

**PUBLIC OFFICERS AND PUBLIC EMPLOYEES:**

**WHEN YOU THINK YOU MAY HAVE A CONFLICT OF INTEREST TO DISCLOSE AT A PUBLIC MEETING, ASK YOURSELF THE FOLLOWING IMPORTANT QUESTIONS TO DETERMINE WHETHER TO DISCLOSE THE CONFLICT OR BOTH DISCLOSE AND ABSTAIN FROM PARTICIPATING IN THE MATTER. See NRS 281A.420**

**DOES THE MATTER BEFORE ME HAVE TO DO WITH:**

1. MY ACCEPTANCE OF A GIFT OR A LOAN?
2. MY PECUNIARY (any economic) INTEREST? OR
3. THE INTERESTS OF A PERSON TO WHOM I HAVE A COMMITMENT IN A PRIVATE CAPACITY? That's defined as a person who is:
  - A. A MEMBER OF MY HOUSEHOLD (someone who lives with me),
  - B. A PERSON RELATED TO ME within the third degree of blood or marriage (namely: a spouse, child, grandchild, great grandchild, great grandparent, grandparent, parent, brother, sister, niece, nephew, aunt, or uncle),
  - C. MY EMPLOYER; or the employer of a member of my household,
  - D. A PERSON WITH WHOM I HAVE A SUBSTANTIAL AND CONTINUING BUSINESS RELATIONSHIP, OR
  - E. A PERSON SUBSTANTIALLY SIMILAR to one of the people described in this paragraph 3, items A, B, C, or D above.

If my answer to any of the above is YES, then, when the matter is being considered,

I must disclose, on the record, sufficient information to fully inform or put the public on notice of the potential effect of my acting on the matter, or of the effect of my disclosing and then abstaining from acting on the matter, due to my conflict of interest. My disclosure must describe the nature and extent of the relationship.

**AND**

I must abstain only in a clear case where the independence of judgment of a reasonable person in my situation would be materially affected by the conflict just disclosed. I should undertake the abstention analysis on the record immediately after a disclosure.

**WHAT YOU MIGHT SAY:** "Mr./Madam Chair, NRS 281A.420 requires me to disclose a conflict of interest. The matter before this body affects my acceptance of a gift or loan / my pecuniary interest / my commitment in a private capacity to the interests of Daisy Duchess, my foster mother. (Next, you must take time to describe the potential conflict between your interest and the matter before the body or board on which you serve.) Ms. Duchess' doughnut business will be financially enhanced if we approve building the new police station next door to her shop, and she will likely face financial ruin if we don't. Ms. Duchess is everything to me even if she isn't my biological mother. She raised me in her home from age 3 until I turned 19. Our relationship is substantially similar to a blood relation, probably closer, and therefore, I conclude that the independence of judgment of a reasonable person in my situation would / would not be materially affected by this relationship, and because this is / is not a clear case of a disqualifying conflict of interest, I am going to be voting / abstaining from voting in this matter." (If you decide to abstain, you must refrain from advocating for or against the matter in any way.)

**REMEMBER, YOU MAY DISCLOSE EVEN AN APPEARANCE OF IMPROPRIETY, THOUGH YOU ARE NOT REQUIRED TO DO SO. THIS TYPE OF DISCLOSURE ASSISTS IN YOUR DUTY TO AVOID CONFLICTS OF INTEREST AND TO ENHANCE AND MAINTAIN THE PUBLIC TRUST. SEE NRS 281A.020.**

**DISCLAIMER: THIS DOCUMENT IS INTENDED AS A GENERAL GUIDE AND IS NOT TO BE CONSTRUED AS PROVIDING LEGAL ADVICE. IN ADDITION, IT DOES NOT FULLY ADDRESS THE DISCLOSURE AND ABSTENTION REQUIREMENTS OF THE ETHICS IN GOVERNMENT LAW AND OFFERS YOU NO PROTECTION FROM LIABILITY EVEN IF YOU FOLLOW ITS PROVISIONS.**

If you are a public officer or employee presented with a potential conflict of interest, please consult with the attorney for the body on which you serve, seek other legal advice, or contact the Commission on Ethics.

