

WORKFORCE CONNECTIONS

BOARD MEETING MINUTES

January 28, 2014
10:00 a.m.

*Workforce Connections
Bronze Conference Room
6330 W. Charleston Blvd., Suite 150
Las Vegas, NV 89146*

Members Present

Bart Patterson	Bill Regenhardt	Commissioner Adam Katschke
Commissioner Lawrence Weekly	Commissioner Ralph Keyes	Councilman Bob Beers
Councilwoman Peggy Leavitt	Councilwoman Anita Wood	Councilwoman Gerri Schroder
Dr. David Lee	Hannah Brown, Chair	Lynda Parven
Matt Cecil	Mujahid Ramadan	Sonja Holloway
Tommy Rowe	Valerie Murzl, Vice-Chair	Vida Chan Lin
William Bruninga (phone)	Willie J. Fields	

Members Absent

Charles Perry	Dan Gouker	Commissioner Butch Borasky
Maggie Arias-Petrel	Mark Edgel	Dan Rose

Staff Present

Ardell Galbreth	Suzanne Potter	Heather DeSart
Jim Kostecki	Carol Turner	Tom Dang
Debra Collins	Brett Miller	Jeannie Kuennen
Shawonda Nance	Kenadie Cobbin-Richardson	Emilio Pias

Others Present

Caren Caferatta-Jenkins, NV Commission on Ethics	Dr. Tiffany Tyler, Nevada Partners, Inc.
Vincent Miller, LCCCF	Janice M. Rael, Nevada Partners, Inc.
Alan Ramirez, LCCCF	Lucy Sanchez, LCCCF
Dr. Rene Cantu, Jr., LCCCF	Maria Flores, Bridge Counseling Associates
Donna Bensing, New Horizons CLC	Yolanda Correa, Bridge Counseling Associates
Nield Montgomery, The Learning Center	Linda Montgomery, The Learning Center
Debbie Tarantino, LCCCF	Helicia Thomas, GNJ Family Life Center
Tamara Collins, Las Vegas Urban League	Omyaka Taggart, Las Vegas Urban League
Jake McClelland, FIT	Sharon Morales, LCCCF
Sherman Rutledge, GNJ Family Life Center	Kelli Mosley, Olive Crest
Gerard Arcenet, Carrington College	Denise Gee, HELP of Southern Nevada
Otto Merida, Latin Chamber of Commerce	Irene Bustamante Adams, Latin Chamber Foundation

(It should be noted that not all attendees may be listed above)

1. Call to order, confirmation of posting and roll call

The meeting was called to order by Chair Hannah Brown at 10:03 a.m. Staff confirmed the meeting had been properly noticed and posted in accordance with the Nevada Open Meeting Law. Roll call was taken and a quorum was present.

2. **DISCUSSION AND POSSIBLE ACTION: Approve the agenda with inclusions of any emergency items and deletion of any items**

A motion was made to approve the agenda as presented by Valerie Murzl and seconded by Matt Cecil. Motion carried.

3. **FIRST PUBLIC COMMENT SESSION:**

Lucy Sanchez and Alan Ramirez, youth participants of Latin Chamber of Commerce Community Foundation shared about their positive experience with the program.

Gerard Arcenet - Carrington College introduced himself as an advocate and partner for getting individuals into the medical field.

4. **DISCUSSION AND POSSIBLE ACTION: Approve the Board Meeting Minutes of October 22, 2013**

A motion was made to approve the Board Meeting Minutes of October 22, 2013 as presented by Valerie Murzl and seconded by Matt Cecil. Motion carried.

5. **INFORMATION: Detailed Briefing on Nevada Ethic Requirements provided by Caren Caferatta-Jenkins, Executive Director, Nevada Commission on Ethics**

Caren Caferatta-Jenkins, Nevada Commission on Ethics (NCOE) provided a detailed presentation on Nevada Ethic Requirements. The three main topics of the presentation include:

- Required Filings
- Prohibited Conduct
- Abstention and Disclosure (Disclosure to provide the public sufficient information regarding the nature and extent of the conflict (i.e., I am a fiduciary and have an obligation to represent the interest of that organization as well as this).

