

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM  
HOTELS MEETING  
FEBRUARY 25, 2014  
GAMING CONTROL MEETING ROOM  
555 E. WASHINGTON AVENUE, ROOM 2450  
LAS VEGAS, NEVADA 89101**

**VIDEO CONFERENCED TO:  
GAMING CONTROL MEETING ROOM  
1919 COLLEGE PARKWAY  
CARSON CITY, NEVADA 89706**

**FEBRUARY 25, 2014**

**1:00 P.M.**

**1-A) Introduction of Commissioners in attendance.**

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Senior Deputy Attorney General Henna Rasul was present as Commission Counsel.

Scott Sibley was not present.

**1-B) Introduction of Division Staff in attendance.**

In Las Vegas: Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Charles Newell, Compliance Audit Investigator; Cheryl Fleming, Compliance Audit Investigator; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator.

**2) Public Comment**

In Las Vegas: Tom Smith, president of the Paradise Valley Homeowners Association, commented on a problem with eligibility for board of directors election ballots. Mr. Smith read NRS 116.31034(5). Mr. Smith stated that the last two years his association has had an association member that has lied on the application form as being in good standing when they are not. Mr. Smith stated that staff has told them that there is no recourse to refute the lie on the application, to refuse candidacy to that individual and that the candidate's name must be placed on the ballot. Mr. Smith stated that since the statute is clear that a candidate cannot have any unpaid assessments, what procedure the association can take to keep such individuals off the ballots and eventually off the board. Mr. Smith asked the Commission to direct staff and the attorney to give associations a method to prevent non-payers who lie on their application. Mr. Smith asked if staff does not see any option that the Commission direct the Attorney General for a ruling on this issue. Mr. Smith asked how associations can carry out their fiduciary responsibilities when forced to accept candidates that do not comply with NRS 116.31034(5)(b).

In Las Vegas: Jennifer Turner, Public Information Officer for the Nevada State Contractors Board, commented in support of agenda item 11-1 and asked for the Commission's support. Ms. Turner stated that the Nevada State Contractors Board put together a three hour training course for community managers that have been beneficial. Ms. Turner stated that they had the opportunity to conduct a pilot of this program on one class and had great feedback.

In Las Vegas: Pennie Puhek, homeowner in Anthem Highlands Community Association, provided the Commission with written public comment and read her comments into the record. Ms. Puhek requested that her issue be placed on the next agenda for discussion and investigation.

In Las Vegas: Mike Randolph, manager of Homeowner Association Services, commented. Mr. Randolph provided the Commission with a document titled "Cite as: State, Bus. & Indus. v. Nev. Ass'n Servs. 128 Nev. Adv. Op. No. 34 August 2, 2012 IN THE SUPREME COURT OF THE STATE OF NEVADA No. 57470." Mr. Randolph stated that he is confused because he has seen an opinion from the Commission, the Division regarding the super priority lien, the Attorney General's Office and a Supreme Court decision on various matters. Mr. Randolph stated that he has provided the Commission with an advisory opinion that came out in State of Nevada Business and Industry v. Nevada Association Services 128 Nevada Advisory Opinion No. 34. Mr. Randolph stated that in the document the Supreme Court says the word "and" but never the word "or". Mr. Randolph read highlighted items within the document that he provided the Commission. Mr. Randolph asked if a ruling from the Supreme Court of the State of Nevada takes precedence over the Attorney General's opinion.

In Las Vegas: George Crocco, resident of Canyon Willow Pecos, commented. Mr. Crocco stated that there is problem in his homeowners association which is an over fifty-five community. Mr. Crocco stated that it is a continuing process with many affidavits that have been sent to the Ombudsman's Office and are now in the Compliance section. Mr. Crocco stated that it is still going on today and wishes that someone would be called in to stop this nonsense. Mr. Crocco stated there is an election coming up and they are doing everything to stop Mr. Crocco and others from getting on the board. Mr. Crocco stated that the Ombudsman's Office sent a letter regarding the referee program. Mr. Crocco stated that the program was turned down and nothing is being done. Mr. Crocco stated that it is a continuing situation regarding abuse in his association and would like some justice. Mr. Crocco stated that he might have to go to news media to get help.

### **3-1) NRED v. Dev Inder Pappas for possible action**

**Case Nos. CIS 2013-2030, 2013-2295, 2013-2294, 2013-2195 & 2013-2911**

**Type of Respondent: CAM.0000381-SUPR (EXPIRED-NOT RENEWED)**

#### Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Dev Inder Pappas was not present.