## NEVADA ACKNOWLEDGMENT OF ETHICAL STANDARDS FOR PUBLIC OFFICIALS

**PERSONAL INFORMATION:**

NAME:	TITLE OF PUBLIC OFFICE:
PUBLIC ENTITY:	
DATE APPOINTED OR ELECTED TO OFFICE (current term):	
ADDRESS:	CITY, STATE, ZIP:
TELEPHONE	E-MAIL:

I HEREBY ACKNOWLEDGE that (Handwritten initials required to the left of each of the following statements, as indicated):

I HERE
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I have received, read and understand the statutory ethical standards for public officers and public employees provided in NRS Chapter 281A (NRS 281A.500(1)(a)); and

INITIAL HERE
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I have a responsibility to inform myself of any amendments to the statutory ethical standards as soon as reasonably practicable after each session of the Legislature (NRS 281A.500(1)(b)).

***I understand that my refusal to execute and file this acknowledgement constitutes a willful violation of Chapter 281A of NRS, which may subject me to civil penalties. Further, if I am subject to removal from office pursuant to NRS 283.440, the Commission may file a complaint in the appropriate court for my removal for nonfeasance in office (NRS 281A.500(8)).***

**THE INFORMATION I HAVE PROVIDED HEREIN IS ACCURATE AND COMPLETE.**

Date: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Print Name:

WHO IS REQUIRED TO FILE:	WHEN (Due Date):
<b>Appointed</b> public officer.	Within 30 days of taking office, for each term of office.
<b>Elected</b> public officer who is elected at general election.	Jan. 15 <sup>th</sup> of the year following the general election, for each term of office.
<b>Elected</b> public officer who is elected at an election other than the general election.	Within 30 days of taking office, for each term of office.
<b>Appointed</b> public officer who serves at the pleasure of the appointing authority and does not have a definite term of office.	Within 30 days of taking office and then Jan. 15 <sup>th</sup> every even-numbered year while holding that office.

**Statutory Ethical Standards may be obtained or requested from:**

Nevada Commission on Ethics  
 704 W. Nye Lane, Suite 204  
 Carson City, Nevada 89703  
 775.687.5469 • 775.687.1279 fax  
<http://ethics.nv.gov>

**File completed form with:**

Nevada Commission on Ethics  
 704 W. Nye Lane, Suite 204  
 Carson City, Nevada 89703  
 775.687.5469 • 775.687.1279 fax

# NEVADA'S OPEN MEETING LAW

Presented by: Jen Gustafson  
Washoe County District Attorney's Office

January 22, 2020

A stylized, dark teal silhouette of a mountain range is positioned in the bottom right corner of the slide, extending from the right edge towards the center.

# Legislative Intent of “OML”

NRS 241.010 sets forth a legislative declaration:

- Public bodies exist to aid in the conduct of the people’s business.
- It is the intent of the OML that board deliberations and board actions be conducted openly.

# When Does the OML Apply?

- ◆ In general, OML applies to all meetings of a public body at which deliberation takes place and/or action may occur.

# Pillars of the OML

- ◆ Public Body
- ◆ Meeting
- ◆ Notice
- ◆ Agenda
- ◆ Minutes



# Public Body

NRS 241.015(4)

- ◆ Any **administrative**, advisory, executive or legislative body of the state or local government
- ◆ which expends or disburses or is **supported in whole or in part by tax revenue**
- ◆ or which advises or makes recommendations to an entity which expends or disburses or is supported in whole or in part by tax revenue
- ◆ includes any **board**, commission, committee, subcommittee or other subsidiary thereof



# Who is NOT a “Public Body”?



- ◆ NRS 241.016(2) provides that a “public body” does not include the Nevada Legislature or the Parole Board
- ◆ Most private non-profit corporations

# Meeting

## NRS 241.015(3)(a)(1)

- ◆ In general, a “meeting” is:
  - The **gathering of members** of a public body at which a **quorum** is present to **deliberate** toward a decision or to take **action** on any matter over which the public body has supervision, control, jurisdiction or advisory power.