All public officers and public employees are subject to the Ethics in Government Law (NRS 281A). The NCOE interprets and provides guidance on the statutory provisions of NRS281A, investigates and adjudicates requests for opinion from public officer, public employees and the public, and accepts certain written disclosures.

The meeting went into a brief recess following the presentation. Chair Brown called the meeting to order at 12:10 p.m.

Ardell Galbreth, Executive Director announced that CEUs are available to individuals with qualified credentials (CPA, CPM, Attorney) for attending this presentation and should see Suzanne to complete the necessary paperwork.

6. **INFORMATION: Adult & Dislocated Worker (ADW) Committee Meeting Minutes of January 8, 2014 (draft)**

Valerie Murzl, ADW Committee Chair presented the Minutes of January 8, 2014 provided on page 15 - 18 of the agenda packet.

7. **DISCUSSION AND POSSIBLE ACTION: Approve the Adult & Dislocated Worker Committee's recommendation to negotiate and execute a Veteran's Employment and Training Services contract procured through the Request for Proposal (RFP) process with the Las Vegas Clark County Urban League in an amount not to exceed \$800,000. Upon Board approval, the dates of the contract will be February 1, 2014 to June 30, 2015 to provide employment and training services to 320 veterans in Southern Nevada**

Councilwoman Gerri Schroder and Matt Cecil disclosed their fiduciary affiliation with Las Vegas Clark County Urban League.

Valerie Murzl provided background and presented the RFP Evaluator scores provided on page 20 of the agenda packet. Murzl noted that 50% of the veterans served must be post 9/11 and all services will be provided out of the One-Stop Career Center.

Councilman Bob Beers noted that he is working on a central registry for veterans and requested that a representative from Urban League contact him with their information to be entered into the registry.

Urban League's executive director Kevin Hooks provided their services and methods of outreach. Urban League has twelve offices across the valley and has established partnerships/MOUs with multiple organizations that serve and outreach to veterans. These partnerships will be managed by an Urban League staff member to ensure stated goals are achieved. Urban League will leverage its Family Development Services, to provide veterans with job training, emergency services, and education services as well as maximize the use of the existing One-Stop Center services.

A motion was made to approve the Adult & Dislocated Worker Committee's recommendation to negotiate and execute a Veteran's Employment and Training Services contract procured through the Request for Proposal (RFP) process with the Las Vegas Clark County Urban League in an amount not to exceed \$800,000. Upon Board approval, the dates of the contract will be February 1, 2014 to June 30, 2015 to provide employment and training services to 320 veterans in Southern by Mujahid Ramadan and seconded by Hannah Brown. Councilwoman Gerri Schroder and Matt Cecil abstained. Motion carried.

8. **DISCUSSION AND POSSIBLE ACTION: Approve the Adult & Dislocated Worker Committee's recommendation to award GNJ Family Life Center additional funding in an amount not to exceed \$150,000 for their One-Stop Center contract and \$200,000 for their Home Office contract for a total of \$350,000. These funds will be used to augment GNJ's current PY2013 WIA Adult and Dislocated Worker and One-Stop contracts to provide additional training and supportive services to participants**

Ms. Murzl provided background and presented GNJ's funding request letters provided on page 22 and 24 of the agenda packet.

Commissioner Lawrence Weekly commented on GNJ's performance at a recent event and their excellent responsiveness in the community.

A motion was made to approve the Adult & Dislocated Worker Committee's recommendation to award GNJ Family Life Center additional funding in an amount not to exceed \$150,000 for their One-Stop Center contract and \$200,000 for their Home Office contract for a total of \$350,000. These funds will be used to augment GNJ's current PY2013 WIA Adult and Dislocated Worker and One-Stop contracts to provide additional training and supportive services to participants by Commissioner Lawrence Weekly and seconded by Councilwoman Anita Wood. Motion carried.

