Jauregui:**

Does the Committee have any questions?

**Assemblyman Leavitt:**

Maybe for a lot of us who are in our other jobs who work in the public sector, whether we work for RTC, are school teachers, or represent various entities, I think you were pretty clear. The big question is about the Public Employees' Retirement System (PERS). We are public employees. We wanted to make sure because we are going to have to vote on certain PERS provisions. The fact that it affects everyone who is in the PERS system, not just us individually, from what you said, allows us to go ahead and vote on those types of provisions. When we start delineating about things that are very agency-specific, whether it be a school district or an agency, I want to make sure that I am steering clear without overstepping bounds to make sure nothing is really going to affect my employment or salary or my decision-making in that nature. Maybe legal counsel can weigh in on that. I just want to make sure we are clear for when we are trying to make decisions in that nature.

**Chair Jauregui:**

Mr. Powers, do you want to weigh in?

**Kevin Powers, Committee Counsel:**

As Ms. Nevarez-Goodson mentioned, the abstention and disclosure requirements in the ethics law, NRS 281A.420, do not apply to state legislators. They have a separate set of abstention and disclosure requirements that are in Standing Rule 23 for each house. When those issues come before you, your legal division is there to provide you with legal advice on when the proper time is to disclose and abstain, whether you have a conflict of interest, and



whether that conflict of interest rises to a disqualifying conflict of interest. I want to emphasize that the standards in Standing Rule 23 are different from those in NRS 281A.420. Those ones in NRS 281A.420 apply to state officers and local officers; they do not apply to state legislators. They have their own separate standard. Those standards are enforced by each house. The Ethics Commission is not involved in the enforcement of those standards; only each house is involved.

**Yvonne Nevarez-Goodson:**

What I would say is, to the extent those of you are serving public positions outside of your roles as state legislators, that is where these provisions I have talked about would apply to you in terms of how you carry out your duties in those jobs.

**Assemblyman Daly:**

I want to get a clarification. I saw a slide or two back that you did some regulations on the advisory opinions. I have heard that a city councilor or county commissioner or whomever, went in for an advisory opinion. Maybe he or she already did the thing he or she was looking to get an opinion on. The opinion came back and it was contrary to what he or she thought or may have been advised. Under the old rule—maybe you changed it—that advisory opinion became the rule, and if you did not follow it, you would get the complaint filed against you. I do not know if you have updated that or not because to me that does not mean that it is advisory; it means here is the rule, this is what it is, and now you better follow it or you will end up with a complaint. Has that been revisited to make it easier for people to use it?

**Yvonne Nevarez-Goodson:**

I am not sure I am familiar with what you are talking about specifically. I think what I could say is that when the commission issues a written decision, whether it be as a response to an advisory opinion or to an ethics complaint, that decision serves as administrative precedent. It is supposed to intentionally be interpreting the existing Ethics in Government Law. What happens in a lot of cases where, in an advisory context, the subject of the request intends to stay confidential, we issue an abstract opinion. Sometimes that is very difficult because we are not giving specific facts and circumstances that may be relied upon in precedent by the rest of the community. They do not always serve as the best precedential value when the facts are removed, for all intents and purposes. Sometimes we can navigate those facts to make it a little bit more user-friendly.

One area where we have seen this happen is what I have referred to as the fiduciary relationships. Technically, the statute does not say that serving on the board of a nonprofit entity creates a commitment in a private capacity. The commission nevertheless has interpreted those relationships to be the types of relationships that have been substantially similar to a business relationship such that they trigger conflicts under the law. The commission's precedent, as interpreting the statutes, is now effectively law, and we advise, interpret, and provide that.

If I may, I think that the other question you are getting at is whether the commission decides something in an advisory capacity that is perhaps contrary. A public officer or public

employee can request the commission's advice even about past conduct. Sometimes the conduct that has already occurred could technically be deemed to be a violation of the Ethics in Government Law. The commission historically has never wanted to have a chilling effect on someone coming forward for advice about past conduct. To my knowledge, it has never said, Thanks for telling us and now we are going to go initiate an ethics complaint against you. Oftentimes we will not initiate a complaint, but we cannot prevent a member of the public who has similar public information about past conduct from coming forward and filing an ethics complaint. That might be something you are referring to. I am not sure.

**Assemblyman Daly:**

I understand that you are making an opinion. They ask you to interpret the law. You interpret the law. Basically you are the one who would be making the decision if someone filed a complaint under the same circumstance. What is the difference between that and an oral opinion where it is not in writing? Yes, it was a situation where someone disagreed, so there is a process if someone disagrees, which would be a secondary question. They can go to judicial review. I do not know what else there is, but it seems to me there would be something there. I have two questions there.