# What is a Quorum?

NRS 241.015(5)

- ◆ A simple majority of the public body's membership
  - ◆ Or another proportion as required by specific statute
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# Methods of Holding Meetings

- ◆ If properly noticed and open to the public, meetings may be held via:
  - Teleconference
  - Video conference

Qualification: As long as each board member can participate in the meeting; there is a physical location for members of the public to attend the meeting; & the public can hear/observe each board member attending (2019 AB 70)



# Special Note

- ◆ Serial Electronic communication must not be used to circumvent the spirit or letter of the Open Meeting Law
  - (NRS 241.016(4))
- ◆ So be careful when communicating over email



# Watch Out for “Walking Quorum”

NRS 241.015(3)(a)(2)

- ◆ If a public body’s members engage in a **series** of gatherings at which:
  - (I) Less than a quorum is present at any individual gathering;
  - (II) But, the members of the public body attending one or more of the gatherings **collectively constitute a quorum**; and
  - (III) The **series** of gatherings was held with the **specific intent** to avoid the OML= **OML violation**

# Exception: Attorney-Client Communications

- ◆ Quorum of board members may gather to:
  - Receive information from the public body's attorney regarding potential or existing litigation, and to deliberate toward a decision=  
**NOT a meeting** (NRS 241.015(3)(b)(2))
  - Receive training from the public body's attorney regarding legal obligations, if public body does NOT deliberate toward a decision=  
**NOT a meeting** (2019 AB 70)
- ◆ E-mail communication with the board's attorney= generally NOT a meeting
  - **But do not hit "Reply All"**

# Exception: Social Function

NRS 241.015(3)(b)(1)

- ◆ Even if a quorum is present, social functions are NOT meetings, as long as the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

Don't turn a party into a meeting!!



# Notice of Meeting

## NRS 241.020

### ◆ Content

- Day, Time, Location (include room)
- Reasonable efforts to ensure meeting location is large enough to accommodate anticipated number of attendees (2019 AB 70)
- Contact info for person who can provide supporting materials
- Agenda

### ◆ Posting

- Meeting location + 3 prominent places
- Websites

### ◆ Mailing

- Subscription- mail or email

### ◆ 3 Working Days prior to meeting (by 9 a.m.)



# Agenda

## NRS 241.020

- ◆ Clear and Complete statement of topics to be considered (stringent standard)
  - Could your neighbor understand what is going to happen at the meeting?
  
- ◆ Notation “For Possible Action” if action item
  - Informational Discussion
  - Deliberation
    - ◆ Collectively examining, weighing and reflecting upon the reasons for or against an action.
    - ◆ Includes collective exchange of facts preliminary to ultimate decision.
  - Action
    - ◆ Decision, commitment or promise, affirmative vote



# Agenda cont...

## NRS 241.020

- ◆ Public Comment Periods
  - Block of time at beginning and end of meeting; or
  - During each action item
    - ◆ (After public body has discussed item, but before public body has taken any action on that item)
  - Cannot restrict a speaker's viewpoint
  - However, conduct that disrupts the meeting's order, efficiency or safety may be limited
  - Board cannot deliberate or take action in response to public comment, unless item is already on the agenda
  
- ◆ Notice that agenda items may be:
  - Taken out of order
  - Combined
  - Removed or delayed discussion

# Materials Available to the Public

- ◆ Agenda
- ◆ Supporting Materials
  - Upon being **available** to the “public body” supporting materials must be made available to the public.
    - ◆ Can be before meeting or on the day of the meeting
    - ◆ If on day of meeting, post to website within 24 hours
  - Confidential support material must relate to proprietary information under NRS 332.025, and does not need to be disclosed to the public.
- ◆ Can be made available by e-mail or emailed link if the requester approves

# Action—Voting Minimums

- ◆ If a public body may have a member who is **not an elected official**, an affirmative vote taken by a **majority of the members present** during a meeting of the public body
  - NRS 241.015(1)(c)
- ◆ If all the members of a public body are elected officials, an affirmative vote taken by a majority of all the members of the public body
  - NRS 241.015(1)(d)

# Minutes

## NRS 241.035

- ◆ Minutes must contain:
  - Date, time, location of meeting
  - Members present
  - Substance of all matters discussed or decided
  - Remarks made by member of public (if person requests minutes reflect remarks)
- ◆ Meetings must be audio-recorded or transcribed by certified court reporter
- ◆ Minutes must be available within **30 working days** after meeting
- ◆ Minutes must be retained for 5 years (audio for **3 years**)
- ◆ Approved w/in 45 days or at the next meeting (whichever later)



# Corrective Action

- ◆ If an OML violation occurs, the public body may take corrective action within 30 days
- ◆ If appropriate corrective action taken, Attorney General's Office may elect not to prosecute the OML violation.