9. **DISCUSSION AND POSSIBLE ACTION: Approve the Adult & Dislocated Worker Committee's recommendation to award the Latin Chamber of Commerce Community Foundation National Emergency Grant (NEG) funds in the amount of \$100,000. NEG funds can only be utilized for WIA allowable training activities. NEG funds can only be expended on participants who are considered long-term unemployed. These are individuals who have been unemployed for 27 weeks or longer**

Hannah Brown disclosed her fiduciary responsibility with the Latin Chamber of Commerce as a foundation board member.

Latin Chamber of Commerce's funding request is provided on page 27 of agenda packet.

A motion was made to approve the Adult & Dislocated Worker Committee's recommendation to award the Latin Chamber of Commerce Community Foundation National Emergency Grant (NEG) funds in the amount of \$100,000. NEG funds can only be utilized for WIA allowable training activities. NEG funds can only be expended on participants who are considered long-term unemployed. These are individuals who have been unemployed for 27 weeks or longer by Councilman Bob Beers and seconded by Bart Patterson. Hannah Brown abstained. Motion carried.

10. **INFORMATION: Training, Wage and Employment Reports**

Brett Miller, Sr. Analyst presented the Training, Wage and Employment reports provided on page 29 - 31 of the agenda packet. Discussion ensued regarding the manufacturing sector council. Commissioner Weekly requested more comprehensive sector council reports.

11. INFORMATION: WIA Client Demographics Report – ADW & Youth

Brett provided a brief overview of the WIA Client Demographics Reports provided on page 32 - 36 of the agenda packet. Discussion ensued.

12. INFORMATION: Youth Council Meeting Minutes of October 16, 2013

Sonja Holloway, Youth Council Chair presented the Youth Council Minutes of October 16, 2013 provided on page 38 – 41 of the agenda packet.

13. INFORMATION: Youth Council Meeting Minutes of January 8, 2014 (draft)

Ms. Holloway presented the Youth Council Minutes of January 8, 2014 provided on page 43 - 45 of the agenda packet.

14. DISCUSSION AND POSSIBLE ACTION: Approve Youth Council’s recommendation to award Latin Chamber of Commerce Community Foundation a WIA Youth contract in an amount not to exceed \$250,000 to serve 100 Out-of-School Youth for the term of February 1, 2014 through September 30, 2014

Ms. Holloway presented Latin Chamber Foundation’s Executive Summary for the STEM Education and Training for Youth program provided on page 47 of the agenda packet.

Dr. Rene Cantu, executive director of the Latin Chamber of Commerce Community Foundation reported enrolling 100 youth within the first quarter of the program year using traditional media for outreach, including online, social media and Craigslist as well as other tools for outreach.

Hannah Brown disclosed her fiduciary responsibility with the Latin Chamber of Commerce as a foundation board member.

A motion was made to approve Youth Council’s recommendation to award Latin Chamber of Commerce Community Foundation a WIA Youth contract in an amount not to exceed \$250,000 to serve 100 Out-of-School Youth for the term of February 1, 2014 through September 30, 2014 by Lynda Parven and seconded by Councilwoman Anita Wood. Hannah Brown abstained. Motion carried.

15. INFORMATION: Budget & Finance Committee Minutes of November 12, 2013

The Budget & Finance Committee Minutes of November 12, 2013 are provided on page 49 – 55 of the agenda packet.

Councilwoman Leavitt inquired about the discussion with Councilman Beers at the November 12th Budget Committee meeting regarding the legalities of funding for One-Stop Centers. Ardell recapped the discussion stating that Beers requested information from staff regarding the legalities of the resources and funding expended for the One-Stop Career Center and stated that WC is on good, firm standing based on the MOUs, contracts, and agreement between the consortium of entities in the One-Stop Center and the Southern Nevada Workforce Investment Board.

16. INFORMATION: Budget & Finance Committee Minutes of December 10, 2013

Jim Kostecki, Finance Manager presented the Budget & Finance Committee Minutes of December 10, 2013 provided on page 57 - 61 of the agenda packet.

17. INFORMATION: “High Risk” Designation Final Update Bridge Counseling Associates (BCA), Latin Chamber of Commerce Community Foundation (LCCCF), and Southern Nevada Children First (SNCF)

Jim reported that all outstanding fiscal issues have been resolved with Bridge Counseling Associates, Latin Chamber of Commerce Community Foundation, and Southern Nevada Children First, and the three agencies have been removed from high risk.