#### State's Witness

Teralyn Thompson testified regarding the notice that was sent to Ms. Pappas.

### Disclosures

Commissioner Lein disclosed that he has known Ms. Pappas for several years but never interacted with her personally or directly professionally.

Chairman Watkins stated that he knows Ms. Pappas from CAI functions but has never interacted with her on a professional level.

Ms. Briggs asked that the complaint be accepted as true and that a default judgment be entered against Ms. Pappas.

Commissioner Breslow moved to accept the complaint as true and that a default judgment is entered. Seconded by Commissioner Friedrich. Motion carried unanimously.

Ms. Briggs read the violations of law into the record.

Commissioner Schwenk moved that the violations of law have been proven. Seconded by Commissioner Friedrich. Motion carried unanimously.

### Division's Recommendation for Discipline

Ms. Briggs gave the Division's recommendation:

- Revocation of community management certificate for no less than three years
- Commission fine of \$10,000.00
- Hearing cost of \$2,078.00

Commissioner Friedrich stated that he would like for Ms. Pappas' certificate to be revoked for ten years.

Commissioner Friedrich moved to impose a Commission fine of \$10,000.00, hearing cost of \$2,078.00 and revocation of the community management certificate for ten years. Seconded by Commissioner Schwenk.

Commissioner Lein stated that ten years revocation of the certificate is extreme. Commissioner Lein stated that he agrees with fines and costs.

Commissioner Breslow suggested a revocation of the certificate for five years.

Motion carried 4 to 2 with Commissioners Lein and Breslow opposed.

### **3-2) NRED v. Diane Wild for possible action**

**Case No. CIS 13-09-19-075**

**Type of Respondent: CAM.0000164(ACTIVE)**

#### Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Diane Wild was not present.

Ms. Briggs stated that this matter was originally set for the December 2013 Commission meeting but Ms. Wild requested a continuance. Ms. Briggs stated that the matter was set for the present Commission meeting and Ms. Wild was sent a notice of default for failing to answer the complaint.

#### State's Witness

Teralyn Thompson testified regarding the notice that was sent to Ms. Wild.

Ms. Briggs stated that based on Ms. Thompson testimony that a default be enter against Ms. Wild for her failure to respond to the complaint and to attend the hearing.

Commissioner Friedrich moved to accept the allegations as true. Seconded by Commissioner Breslow.

#### Disclosures

Commissioner Lein disclosed that he has known Ms. Wild for over twenty years. Commissioner Lein stated that his company does not provide professional services to Castle Management and Commissioner Lein does not socialize with Ms. Wild personally.

Chairman Watkins disclosed that he lived in an association that Ms. Wild's company managed but had no interaction with that board or its officers.

Motion carried unanimously.

Commissioner Breslow moved that all of the violations of law are true. Seconded by Commissioner Schwenk. Motion carried unanimously.

#### Division's Recommendation for Discipline

Ms. Briggs gave the Division's recommendation:

- Revocation of community management certificate for ten years
- Commission fine of \$14,000.00
- Hearing costs of \$2,836.50
- Revocation of reserve study specialist registration for ten years.

Commissioner Friedrich moved to revoke the community management certificate for ten years, impose a Commission fine of \$14,000.00 and hearing costs of \$2,836.50. Seconded by Commissioner Frank.

Ms. Briggs requested that restitution be paid to the association in the amount of \$1,453.26.

Commissioner Friedrich stated that he would like to amend the motion to include the cost of restitution in the amount of \$1,453.26 and the revocation of the reserve study specialist certificate. Amendment seconded by Commissioner Frank. Motion carried unanimously.

**3-3) NRED v. Diane Wild for possible action**

**Case No. CIS 14-07-51-051**

**Type of Respondent: CAM.0000164(ACTIVE)**

Parties Present

Senior Deputy Attorney General Michelle Briggs was present representing the Division.

Diane Wild was not present.

Disclosures

Commissioner Lein disclosed that he has known Ms. Wild for over twenty years. Commissioner Lein stated that his company does not provide professional services to Castle Management and Commissioner Lein does not socialize with Ms. Wild personally.

Chairman Watkins disclosed that he lived in an association that Ms. Wild's company managed but had no interaction with that board or its officers.

State's Witness

Teralyn Thompson testified regarding the notice that was sent to Ms. Wild.

