

Ethical Roadmap for Public Agencies, Attorneys and Employees and The Open Meeting Law After Hansen



Presented by:

Yvonne M. Nevarez-Goodson, Esq.
Executive Director

Nevada Commission on Ethics

What is the Nevada Commission on Ethics?

- **The Commission**
- The Ethics Commission consists of 8 members appointed to serve 4-year terms
 - 4 members appointed by the Governor
 - 4 members appointed by the Legislative Commission.

Interpret and enforce the Ethics In Government Law – NRS 281A
"Conflicts of Interest" for Public Officers and Public Employees



2

Nevada Commission on Ethics

OUR MISSION

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

3

Commission Jurisdiction (2 years)

- ✓ Public Officers
- ✓ Public Employees
- ✓ State Legislators
 - ✓ Exceptions
- ✓ Former Public Officers and Employees

- ✓ Exceptions:
 - ✓ Judicial Officers
 - ✓ Advisory Board Members



4

Nevada Commission on Ethics

- 3 Primary Functions:
 - Advisory Opinions (Confidential)
 - Ethics Complaints (Investigation Confidential)
 - Outreach/Education
 - Section 5(3)(b)(3) of AB 70 (R2)
 - Exempts Ethics Training from OML
- Acknowledgment of Statutory Ethical Standards Form
 - Appointed: 30 days of appointment/reappointment; January 15 each even-numbered year for appointed officer who doesn't have definite term.
 - Elected: January 15 after General election; 30 days after special election

5

Advisory Opinions

Any public officer or public employee with questions regarding his or her own past, present or future conduct related to the Ethics in Government Law may request a **confidential advisory opinion** from the Commission. Consideration of these advisory opinions has been statutorily exempted from Nevada's Open Meeting Law.



6

Ethics Complaints – Filing

Who May File:

1) Any person

- Not an incarcerated person
- Confidential Requester if:
 - Requester works in same agency as Subject; or
 - Bona fide threat of physical harm

2) Commission may initiate

3) Local/Special Ethics Committee

7

Ethics Complaints: Jurisdiction

Review/Recommendation by the Commission's Executive Director and Commission Counsel.

The Commission will accept **jurisdiction** if:

- (1) Subject of the Complaint is a public officer or public employee;
- (2) Complaint contains an allegation of a violation of NRS Chapter 281A

Commission will direct the Executive Director to conduct **investigation** if:

- (1) The Commission accepts jurisdiction; and
- (2) The Complaint includes a reliable form of credible evidence to support the allegations.

Commission may also dismiss complaint with or without a **Confidential Letter of Caution or Instruction**.

The Executive Director will notify the requester and the subject of the decision. The subject is provided an opportunity to respond in writing to the allegations under the Executive Director's Investigation.

8

Ethics Complaints: Investigation

■ Investigations – **Confidential** (Neither Confirm nor Deny)

- Executive Director conducts investigation
 - With Associate Counsel and Investigator
- Investigatory File remains Confidential – Not public record
 - ED may waive confidentiality
 - Discovery for evidence intended to be presented at hearing.

■ Participation by Subject and Witnesses –

- Mandatory/Subpoena to participate in investigation
- Witnesses Often include Subject, Public Officers and Employees
- Public Attorneys: Who is your client?
 - Public Agency/Body?
 - Subject or witness?

■ Loophole to Confidentiality:

- Requester who files complaint may publicize it.

9

Senate Bill 129(R1) - 2019

- If passed:
 - Preliminary investigations before accepting jurisdiction/formal investigation
 - Eliminate Notice to Requester to close loophole of confidentiality leaks
 - Extensions to complete investigations upon good cause
 - Public officers and employees must cooperate in investigations

10

Review Panel



The Executive Director presents a recommendation to a **3-member Review Panel of the Commission** regarding results of the investigation. (CONFIDENTIAL REVIEW PANEL PROCEEDINGS – Exempt from OML)

The Review Panel issues a Panel Determination (**PUBLIC RECORD/No More Confidentiality of Complaint**).

- Insufficient evidence (no just and sufficient cause) = **DISMISSAL**
 - With or without a **Confidential Letter of Caution or Instruction**.
- Sufficient evidence - (just and sufficient cause):
 - **Refer the matter to the Commission OR**
 - Approve a **DEFERRAL AGREEMENT** between the Executive Director and Subject.