18. DISCUSSION AND POSSIBLE ACTION: Review, Discuss, Accept and Approve Reports

a. PY2013 WIA Formula Budget July 1, 2013 through June 30, 2014 and Budget Narrative

Jim presented the budget revisions and the Board voted on each item separately.

i. Budget & Finance Committee recommends approval of the reallocation of \$15,000 of strategic initiative funds to program support contracts for procurement training

The PY2013 Budget and budget narrative is provided on page 66 – 74 of the agenda packet.

A motion was made to accept and approve Budget & Finance Committee's recommendation for the reallocation of \$15,000 of strategic initiative funds to program support contracts for procurement training by Councilwoman Peggy Leavitt and seconded by Bill Regenhardt. Motion carried.

ii. Budget & Finance Committee recommends approval of \$372,061 from unobligated community resources funds to support three existing Business Services positions and fill two additional Business Services positions in the One-Stop System

Jim provided background and presented employee justification and Business Services Specialist job description provided on page 75 – 78 of the agenda packet.

Lynda Parven stated that WIA funded partners provide business services, including DETR, and does not understand how adding two more positions does not duplicate services even more than it already is. Ardell replied that according to the Workforce Investment Act, the Board is responsible for the workforce delivery system, including business services and the management thereof. The service providers are responsible for providing business services on behalf of their organizations; however, the Board has the responsibility to implement and manage the delivery of these services throughout the workforce investment area. These positions started last year and there has been a steady increase in pace and demand for additional staff to support businesses/employers seeking our services. Without additional support, Business Services does not have the capacity to meet the demands in this area.

Councilman Beers requested staff to report on the last six months of success outcomes for the Business Services department, including job placements, retention, etc. Kenadie Cobbin-Richardson, Business Services Manager provided a brief update. Discussion ensued.

A motion was made to accept and approve Budget & Finance Committee's recommendation for \$372,061 from unobligated community resources funds to support three existing Business Services positions and fill two additional Business Services positions in the One-Stop System by Commissioner Lawrence Weekly and seconded by Councilwoman Anita Wood. Lynda Parven opposed. Motion carried.

iii. Budget & Finance Committee recommends approval of the reallocation of \$7,200 of One-Stop System strategic initiative funds to program support contracts for programming of a queuing system at the One-Stop Career Center

Jim reported that the reallocation of \$7,200 will fund the IT consultant to reprogram a queuing system at the One-Stop Center that will interface with the current NVTrac system to capture necessary data for reporting purposes. The current queuing system does not have these capabilities.

A motion was made to accept and approve Budget & Finance Committee's recommendation to reallocate \$7,200 of One-Stop System strategic initiative funds to program support contracts for programming of a queuing system at the One-Stop Career Center by Dr. David Lee and seconded by Bill Regenhardt. Motion carried.

Jim presented the following reports and noted no changes from the December Budget and Finance Committee report, except for the Awards & Expenditures report, which has been updated to reflect the three funded partners that were removed from high risk.

- b. **Budget vs. Actual Finance Report (Workforce Connections' Operations) for the period July 1, 2013 through June 30, 2014 (Formula WIA)**
- c. **Awards & Expenditures (Compliance and Operational Status of Service Providers/Funded Partners) – Monthly Update**
- d. **Funding Plans – Adult/Dislocated Worker & Youth**
- e. **Workforce Connections' Professional Services Contracts – Monthly Update**

A motion was made to accept and approve reports (agenda items 20 b, c, d, e) as presented by Commissioner Lawrence Weekly and seconded by Councilwoman Anita Wood. Motion carried.

19. INFORMATION: Executive Committee Meeting Minutes of November 13, 2013 (draft)

The Executive Committee Minutes of November 13th are provided on page 93 – 98 of the agenda packet.