Commissioner Friedrich moved that the allegations in the complaint are true and correct. Seconded by Commissioner Frank. Motion carried unanimously.

Commissioner Friedrich moved that the violations in the complaint listed as items 32-48 as true. Seconded by Commissioner Schwenk. Motion carried unanimously.

Division's Recommendation for Discipline

Ms. Briggs gave the Division's recommendation:

- Restitution to the association in the amount of \$51,081.75
- Commission fine of \$17,000.00
- Hearing cost of \$2,018.50

Commissioner Breslow asked that the revocation of her community management license and reserve study specialist registration for ten years be included just in case the first case that was heard by the Commission gets set aside.

Chairman Watkins asked if the maker of the motion wished to accept Commissioner Breslow's amendment.

Commissioner Friedrich stated that he would accept Commissioner Breslow's amendment although Commissioner Friedrich never made a motion regarding recommended discipline.

Commissioner Frank stated that he would like to amend the motion to say that this case would be recommended to law enforcement for investigation.

Ms. Briggs stated the association has gone to law enforcement themselves.

Commissioner Frank stated that he still would like it to be placed on the record.

Commissioner Lein read NAC 116.451(3) regarding the interim financial statement of the association. Commissioner Lein stated that he would like to consider the possibility that Ms. Wild cannot do these duties. Commissioner Lein stated that both cases that came before the Commission dealt with financial matters and the efforts would be to try to remove Ms. Wild completely from that process.

Commissioner Frank stated that he would like to amend the motion to say that the Commission would like to direct the Division to provide the information regarding this case to law enforcement.

Chairman Watkins asked if the maker of the motion wished to accept Commissioner Frank's amendment.

Commissioner Friedrich stated that he would accept Commissioner Frank's amendment although Commissioner Friedrich never made a motion regarding recommended discipline.

Commissioner Lein stated that he would like to amend the motion and add that Ms. Wild would not be involved in the preparation on a daily basis or in a supervisory capacity with the preparation of financial statements for a community association for ten years.

Chairman Watkins asked if the maker of the motion wished to accept Commissioner Lein's amendment.

Commissioner Friedrich stated that he would accept Commissioner Lein's amendment although Commissioner Friedrich never made a motion regarding recommended discipline.

Commissioner Friedrich stated that he would like Ms. Wild to be barred from any and all activities dealing with homeowner associations for ten years.

Ms. Briggs stated that Ms. Wild can own a company dealing with homeowner associations.

Commissioner Breslow stated that he would like to retract the motion that this would be referred to law enforcement because the Commission is at the stage where the Commission is imposing discipline on Ms. Wild. Commissioner Breslow stated that to direct somebody to take the Commission's decision to an authority that can investigate this for criminal prosecution is not discipline on Ms. Wild; it is directing somebody to do something that the Commission wants.

Commissioner Frank withdrew his amendment to the motion.

Chairman Watkins asked if the maker of the motion wished to accept Commissioner Frank's withdrawal of his amendment.

Commissioner Friedrich stated that he would accept Commissioner Frank's withdrawal of the amendment although Commissioner Friedrich never made a motion regarding recommended discipline.

Seconded by Commissioner Breslow. Motion carried.

**10-A) For possible action: Review and decision of Respondent Diane Wild's compliance with Commission's Findings of Fact, Conclusion of Law and Order filed January 10, 2013, as amended for Case Nos. CIS 10-08-04-018, CIS 10-09-08-038, CIS 11-10-30-110, CIS 12-08-35-044 and CIS 11-05-34-311.**

Senior Deputy Attorney General Michelle Briggs stated that this agenda item can be removed.

The Commission agreed.

**11-2) Leach Johnson Song and Gruchow, LLP**  
**"Fair Housing-Region IX-From the Source"**  
**Request: 3 Hours    General    Classroom**

**11-3) Leach Johnson Song and Gruchow, LLP**  
**"Alternate Dispute Resolution (ADR) & Mediation In The Common Interest Community"**  
**Request : 3 Hours    General    Classroom**

**11-4) State of Nevada, Real Estate Division, Common Interest Communities & Condominium Hotels Program**  
**"Ethical Issues in HOAs"**  
**Request: 3 Hours    General    Classroom**

Jennifer Oerding presented agenda items 11-2, 11-3 and 11-4 to the Commission and stated that the Division recommends approval for these courses.

Commissioner Breslow moved to approve agenda items 11-2, 11-3 and 11-4. Seconded by Commissioner Schwenk.