11

Deferral Agreements

For conduct which is appropriate for Deferral versus Violation

- Deferred Action No Finding of Violation

- Between **Executive Director and Subject**
- Approved by Review Panel
- Public Record
- Terms and Conditions of Deferral
 - Corrective Action (Training; Public Apology; Future Compliance Requirements; Other)
 - Public Admonishment
- Dismissal with Compliance
- Referral to Commission for Non-Compliance



12

Complaint - Hearings

- Notice and Scheduling

- If the Review Panel refers complaint to the Commission for adjudicatory hearing, the Commission issues a Notice of Hearing and Scheduling Order to the Subject and Executive Director outlining the date, time and location of the hearing and deadlines for various prehearing requirements.
 - (Discovery/Subpoenas/Motions).
 - Executive Director Becomes a **Party** to Proceedings at this juncture.
 - No *ex parte* communications with Commission/Commission Counsel;
 - All service/pleadings as party.
 - Associate Counsel represents Executive Director (NOT COMMISSION COUNSEL)

13

Hearing- Complaint

Commission deliberations and receipt of evidence in adjudicatory hearings of Complaints are exempt from Open Meeting Law, but are typically conducted in open public sessions to promote transparency in government. Final action must be taken in open meeting.

- Evidentiary Hearing:
 - Parties present evidence and testimony
 - Commission deliberates (in confidential setting – Exempt OML)
 - Commission determines whether the subject's conduct violated a provision of NRS 281A
 - If the Commission finds that the subject violated NRS 281A, the Commission may impose civil penalties – OTHER THAN MONETARY SANCTIONS.
 - If the Commission determines the violation is willful; i.e., knowing and intentional, the Commission may impose civil penalties as well as monetary sanctions and other disciplinary action, including moving for removal from office.

14

Civil Penalties ...

- Corrective/Remedial Action
- Ethics Training
- Public Apologies
- Public Admonishments
- Conditions on Future Conduct

15

Monetary Penalties - Willfulness

- The Commission is authorized to impose monetary penalties for **willful** violations of the Ethics in Government Law. Considerations include severity of the violation, and aggravating or mitigating factors.
- A willful violation if 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.

16

Penalties:

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.

17

Senate Bill 129 (2019)

- Eliminate Willfulness
- Instead determine severity of conduct for imposition of penalties, including monetary sanctions.
 - Does not eliminate *mens rea* for determination of "intentional" and "knowing" conduct for finding of a violation
 - Effect of eliminating willfulness component:
 - Eliminates 2-step process for Commission to impose sanctions
 - Eliminates connotation of bad faith or malicious intent as prerequisite to finding of violation
 - Expands safe harbor protection to any violation, not just a willful violation.

18

Ethics Law Statutes

- Prohibited conduct
 - Misuse of Official Position (decisions/conduct) in conflict with certain Private Interests ...

19

Private Interests:

- "Pecuniary" (NRS 281A.139)
- "Commitments in a Private Capacity" (NRS 281A.065)
 - Family/Relatives – 3rd Degree of Consanguinity/Affinity
 - Employers
 - Business Relationships
 - Household Members
 - Substantially Similar Relationships
 - Fiduciary Positions – Nonprofit Boards of Directors

20

PROHIBITED CONDUCT

GIFTS...



(Improper Influence)

NRS 281A.400(1)

21

PROHIBITED CONDUCT

- IMPROPER USE OF POSITION
 - Unwarranted Benefits



NRS 281A.400(2)

22

PROHIBITED CONDUCT

- IMPROPER USE OF POSITION
 - Improper Contracts/Employment
(Negotiating/Entering)

New Limitations –
SB 129 (2019)
- Contracts with agency



NRS 281A.400(3,10); 281A.430

23

PROHIBITED CONDUCT

- IMPROPER USE OF POSITION
 - Additional Compensation – Private Source



NRS 281A.400(4)

24

PROHIBITED CONDUCT

■ IMPROPER USE OF POSITION

Using/Suppressing Non-public Government Information



NRS 281A.400(5,6)

25

PROHIBITED CONDUCT

■ MISUSE GOVERNMENT RESOURCES

Limited Use Exceptions

SB 129 (2019)

Clarifies Limited Use Exceptions



NRS 281A.400(7)

26

PROHIBITED CONDUCT

■ IMPROPER USE OF POSITION

Influencing Subordinate – Personal Purpose



NRS 281A.400(9)

27

PROHIBITED CONDUCT

Honoraria for performing your public duty.