20. DISCUSSION AND POSSIBLE ACTION: Executive Director's Report ~ Ardell Galbreth

Ardell Galbreth reported that Workforce Connections failed the Youth Literacy/Numeracy Gains performance measure partly due to the Board's decision (based on staff's recommendation) to target the hardest-to-serve youth populations, including foster care youth and youth with disabilities. Ardell further stated that there may be an error with the State's data and/or the reporting system because at the fourth quarter of the program year the Board was exceeding this performance measure at 48.8%. Staff will further investigate this matter and report back to the Board. Councilman Beers inquired about possible sanctions for failed performance, such as disallowed costs. Ardell replied that if the Board fails performance, it is not eligible to receive incentive funds; however, if the Board fails performance for two consecutive years, there could be potential sanctions from the State.

Ardell reported that Workforce Connections and the Nevada Department of Corrections is discussing options for accepting proposals from organizations to provide employment and training services to inmates prior to and following their release.

The Executive Director's Report is provided on page 100 – 101 of the agenda packet.

21. SECOND PUBLIC COMMENT SESSION

None

22. INFORMATION: Board Member Comments

Commissioner Weekly requested staff to provide a report at the next Board meeting regarding the positive impact Workforce Connections and its funded partners had on increasing the graduation rate; staff concurred.

Tommy Rowe requested a flag for the Board room.

Councilman Beers reported that DETR is interested in pursuing an MOU with the North Las Vegas JobConnect to create another One-Stop Center and requested staff to put the matter on the next Board Agenda. Ardell replied that he has not seen the MOU but once he does he will be happy to.

Beers requested a standing report to the Board from the One-Stop Center Consortium and asked that it be agendaized. Ardell stated that the One-Stop Center Consortium can provide an update/report through the ADW Committee and the ADW Committee reports to the Board; this is the typical reporting structure for all the committees. To clarify Ardell's comments, Chair Brown stated that the One-Stop Consortium can make a report that is vetted through the ADW Committee. Discussion ensued. Bart Patterson concurred with Beers to have the matter agendaized at the next ADW Committee meeting; and staff concurred.

23. ACTION: Adjournment

A motion was made to adjourn the meeting at 1:00 p.m. by Bill Regenhardt and seconded by Sonja Holloway. Motion carried.

Nevada Ethics in Government



Caren Cafferata-Jenkins, Esq.
Executive Director

Nevada Commission on Ethics

Nevada Commission on Ethics Vision & Mission Statement

OUR VISION

To have principled public servants
preserving the public trust.

OUR MISSION

To enhance the public's faith and confidence in government and to uphold the public trust **by ensuring that all Nevada public officers and public employees commit themselves to avoiding conflicts** between their private interests and their public duties.

Nevada Commission on Ethics



It's all about balance.

Nevada Commission on Ethics – WHAT DOES IT DO?

- Interprets and provides guidance on the statutory provisions of NRS 281A - the Ethics in Government Law (First-Party RFO & training outreach)
 - Investigates and adjudicates requests for opinion from public officers, public employees and the public (Third-Party RFO)
 - Accepts certain written disclosures
-

But why do we need an Ethics Commission at all?

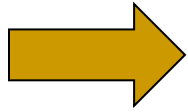
Maybe the recent reports of corruption
and self dealing in government are
true.

Maybe the fabric of American society
woven by the Founders finally is
unraveling.....

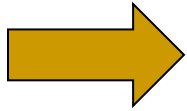
***Because power corrupts,
“[s]ociety’s demands for
moral authority and
character increase as the
importance of the position
increases.”***

*- John Adams, American Founder and
second U.S. president (1735-1826)*

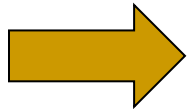
Today's main topics:



Required Filings



Prohibited Conduct



Abstention and Disclosure

Required Written Disclosures for Public Officers

Financial Disclosure Statement (FDS)

If you are 1) appointed to a position, 2) elected, or 3) appointed to an elective office, and are entitled to receive annual compensation of \$6,000 +, you must file an FDS annually **with the SECRETARY OF STATE- not the Ethics Commission** - on or before January 15th each year.

Required Written Disclosures for Public Officers and Employees

Acknowledgment of Statutory Ethical Standards (ACK)

Every public officer and public employee must be exposed to NRS 281A at the beginning of his/her term or employment, and public officers must acknowledge their duties by filing an ACK with the NCOE. Some public officers must file the same form every even numbered year thereafter.