Commissioner Friedrich stated that he is in favor of agenda item 11-3. Commissioner Friedrich stated he has a problem with Mr. Leach and two other attorneys who gave a three hour course in one of the hotels and Mr. Leach did not speak favorably about the new mediation program. Commissioner Friedrich stated that someone who spoke unkindly about the program should not be teaching the course. Commissioner Friedrich stated that he is in favor of the course but not in favor of one of the instructors.

Commissioner Lein stated that he has known John Leach for over twenty-five years but will not recuse himself from voting for these classes.

Motion carried 4 to 2 with Commissioners Frank and Friedrich opposed.

**11-1) Leach Johnson Song and Gruchow, LLP**

**“The State of Nevada Contractor’s Board and the Common Interest Community”**

**Request: 3 Hours    General    Classroom**

Chairman Watkins stated that there is going to be some discussion on this course regarding retroactivity of credits. Chairman Watkins stated that because some of his people who work directly for him have taken this course and are looking for those retroactive credits, Chairman Watkins abstained from voting and gave the chair to Commissioner Breslow.

Jennifer Oerding stated that there is a request for retroactive approval. Ms. Oerding stated that the class has already been taught. Ms. Oerding stated that the Division received a letter from Sara Barry on January 27, 2014 asking for retroactive approval. Ms. Oerding stated that the Division responded to Ms. Barry on January 28, 2014 stating that it would be on the agenda and that the Division would be supporting the class for approval. Ms. Oerding stated that at the Commission’s August 2013 meeting, the subject had come up regarding retroactive approval being looked at gingerly in the future. Ms. Oerding stated that retroactive approval is allowed but teaching a class prior to the class being offered on the Division’s calendar for continuing education credit is not allowed without a continuing education number.

Commissioner Schwenk moved to approve the course and to accept the retroactive credits. Seconded by Commissioner Lein.

Commissioner Frank stated that as a former contracting officer who has had many dealings with the individual proposed to conduct this course. Commissioner Frank stated that instructor would be the last person to conduct this course. Commissioner Frank stated that competitive contracting in this state is being poorly done across the board and training to community managers is surely needed but not by a law firm with such a track record. Commissioner Frank stated that the Contractor’s Board should be teaching community managers how it should be done properly and not a law firm that does not do a good job.

Ms. Oerding stated that Julio Sabates and Jennifer Turner are representatives of the Nevada State Contractor’s Board and Leach Johnson Song and Gruchow are sponsoring the class.

Commissioner Lein stated that he wants to be sure that there was a course outline, course material, sign in sheets, sign out sheets and the full documentation has been received. Commissioner Lein stated that if the Commission is going to make this course retroactive, he would like to make sure that the course meets all of the requirements had it been pre-approved.

Commissioner Lein stated that Commissioner Frank seems to have a bias about a law firm that does not do construction defect. Commissioner Lein stated that if Commissioner Frank has a predetermined bias that should be stated.

Commissioner Frank stated that he has an opinion from personal experience that this law firm would not be his choice to teach a course on construction defect. Commissioner Frank stated that he has confidence in the Contractor’s Board.



Sara Barry stated that one of the reasons that she proposed this class and Leach Johnson Song and Gruchow supported her is because of the new law that passed regarding contractors and property managers being exempt from having to have a contractor's license versus community managers. Ms. Barry stated that there was a lot of confusion so Ms. Barry went to the State of Nevada Contractor's Board and asked if they would teach a class. Ms. Barry stated that the Contractor's Board put the class together and teach the class. Ms. Barry stated that when the class was taught there were sign in sheets, evaluations and certificates were not given out.

Motion carried 5 to 1 with Commissioner Watkins abstaining.

**9-A) Ombudsman's report.**

Sharon Jackson presented this report.

**9-B) Program Training Officer's Report**

Ken Richardson presented this report.

Commissioner Schwenk asked about the manual.

Mr. Richardson stated that he and Ms. Oerding are working together to get the manual reviewed by Ms. Jackson. Mr. Richardson stated that the manual is not a dead issue and is something that the Ombudsman's Office is getting re-focused on.

Commissioner Frank stated that he would hope that any manual being developed is being developed in such a way so that it is online and only printed on demand.

Mr. Richardson stated that the recommendation to Ms. Jackson is that the manual primarily be an online document.

Commissioner Frank asked if Mr. Richardson is going to do live streaming media training.