Causing 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.510 and 281A.520 ²⁸

PROHIBITED CONDUCT

■ SB 129 – 2019

■ Prohibited Abuse of Power/Authority:

- Prohibits actions by public officers/employees that a reasonable person would find gross/unconscionable abuse of official position undermining integrity or impartiality of reasonable person in public officer position;
- Does not include allegations of bias, error or abuse of discretion within normal scope of duties.

²⁹

“Cooling-Off” Prohibitions

■ One-year cooling off period to seek or accept employment or certain private representations after leaving public service (certain exceptions)

- NRS 281A.550(3) – Prohibits Executive Branch officers/employees of State Government from employment by regulated business/industry
- NRS 281A.550(5) – Prohibits certain public officer/employee from employment with vendors of agency. (State/Local)
- NRS 281A.410 – Prohibits any public officer/employee from representing or counseling private persons/entities on issues that were before the agency.

■ Relief may be granted from the strict application of NRS 281A.550(3) and (5). (NRS 281A.550(6))

NRS 281A.410 and 281A.550(3)(5)(6) ³⁰

“Cooling-Off” Prohibitions

- SB 129 (2019) –
 - NRS 281A.550(3) - Limits prohibitions for future employment by regulated business/industry for employees of Executive Branch of State Government to management level employees.
 - NRS 281A.550(3) – Expands probation for employment by vendor from employees who awarded contract to those who materially implemented or administered contract.

31

Disclosure and Abstention for Public Officers and Employees

Walking the Disclosure & Abstention tightrope



Disclosures

- **Disclosure** is mandatory for any interest created by:
 - ✓ A gift or loan
 - ✓ A **substantial*** pecuniary interest
 - ✓ A “commitment in a private capacity”
 - ✓ Representation of private client
 - ✓ SB 129 – Protects disclosure of confidential clients
- **Disclosure** must be made at the time the matter is considered.
- **Sufficient** to Inform Public – Nature and Scope

NRS 281A.420(1) ³³

Disclosure – Public Employees

- To supervisory head of organization
- Sufficient to inform public



34

Voting & Abstention

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

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

NRS 281A.420(4) ³⁵

Voting & Abstention

- Voting is presumed permissible **if the resulting benefit/detriment to the public officer (or committed person) is no greater than the benefit/detriment to anyone else affected by the matter.**

NRS 281A.420(4) ³⁶

SAFE HARBOR PROVISIONS

No **willful** violation IF:

(a) The public officer or employee relied in **good faith** upon the **advice of the legal counsel** retained by his or her the public body, agency or employer:

and

(b) The legal advice was:

- Provided before conduct; and
- Not contrary to prior published opinions on Commission website.



37

Safe Harbor Implications on Attorney/Client Relationship

- Attorney becomes a witness
- Outside counsel to represent client in complaint?
- What did attorney know and when did he know it?
- Professional Rules of Responsibility – taking the hit for your client?

- SB 129 – 2019
 - Extends Safe Harbor protection to any violation, not just willful violation.

38

What Ethics Law is NOT:

- Campaign Finance
- Rude Behavior
- Laziness
- Poor Policy Decisions
- Sexual Harassment

39

Current Legislation

- 80th (2019) Legislative Session
 - SB 129 – Summary of additional issues:
 - Advisory Opinions
 - By agency; agency cooperation; confidentiality waivers; statute of limitations
 - Ethics Complaints
 - Notice of Investigations/Charges
 - Decisions v. written opinions
 - OML – Exemption; Regulations for Transparency
 - State Legislator Jurisdiction – Referral of Complaints

40

CAUTION –

Death by Power Point Ahead

...

- Slides are for detailed informational purposes

41

OML and the Commission



- Commission Exemptions From OML
 - Advisory Opinions/Hearings Exempt
 - Receipt of Ethics Complaint confidential **unless and until** Review Panel Determination:
 - Confidential indefinitely if Commission declines to accept jurisdiction or investigate.
 - Confidential until Review Panel if jurisdiction is accepted and the case is investigated.
 - Investigations/Review Panels Confidential
 - Deliberations and receipt of information related to ethics complaints – Exempt from OML.
 - Final Action – Public (Not Exempt).