# Enforcement

- ◆ Person may make OML complaint to Nevada Attorney General's Office
  - AG notifies public body of complaint w/in 14 days
  - If complaint submitted w/in 120 days of alleged violation, AG MUST investigate.
  - If complaint submitted after 120 days, AG will NOT investigate
    - ◆ Exception: Alleged violation not previously discoverable & complaint submitted w/in 1 year.
  - AG not required to investigate an alleged OML violation if person's interests are not "significantly affected" by alleged violation.
    - ◆ Example: Person doesn't live within public body's geographic area

# Enforcement, cont...

- ◆ If AG conducts investigation, it will inform public body
- ◆ After investigation complete, AG will issue:
  - A finding that NO violation occurred; OR
  - A finding that a violation occurred + an explanation for this finding
- ◆ Public body submits response w/in 30 days
- ◆ If AG finds an OML violation, public body must acknowledge finding on next agenda

# OML Violations

- ◆ AG may bring a legal proceeding to void an action taken in violation of the Open Meeting Law; or to obtain an injunction to prevent violations of the Open Meeting Law
- ◆ A private citizen may also bring a legal proceeding

# OML Violations

- ◆ Action taken in violation of the Open Meeting Law is **void** - NRS 241.036
- ◆ OML violations may result in administrative fines against board members
  - 1<sup>st</sup> offense: \$500; 2<sup>nd</sup>: \$1,000; 3<sup>rd</sup>: \$2,500
- ◆ Serious violations of the OML (member has knowledge of violation & participates in violation) can result in **misdemeanor** charges
- ◆ However, if a board member violates the OML because the board member is relying on legal advice of board counsel= no administrative fine or criminal penalty. (2019 AB 70)



# Sources of Information

- ◆ NRS Chapter 241
  - Google NV Legislature– Law Library– Nevada Revised Statutes
- ◆ Open Meeting Law Manual published by the Attorney General's Office
  - Available online at <http://ag.state.nv.us>
- ◆ Opinions from the Attorney General's Office relating to the OML
  - Available online at <http://ag.state.nv.us>



# But wait... there's more!

- ◆ Don't assume that other public body members will be able to spot every issue!
- ◆ Discuss any questions/issues with legal counsel

# Any Questions



# Ethics in Government

- ◆ NRS Chapter 281A
- ◆ The Ethics Code is a series of rules governing the conduct of certain public officers and employees

# To Whom Does it Apply?

- ◆ **Public employees**-- which include any person who performs public duties under the direction and control of a public officer for compensation paid by the state or any county, city or other political subdivision.
- ◆ **Public officers**-- which include a person elected or appointed to a position which:
  - Is established by law
  - Involves the exercise of public power, trust or duty.

# NRS 281A.400

- ◆ No gifts that would tend to influence improperly
- ◆ No use of position to get unwarranted privileges
- ◆ No negotiation by employee or officer of contract between government agency and employee's or officer's business
- ◆ No payment from private source for performance of duties

# NRS 281A.400, cont...

- ◆ No use of confidential information obtained through position to benefit personal interests
- ◆ No suppression of government info that would tend to be unfavorable to employee
- ◆ No attempts to benefit personal interests through use of subordinate.

# NRS 281.400, cont...

- ◆ No seeking of employment or contracts thru use of government job
- ◆ No improper use of government property
  - Exception for de minimis use

# Conflicts of Interest

- ◆ DISCLOSE
- ◆ If, at the time a matter is called, a member has a conflict of interest, it must be disclosed
- ◆ Conflicts include commitments in a private capacity to the interests of others in the matter, pecuniary interest in the matter, receipt of a gift or loan in connection with a matter

# Recusal

- ◆ Recusal is generally disfavored because of the importance of public official in carrying out their duties.
- ◆ Recusal nonetheless is necessary in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the conflict

# Ethics Acknowledgement

- ◆ 281A.500 requires public officers to file a form with the Nevada Ethics Commission acknowledging review of ethical standards

# Any Questions