**Yvonne Nevarez-Goodson:**

To answer your second question first: yes, every decision of the Ethics Commission that is deemed to be an adversarial decision or a contested case is subject to judicial review. Not all opinions on advisory requests are deemed to be contested cases, including those regarding past conduct. There is a specific provision in the statute that says judicial review is only available to advisory opinions regarding present and future conduct, probably for the reasons I have identified: that we do not want to have a chilling effect and also if there is a problem and someone does bring a complaint about past conduct, it can be addressed by the commission.

The other nuanced difference between an advisory opinion and a complaint that were to come in is that for an advisory opinion, the commission has to rely solely upon the information presented to it by the requestor. We do not have the ability to get outside information to us in an advisory context. We rely wholly on the information that is given to us versus an ethics complaint where we go out and conduct an actual investigation and find out if there are any other facts that might be relevant. We also have the opportunity to request reconsideration of the Ethics Commission's opinion if we did not understand facts appropriately. Prior to going to judicial review, there is an opportunity in our regulations to seek reconsideration of our opinions.

**Assemblyman Daly:**

And the difference between oral and written?

**Yvonne Nevarez-Goodson:**

During my tenure, what I can say is, there might be two or three decisions that did not result in a written opinion of the Ethics Commission. It nevertheless is discretionary for the Ethics Commission about whether or not it wants to issue a written decision in an advisory context.

If the advisory request constitutes a contested case as defined under our Nevada Administrative Procedure Act, then we must comply and file a written decision to that response because presumably that is the issue that would be subject to judicial review. There has to be something written. If there is a decision that does not qualify as a contested case under the Nevada Administrative Procedure Act, we are not required to file a written decision, but historically as a practical matter, we have. In fact, the only circumstances I can recall in recent history where we have not was because the requestor passed away, so we did not issue a written decision. There was a late withdrawal. We might have those situations. But for all intents and purposes and to my recollection, the commission issues a written decision in most of its cases.

An oral decision would not have the same precedential value as a written decision. It would not be the type of decision that is published on our website, protected under our safe harbor provisions, and also published on the Nevada Law Library.

**Assemblyman Roberts:**

I have just a couple of quick questions. You mentioned about going backward, do you have a statute of limitations on complaints? And two, does your jurisdiction go to past employees, or do you have to be a current employee? Maybe you said that, but I did not catch it.

**Yvonne Nevarez-Goodson:**

I did not say, and yes, we do. Our statute of limitations is currently two years. It could trigger past employees or past public officers if the conduct is alleged to have occurred within the two years prior to our receiving the complaint. It could be that that person is no longer in public service, but the conduct occurred within two years, so we would still have jurisdiction to look at that. One of the things in S.B. 129 is to make clear that the two-year statute of limitations is also going to be applicable to past conduct for advisory opinions. We will not give advice on past conduct that exceeds two years.

**Chair Jauregui:**

Are there any further questions?

**Yvonne Nevarez-Goodson:**

I just wanted a quick follow-up. There is another part of our statute that says unless the conduct is not otherwise reasonably discoverable within those two years. We do have an opportunity in the appropriate circumstance to ascertain whether something was reasonably discoverable within that two years.

**Chair Jauregui:**

Thank you, Ms. Nevarez-Goodson. It was a very thorough presentation. We look forward to working with you and hearing S.B. 129.

Is there anyone in the audience here in Carson City who wishes to speak on the record under public comment? [There was no one.] The next Committee meeting is scheduled for

Tuesday, February 12, 2019, at 4 p.m. The Committee will receive a presentation from the Office of the Secretary of State. Thank you, everyone. We are adjourned [5:32 p.m.].

[Chair Jauregui requested that the State of Nevada Commission on Ethics – Annual Report, July 1, 2018 ([Exhibit H](#)) and the FY18 & FY19 Case Statistics ([Exhibit I](#)) be included in the official record as reference material.]

RESPECTFULLY SUBMITTED:

---

Catherine Bodenstein  
Committee Secretary

APPROVED BY:

---

Assemblywoman Sandra Jauregui, Chair

DATE: \_\_\_\_\_

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a document titled "2019 Assembly Legislative Operations and Elections - Standing Policies," presented by Chair Jauregui.

[Exhibit D](#) is a document titled "Assembly Committee on Legislative Operations and Elections Committee Brief," dated February 2019, presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit E](#) is a document titled "Assembly Committee on Legislative Operations and Elections 2019 Key Election Officials in Nevada," presented by Carol Stonefield, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit F](#) is a document titled "Nevada Ethics in Government Law," presented by Yvonne M. Nevarez-Goodson, Esq., Executive Director, Commission on Ethics.

[Exhibit G](#) is a document titled "State of Nevada Commission on Ethics Consanguinity/Affinity Chart," presented by Yvonne M. Nevarez-Goodson, Esq., Executive Director, Commission on Ethics.

[Exhibit H](#) is a document titled "State of Nevada Commission on Ethics - Annual Report," dated July 1, 2018, provided by the Commission on Ethics.

[Exhibit I](#) is a document titled "FY18 & FY19 Case Statistics," provided by the Commission on Ethics.