Mr. Richardson stated that the Ombudsman's Office will be taping specific classes to post online. Mr. Richardson stated that the Division does not have the capability to do live streaming yet.

**9-C-1) Administrative Program Officer's report on Intervention Program.**

Sonya Meriweather presented this report.

**9-C-2) Administrative Program Officer's report on number and types of associations registered within the State.**

Sonya Meriweather presented this report.

**9-C-3) Administrative Program Officer's report on homeowner association and compliance audits.**

Sonya Meriweather presented this report.

Commissioner Friedrich asked how many have been chosen or been selected to go to the referee program.

**9-C-4) Administrative Program Officer's report on Alternative Dispute Resolution filings and subsidy claims.**

Sonya Meriweather presented this report.

Commissioner Friedrich asked how many have been chosen or been selected to go to the referee program.

Ms. Meriweather stated that for FY 14 there have been a total of seventy-one claims. Ms. Meriweather stated that the referee program started on October 1, 2013 and that the report goes through December 2013. Ms. Meriweather stated that there have been a total of forty-six claims filed since October 1, 2013. Ms. Meriweather stated that the total request for the referee program from October 1<sup>st</sup> to December 31<sup>st</sup> was six and the total claims that proceeded to the referee program since implementation of the program is zero.

Commissioner Frank suggested that the Commission revisit this series of report because it looks to be a lot of work that may not be leading to as much results in terms of output as additional manpower on investigations.

**9-C-5) Administrative Program Officer's report on notices of sales.**

Sonya Meriweather presented this report.

**9-D) Compliance Section's current caseload report.**

Sonya Meriweather presented this report.

Commissioner Frank stated that there does not seem to be a way to manage affidavits in such a way so that they can complete the system consistently in less than a year. Commissioner Frank stated that the amount of cases that the Commission is presented on a quarterly basis is not close to the volume of cases that appear to be valid.

Gail Anderson stated that Ms. Jackson reported that every intervention affidavit that comes into the Ombudsman's Office is being offered and strongly encouraged to participate in a conference with the Ombudsman. Ms. Anderson stated that this conference does not suffice and does not meet NRS 38 requirements for civil action and is an attempt to resolve. Ms. Anderson stated that Ms. Jackson has been successful in the short time that she has been in her position. Ms. Anderson stated that the goal is not to have as many things roll into the Compliance section that gets resolved at the Ombudsman's level. Ms. Anderson stated that unresolved violations of law go to the Compliance section but not governing documents issues. Ms. Anderson stated that she has been meeting one-on-one with investigators on the oldest cases to find out the status, the issues and if it is still an issue.

**9-E) Administrative fine report pursuant to NAC 116A.350(4).**

Teralyn Thompson reported that there are no administrative fines.

**9-F) Licensee and board member discipline report.**

Teralyn Thompson presented this report.

**9-G-1) Administrator's report on personnel.**

Gail Anderson presented this report. Ms. Anderson stated that there was a re-classification done of four investigator positions and the supervisory investigator position. Ms. Anderson stated that in State Personnel there is a compliance investigators series and a compliance audit investigators series. Ms. Anderson stated that the original investigators were classified as compliance investigators. Ms. Anderson stated that two new positions that were added in the 2013 Legislative Session were compliance audit investigators. Ms. Anderson stated that the audit includes audits of records and financial statements. Ms. Anderson stated that she submitted for re-classification and it was approved, finalized and granted. Ms. Anderson stated that all of the investigators in the common-interest communities program are now compliance/audit investigators which correspond to all of the real estate investigators who are in the same classification. Ms. Anderson stated that she delayed in recruiting and filling the supervisory investigator position which has now been re-classified to chief investigator compliance/audit.

Ms. Anderson reported on vacant positions:

- Chief Investigator Compliance/Audit position
- Administrative Assistant II position in the Compliance section
- Program Officer II position which is the Division's Legal Administrative Officer
- Administrative Assistant III position in the Administrator's Office.
- Two vacancies in the Licensing section

**9-G-2-a) Administrator's report on status of proposed regulation: LCB File No. R125-12 NAC 116 concerning subsidization of mediation.**

Gail Anderson presented this report. Ms. Anderson stated that this regulation will have a workshop at the current Commission meeting.

**9-G-2-b) Administrator's report on status of proposed regulation: LCB File No. R049-13 NAC 116A concerning prohibition in management contract.**

Gail Anderson presented this report. Ms. Anderson stated that this regulation will have a workshop at the current Commission meeting.