NRS 281A.500

Required Written Disclosures for Public Officers

Agency Representation Disclosure

If you are a **public officer** who meets all 5 of the following: 1) represented or counseled 2) a private person 3) for compensation before 4) a state agency of the 5) Executive Branch, you must file with the NCOE a disclosure of each representation by January 15th of every year.

Commission Practices

Responds to requests for its opinion (RFOs)

- Advisory opinions about past, present, or future conduct of public officers/employees (confidential first-party requests)
 - Ethics “complaints” from the public about conduct of public officers/employees (third-party requests)
 - The Commission has had authority to bring a matter on its own motion for many years, but has not yet done so.
-

Confidential Advisory Opinions

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

~ Senator Richard Bryan, Sponsor of the legislation providing for first party advisory opinion requests.

Citations for Ethics Complaints

Nevada's Ethics in Government Laws
are found in **Chapter 281A** of

Nevada Revised Statutes.
(NRS 281A.010 through 281A.530)

(approx. 20 pages of statute,
expanded to 88 pages, including annotations)

Commission Jurisdiction

Public Officer is:

- ✓ Elected or appointed to position established by the NV Constitution, a state statute, charter or ordinance of any county, city or other political subdivision, **AND**
- ✓ Exercises a “public power, trust, or duty” = has administrative discretion in policy formulation; in the expenditure of public money; and the administration of the laws and rules of a political subdivision.

AUTOMATIC Public Officers: NSHE college, community college & univ. presidents, school superintendents & city and county managers as public officers, regardless whether appointed, contracted or employed; paid or unpaid; acting, temporary or permanent. NRS 281A.182

Commission Jurisdiction

Public officer does not include:

- “**State** Legislators” - members of the Nevada Senate or Assembly when undertaking core legislative functions. (disclosure, abstention and related matters) Hardy
 - Judges or officers of the court. Whitehead
 - Person acting in a PURELY advisory capacity
 - County health officers
 - Others specifically excluded by the statute
-

Commission Jurisdiction

Public Employee:

- ✓ Performs public duties for compensation from a state, county, city or political subdivision.

Commission Jurisdiction

Former public officers and employees:

The Commission has jurisdiction over conduct of public officers and employees within **TWO YEARS** from the alleged conduct or its reasonable discovery.

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

~ Assemblyman Joseph E. Dini, Jr.

*Sponsor of 1975 and 1977 Legislation
establishing Nevada's Ethics
Commission.*

Topic No. 2 – PROHIBITED CONDUCT

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

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

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

Ethics in Government – Prohibitions

- Participating as an agent of government to negotiate or execute contracts with a business in which you have a significant pecuniary interest.
- Accepting a salary or other compensation from a private source for performing your public duties.

Ethics in Government – Prohibitions

- Furthering your pecuniary interest or that of others by using any non-public information acquired through your public duties or relationships.
- Suppressing or delaying government reports or documents which might tend to unfavorably affect your pecuniary interest or that of a person to whom you have a private commitment.

Ethics in Government – Prohibitions

- Using government resources - time, property, equipment, and so forth to benefit a significant personal or financial interest.
 - But some personal use is allowed

Limited Personal Use of Government Property – Criteria

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

State Legislators have similar restrictions set forth in NRS 281A.400(8).

Ethics in Government – Prohibitions

- Attempting to benefit a significant **personal** or financial interest by influencing a subordinate.
- Seeking other employment or contracts through the use of your public position.

