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MEMORANDUM

TO: Nevada Government Employee-Management Relations Board

FROM: Francis C. Flaherty, Esq.

DATE: November 17, 2026

RE: Supplemental Comment in Opposition to Proposed Section 8(5) of NAC 288.340(4); LCB File No. R135-26

FILE NO.: 021013

Introduction

This firm is counsel for numerous employee organizations, including the Nevada State Education Association and many of its local affiliates. Pursuant to the Commissioner's October 19, 2026, SECOND NOTICE OF INTENT TO ACT UPON A REGULATION, LCB FILE NO. R135-26, we hereby submit this comment in opposition to the addition of NAC 288.340(4) to the Board's regulations.

The proposed new language, as revised is:

> ***5. Any member of the Board or panel, as applicable, may abstain from voting, subject to the provisions of NRS 241.0355 and 281A.420.***

(Underscoring added). We object to the language because at best, it continues to suggest that abstention is a readily available, casual option, which is simply not the case, and at worst, it encourages abstention.

Statutes Cited in Proposed Regulation

As an initial matter, the citation to NRS 241.0355 is misplaced. By its own terms, that statute only applies to "a public body that is required to be composed of elected officials." The Board is not composed of elected officials, and thus the statue is simply not applicable. Regarding NRS 281A.420, it ***requires*** an explanation for abstention in ***all*** circumstances:

> [A] public officer or employee ***shall not*** . . . ***abstain*** from voting . . . :
>
> * * * *

> ***without disclosing*** information concerning the gift or loan, the significant pecuniary interest, the commitment in a private capacity to the interests of the other person or the nature of the representation or counseling of the private person that is sufficient to inform the public of the potential effect of the action ***or abstention*** upon the person who provided the gift or loan, upon the public officer's or employee's significant pecuniary interest, upon the person to whom the public officer or employee has a commitment in a private capacity or upon the private person who was represented or counseled by the public officer or employee. ***Such a disclosure must be made at the time the matter is considered***.

(Emphasis added).

Public Policy

Also of concern, the suggestion in the proposed language that abstention is freely available is contrary to Nevada public policy, as expressed by the Legislature in Chapter 281A, "which favors the right of a public officer to perform the duties for which the public officer was . . . appointed" and recognizes that "abstention by a public officer disrupts the normal course of representative government and deprives the public and the public officer's constituents of a voice in governmental affairs." NRS 281A.420(4)(b).

Practical (Adverse) Effect

Note that NAC 288.340(4) is proposed to be included under the major subheading in NAC 288 entitled "PRACTICE BEFORE THE GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD" and under the minor subheading of "HEARINGS." Thus, the proposed new language applies in the context of hearings before the Board *en banc* (five members) or before a panel of the Board (three members). Whether in an *en banc* or panel hearing, there is the potential for a closely split decision (*e.g.,* 3-2, 2-1). If a Board member abstains in such a close case, the Board and the parties may be confronted with a scenario where the Board is split 2-2 or 1-1, and there is no language in NAC 288 nor NRS 288 that addresses that situation.

Also, a Board or Panel member's abstention from a vote at the conclusion of a contested hearing begs the question of why the member continued to participate in the hearing despite the fact that they:

- had accepted a gift or loan related to the hearing and/or its participants;
- had a significant pecuniary interest related to the hearing;
- had a commitment in a private capacity to the interests of another person related to the hearing; or

(d) had provided representation or counseling for compensation to a private person related to the hearing before another agency within the immediately preceding year.

Abstention from a vote at the conclusion of a contest hearing is also a violation of NRS 281A.420, which requires that disclosure "be made at the time the matter is considered," not at the end of the hearing.

Conclusion & Recommendation

To be clear, there may be rare and unfortunate situations where a member of the Board or a panel does not discover or realize there is a conflict of interest that would require abstention until the hearing of a matter commences, but in that situation, the Board member should disclose the conflict and explain the basis of the conflict as soon as it becomes apparent and recuse themselves from the proceeding, well before the time for the Board or panel to render a decision. An earlier recusal, as opposed to an abstention at the end of the proceeding, will afford the remaining Board or panel members (and the parties) ample time to determine how the matter should move forward post recusal.

Thank you for your service on the Board and your continued attention and careful consideration.