42

OML – Attorney/Client Non-Meetings

- Attorney Client Conferences to Discuss Pending/Potential Litigation
 - – NOT Meetings subject to OML
 - Includes only receipt of information and deliberations
 - Not Decisions of a public body



43

OML and the Commission



44

Hansen v. Commission - Backstory

- Commission received ethics complaints alleging misconduct by Assemblymen Hansen and Wheeler (2014)
- Commission's Jurisdiction of State Legislators Limited -
- Separation of Powers: 1) Core Legislative Function (voting); 2) Conduct protected by Legislative Privilege and Immunity
- Complaints alleged that Assemblyman Hansen misused his position as a Legislator to request a legal opinion from the LCB regarding the applicability of a statute.
 - NRS 503.580 prohibited placing steel traps within 200 feet of a public roadway and Hansen requested an opinion whether the statute prohibited placing box traps and snare traps.
- LCB Legal Counsel cautioned Assemblyman Hansen that it might look like a conflict of interest for Hansen to request the legal opinion given that he was the subject of misdemeanor charges initiated by the Nevada Department of Wildlife for placing snare traps near a public roadway in violation of NRS 503.580. Legislative Counsel suggested that Hansen ask a colleague to make the request for the legal opinion and Hansen asked Assemblyman Wheeler to request the opinion, which he did.
- Legislative Counsel's legal opinion was that NRS 503.580 did not apply to snare traps
 - LCB Opinion used in Hansen's defense of criminal charges.

45

Hansen/Wheeler Ethics Complaints

- The ethics complaints alleged that the Assemblymen used their official positions and government resources (LCB Legal Counsel) to benefit Hansen's personal interests in defeating the misdemeanor charges when Hansen should have hired his own private lawyer.
 - Act/Conduct at issue:
 - Wheeler:
 - Requesting Legal Opinion from LCB to assist legislative colleague in a personal matter
 - Hansen:
 - Requesting Legal Opinion from LCB to benefit his personal interests;
 - Using his governmental position to influence fellow legislators to request a legal opinion from LCB for a personal matter after being advised it was a conflict.
 - ASSERTED DEFENSE AGAINST COMMISSION JURISDICTION:
 - The act of a legislator requesting a legal opinion on any matter of law from LCB is a legislative act authorized by statute and protected by legislative privilege and immunity EVEN IF such a request is for an inappropriate purpose, motive irrelevant.
 - Only the Legislative (Assembly) Ethics Committee may discipline the legislator for such conduct that is otherwise protected by legislative privilege and immunity.
 - Standing Rule 23.

46

Hansen – Motion to Dismiss

- LCB filed a Motion to Dismiss the ethics complaints with the Commission for Lack of Jurisdiction over State Legislators whose alleged conduct is protected by legislative privilege and immunity.
- Commission held closed hearing and denied the Motion to Dismiss, and issued a Preliminary Jurisdictional Order directing limited jurisdictional fact-finding to determine whether sufficient evidence supported that the conduct was protected by privilege and immunity – i.e., the mere assertion of the privilege not sufficient to divest Commission of jurisdiction without finding that the act at issue was a protected legislative act.
 - Ethics Complaints – Confidential Phase of Proceedings
 - Pre-Panel Motion to Dismiss
 - Hearing held in confidential, closed meeting
 - LCB also informed Commission that it would seek immediate judicial review for any assertion of jurisdiction – through and including Supreme Court.

47

More Procedural History

- Hansen/Wheeler filed Petition for Judicial Review in District Court to set aside Commission's Order Denying Motion to Dismiss.
- In the alternative, Hansen/Wheeler also filed a Petition and Application for Writ of Certiorari, Review or Prohibition to halt Commission's investigation for lack of jurisdiction.
- Parties stipulated to a stay of administrative investigations/proceedings by Commission and its staff while the matter was pending before the District Court, Nevada Court of Appeals or the Nevada Supreme Court.
- Stipulation included first waiver of confidentiality of ethics complaints by Hansen/Wheeler.
 - Prior to stipulation – Cases were in confidential phase of proceedings pre-panel and Commission had NON-Meeting Conference with Commission Counsel to authorize defense of litigation as she deemed legally appropriate, in consultation with the Chair, through and including appeals through the Nevada Supreme Court.
 - Commission could not take "action" in an Open Meeting to authorize counsel to defend litigation as case was still in confidential status – pre-panel.
- While pending Petitions in court, Legislature passed AB 496 upon advice of LCB on the last day of Session in 2015 as emergency measure to expand/clarify Legislative Privilege and Immunity for State Legislators and LCB Staff and make it retroactive to pending cases.
- As a result of legislation, District Court grants petition and orders Commission to terminate proceedings.
 - District Court concludes that the substantial rights of Assemblymen were not prejudiced by the Commission under the grounds stated in NRS 233B.135(3) – and the Commission did not act unreasonably.
- Based upon authority granted to Commission Counsel during Non-Meeting Conference and during Confidential phase of proceedings, Commission Counsel consulted the Chair and Executive Director and filed Notice of Appeal of District Court Order to Nevada Supreme Court.