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

Additional standards for public officers & employees

- One-year “cooling off” period after leaving public service **unless relief from the strict application of the statute is obtained.**

(NRS 281A.550)

- No contracts between government agencies and business entities in which public officer has a pecuniary interest, **unless certain exclusions apply are met or relief from the strict application of the statute is obtained.**

(NRS 281A.400(3), .430 and .530)

Additional standards for public officers & employees

- No accepting an honoraria for performing your public duty.
(NRS 281A.510)
 - May not cause a governmental entity to make an expenditure to support or oppose a ballot question or candidate (during period between candidate filing and election).
(NRS 281A.520)
-

Criminal statutes applicable to public officers & employees

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

*These statutes **are not** within the jurisdiction of the NCOE; however, some parts of the Ethics in Government Law can trigger **criminal** statutes and referral for prosecution.*

Topic 3:

Disclosure and Abstention for Public Officers and Employees

Walking the Disclosure & Abstention tightrope



Disclosing & Abstaining from Acting

- **Disclosure** is mandatory for any interest created by:
 - ✓ A gift or loan
 - ✓ A substantial pecuniary interest
 - ✓ A “commitment in a private capacity to the interests of others” (will be defined in a moment)
- These are **presumed** to be conflicts of interest.
- **Disclosure** must be made at the time the matter is considered.

But what is a
'conflict of interest' anyway?

What policy is being furthered
here?

Conflict of Interest

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

~ Black's Law Dictionary, Eighth Edition

Do **you** agree with this definition?

Appearance of Impropriety

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

~from Canon 2 of the American Bar Association
Model Code of Judicial Conduct

Who is this “Reasonable Person”?

A hypothetical person used as a legal standard ... a person who exercises the degree of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own and of others' interests.

The reasonable person acts sensibly, does things without serious delay, and takes proper, but not excessive, precautions.

~Black's Law Dictionary, Eighth Edition

Discussion on a "Reasonable Person"

The reasonable person -

A person (1) whose standards of behavior and notions of responsibility correspond with those generally obtained among **ordinary people in our society at the present time**, (2) who seldom allows emotions to overbear reason, and (3) whose habits are moderate and whose disposition is equitable.

Note: the **reasonable** person is not necessarily the same as the **average** man - often an amalgamation of counter-balancing extremes.

Voting, Disclosing, & Abstaining

A public officer **is not** required to disclose:

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

NRS 281A.420(2)

Voting, Disclosing, & Abstaining

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

This determination should be made by the public officer or employee and explained fully.

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

Voting, Disclosing, & Abstaining

The statute prohibits advocating or voting for the passage or failure of, but otherwise allows participation in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected by:

- ✓ A gift or loan
- ✓ A pecuniary interest or
- ✓ A commitment in a private capacity to the interests of others.

DANGER! DANGER! DANGER!

NRS 281A.420(3)

Voting, Disclosing, & Abstaining

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

NRS 281A.420(4)