48

And then OML Complaints ...

- Based upon Commission Counsel's filing of the Notice of Appeal, Hansen/Wheeler filed an OML complaint in district court and a motion to dismiss the appeal with the Supreme Court, based upon the argument that the Notice of Appeal was filed in contravention of the OML
 - Claim that the Commission **failed to hold an open, public meeting to authorize its counsel to file the appeal.**
 - The Commission did not hold a public meeting.
 - OML Complaint filed in District Court – not with the AG's Office.
 - OML Complaint filed on 31st day after Commission filed Notice of Appeal.

49

OML Complaint(s) – Con't.

- Upon receipt of OML Complaint, without admission of liability, Commission noticed and held a public meeting to ratify the Commission Counsel's decision to file the Notice of Appeal. The agenda item for ratification referenced the title of the litigation, including Hansen/Wheeler's names and titles.
 - The Commission unanimously ratified the decision, noting its prior authority to Commission Counsel.
- LCB filed a separate OML Complaint alleging that the Commission failed to provide personal notice that Hansen/Wheeler's character and competence would be discussed by the Commission in an open meeting.
- Parties stipulated to stay both OML Complaints in District Court to resolve Motion to Dismiss the Notice of Appeal in Supreme Court
 - Commission argued, in part, that the Supreme Court lacked jurisdiction when the parties had not yet been entitled to discovery, a record, or disposition in District Court on OML cases.
 - Discovery would have revealed factual evidence of the Commission's grant of authority to Commission Counsel to defend/pursue appeal during confidential phase of proceedings in Non-meeting of the Commission.

50

Hansen – Nevada Supreme Court

- 3 Member Panel of the Supreme Court ruled that the Commission violated OML because it **DID NOT hold a public meeting** to authorize its Commission Counsel to file a Notice of Appeal
- Rehearing - Denied
- *En Banc* Reconsideration - Granted
 - Affidavit filed by Commission Counsel swearing to authorization by Commission during confidential phase of proceedings to pursue case in her discretion in consultation with the Chair, through appeal to Nevada Supreme Court for final determination of the scope of Commission's jurisdiction of State Legislator where Privilege and Immunity is asserted.
 - No Record on Appeal from District Court – Not allowed to litigate cases below.
 - Amici – Various State and Local Government Agencies Concerned about implications of OML requiring open, public meetings to authorize counsel to file Notices of Appeal, including concerns about associated Notice requirements under OML and divesting public agency of confidential legal advice/strategies.

51

Hansen – *En Banc* Reconsideration

- 4-3 Decision
- **Majority** finds OML Violation – Dismisses Commission Appeal
- **Dissent** holds No OML Violation – Move forward on Merits of Appeal
 - OML doesn't apply to an action by less than a quorum of the public body; and
 - Counsel has presumed authority to file Notice of Appeal on behalf of client
 - Claims that only the governing body may authorize Notice of Appeal – not by Counsel, raised for first time in Reply, were resolved through ratification.

52

Hansen – Majority Decision

- 134 Nev., Advance Opinion 40 (2018)
- Majority applies OML to require “action” of filing a Notice of Appeal to be taken by public body in an open, public meeting.
- Counsel does not have implied or actual authority to file Notice of Appeal on behalf of client.
 - Concern raised about decision to file an appeal resulting in a commitment of public funds therefore requiring action by the public body.
 - Finding that actions by a public body must be taken by the body in an open meeting in accordance with the OML and failure to hold an open meeting itself is a violation.
- **Authority to File Notice of Appeal May be delegable –**
 - Court found analysis not to be germane to this case because the record did not show** and the statutes and Regulations did not provide for a grant or delegation of decision-making authority to the Commission’s counsel, chair or director.
 - ****Presumably, the Court did not take into consideration the evidence presented that the Commission had delegated the decision to Commission Counsel in consultation with the Chair.**

53

OML Implications for Public Bodies – Post Hansen ...

- New interpretation of OML to require open public meeting to authorize Notices of Appeal
- Many agencies have voluminous appeals – making compliance with OML difficult
- Give away litigation strategies in public meeting.
- Overall look at “Non-meeting” with attorney-client for pending litigation and ask why government lawyers lose the privileged confidentiality by requiring action in public meeting of certain litigation strategies.
 - Are government lawyers and clients entitled to less attorney/client privilege?

54

Hansen – What Now?

- Majority left open possibility that if the Commission had statutory or regulatory authority to delegate decisions regarding the litigation to the Chair, Executive Director or Commission Counsel and had asserted that authority during an open meeting, the Commission's actions may not have violated OML.
- Commission requested legislation to grant such authority to the Chair, Executive Director, or both; and the Commission Counsel
 - SB 129
- Attorney General's Office sponsored OML legislation, supported by task force of state/local government representatives to pursue similar delegation language
 - AB 70

55

Ethics Bill – SB 129(R1) - Delegation

- SB 129(R1) – Amends Ethics Law:
- Commission Counsel Duties (Sec. 27(3)):
 - 3. *Except as otherwise provided in this section or directed by the Commission, in litigation concerning any judicial action or proceeding in which the Commission or any member or employee of the Commission is a party in an official capacity or participates or intervenes in an official capacity, the Commission Counsel:*
 - (a) *Shall represent and act as legal counsel to the Commission or any member or employee of the Commission in the action or proceeding;*
 - (b) *May commence, prosecute, defend, participate or intervene in the action or proceeding on behalf of the Commission or any member or employee of the Commission;* and
 - (c) *May file an appeal or petition for or seek any writ or other appellate relief in the action or proceeding on behalf of the Commission or any member or employee of the Commission with the consent or ratification of:*
 - (1) *The Commission; or*
 - (2) *The Chair or the Executive Director, or both, if the authority to provide such consent or ratification is delegated pursuant to section 9 of this act.*
- Executive Director/Chair Authority (Sec. 9):
 - 1. *In carrying out the provisions of this chapter, the Commission may delegate authority to the Chair or the Executive Director, or both, to make any decisions in litigation concerning any judicial action or proceeding in which the Commission or any member or employee of the Commission is a party in an official capacity or participates or intervenes in an official capacity.*
 - 2. *During any period in which proceedings concerning a request for an advisory opinion or an ethics complaint are confidential pursuant to this chapter, the provisions of chapter 241 of NRS do not apply to any meeting or hearing held by the Commission or any deliberations or actions of the Commission involving:*
 - (a) *Any decisions in litigation concerning any judicial action or proceeding related to the request for an advisory opinion or the ethics complaint; or*
 - (b) *Any delegation of authority to make such decisions in the litigation to the Chair or the Executive Director, or both, pursuant to subsection 1.*

56

OML Bill - AB 70(R2) - Delegation

- AB 70(R2) – OML Bill
- Section 2.5
 - ***A public body may delegate authority to the chair or the executive director of the public body, or an equivalent position, to make any decision regarding litigation concerning any action or proceeding in which the public body or any member or employee of the public body is a party in an official capacity or participates or intervenes in an official capacity.***

57

Effect of Delegation

- Public body, if applicable, must hold public meeting to delegate litigation decisions to staff
- If delegated, staff will have authority to direct decisions in litigation outside of OML requirements

58

Hansen – What about the other OML Complaint?

- Parties stipulated to dismissal of second OML complaint.
 - Status left open as to whether personal service on party is required as intent to take administrative action involving character and competence of party to litigation when placed on open public agenda to make litigation decisions.
 - Are litigation discussions/decisions considered "administrative actions regarding the character and competence of a party"?
 - OML Manual provides that discussion of a pending lawsuit involving a particular person does not require special notice to the person under NRS 241.033. OML Manual § 5.09 at p.54, citing OMLO 2003-14 (March 21, 2003), stating that designation of parties to litigation referenced on agenda not sufficient to trigger personal notice.

59

Commission Opinions & Other Resources

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

www.ethics.nv.gov

60

Nevada Commission on Ethics

Nevada Commission on Ethics
704 W. Nye Lane, Suite 204
Carson City, NV 89703
775-687-5469 (Office)
775-687-1279 (Fax)



Yvonne M. Nevarez-Goodson
Executive Director
Direct Line: 775-687-4312

Website: www.ethics.nv.gov
ynevarez@ethics.nv.gov

61