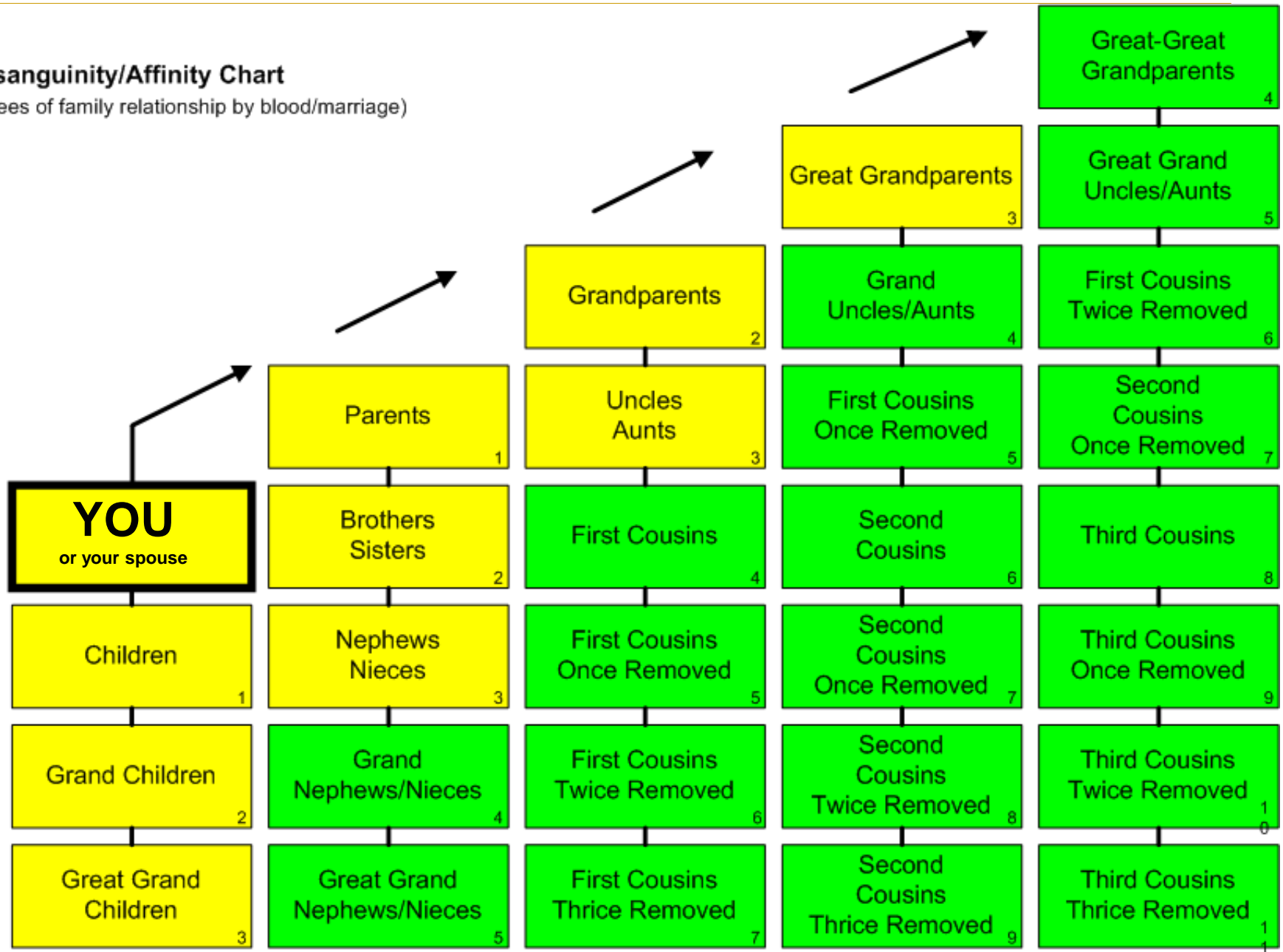
Commitment in a Private Capacity to the Interests of Others

A commitment to a person who:

- Is a member of your household;
- Is related to you by blood, adoption, or marriage within the 3rd degree of consanguinity/affinity;
- Employs you or a household member; or
- With whom you have a substantial or continuing business relationship; OR
- Other relationships similar to these.

Consanguinity/Affinity Chart

(Degrees of family relationship by blood/marriage)



Woodbury Opinion (updated to present):

NCOE Opinion No. 99-56

- Disclose **sufficient information** to inform the public of the potential effect of the action or abstention upon you and/or your private commitments,
- Apply the **reasonable person standard**, considering whether your private commitment would likely have a material effect on a reasonable person's independence of judgment, and
- **Explain** why the standard does or does not apply.

CAREN'S PERSONAL COMMENTARY: Abstaining from acting is not a reasonable means to avoid making tough decisions.

Do your job.

Commission Opinions

Opinions of the Commission appear on the NCOE website:

<http://ethics.nv.gov>

Penalties

- The Commission is authorized to impose civil penalties for **willful** violations of the Ethics in Government Law. Considerations include severity of the violation and aggravating or mitigating factors
- A willful violation is a violation where the public officer or employee:
 - acted intentionally & knowingly (no bad intent required); OR
 - was in a situation with a duty to act but intentionally & knowingly failed to act as required by statute.

NRS 281A.480 and NRS 281A.170

Penalties available:

Monetary sanctions & referral for removal from office

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

The Commission must consider comparable situations in a comparable manner and ensure the disposition of a matter bears a reasonable relationship to the severity of the violation.

Creating ethical conflicts

- Engage in self-dealing
 - Seek improper gifts or unwarranted benefits
 - Peddle influence
 - Take public property for private advantage
 - Use confidential information to make \$
 - Enter unauthorized contracts with gov't
 - Seek outside employment using position
 - Try to influence subordinates
 - Ignore cooling-off periods
-

Nevada Commission on Ethics



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