**9-G-2-c) Administrator's report on status of proposed regulations: LCB File No. R050-13 NAC 116 and 116A concerning reserve studies and financial statements and qualification and duties of reserve study preparers.**

Gail Anderson presented this report. Ms. Anderson stated that this proposed regulation is being submitted for revisions based upon the Commission's previous meetings that had discussions and input on the proposed regulation with Commissioner Lein's assistance. Ms. Anderson stated that the Legislative Counsel Bureau will make revisions and when the Division gets a first revised draft the Division will post the proposed regulation for a workshop.

**9-G-2-d) Administrator's report on status of proposed regulations: LCB File No. R052-13 NAC 116 and 116A concerning procedures for requesting rehearing.**

Gail Anderson presented this report. Ms. Anderson stated that this regulation will have a workshop at the current Commission meeting.

**9-G-2-e) Administrator's report on status of proposed regulations: LCB File No. R152-13 NAC 116A concerning minimum hours of a course to count for continuing education credits.**

Gail Anderson presented this report. Ms. Anderson stated that this regulation will have a workshop at the current Commission meeting.

**9-G-2-f) Administrator's report on status of proposed regulations: LCB File No. R153-13 NAC 116 concerning consent to Service of Process to Administrator.**

Gail Anderson presented this report. Ms. Anderson stated that this regulation will have a workshop at the current Commission meeting. Ms. Anderson stated that this proposed regulation is part of a revision from an old file that had to be closed because it was too old.

**9-G-2-g) Administrator's report on status of proposed regulations: LCB File No. R—14 NAC 116 amending NAC 116.405 concerning executive board member duties.**

Gail Anderson presented this report. Ms. Anderson stated that the Division is waiting for a file number on the unassigned file from the Commission's previous meeting. Ms. Anderson stated that once the Division gets a draft from the Legislative Counsel Bureau, the Division can notice the regulation for a workshop.

**9-G-2-h) Administrator's report on status of proposed regulations: LCB File No. R---14 NAC 116 concerning notice of hearing for a fine.**

Gail Anderson presented this report. Ms. Anderson stated that the Division is waiting for a file number on the unassigned file from the Commission's previous meeting. Ms. Anderson stated that once the Division gets a draft from the Legislative Counsel Bureau, the Division can notice the regulation for a workshop.

**10-H) For possible action: Discussion and decision to approve minutes of the December 3-4, 2013 Commission meeting.**

Commissioner Friedrich moved to accept the minutes as corrected. Seconded by Commissioner Lein.

Commissioner Friedrich stated that on page 16 under Public Comment within the fifth line down should state "Mr. Wright stated that in order to violate a statute there has to be something one is told to do" the word "be" was left out.

Commissioner Breslow stated that on page 6 the word "plaintive" should be replaced with the word "plaintiff".

Motion carried 4 to 2 with Commissioners Breslow and Schwenk abstaining.

**10-C) For possible action: Discussion and decision regarding establishing a Commission for Common-Interest Communities and Condominium Hotels Working Group for developing a regulation to smoothly administer cases where alleged violations involve both administrative and criminal statutes.**

Commissioner Frank stated that he is having difficulty getting people to work with him on this issue. Commissioner Frank stated that law enforcement agencies do not want to talk to Commissioner Frank if the Division is not interested. Commissioner Frank stated that he would like to schedule an appointment with Ms. Anderson.

Commissioner Friedrich stated that he has spoken to the district attorney and two of the four candidates for sheriff and no one want to get involved in this issue.

Chairman Watkins stated that the Commission has been told on several occasions by Commission Counsel that on the criminal side, there is not much that the Commission can do. Chairman Watkins stated that the Commission has been informed by the Administrator that when appropriate the Division reports these things to the appropriate law enforcement jurisdiction. Chairman Watkins stated that a regulation to smoothly administrator case might not belong within the purview of the Commission or the Administrator in managing the Division.

Commissioner Friedrich commented on NRS 624 which is the contracting licensing statute. Commissioner Friedrich stated that there is a subsection that allows that agency to employ investigators and to allow that agency to issue misdemeanor citations. Commissioner Friedrich stated that Ms. Anderson has told the Commission that there is no criminal jurisdiction yet this other State agency has this power. Commissioner Friedrich asked if the agency wants to put forth an agency bill draft request or Commissioner Friedrich will approach one of the State legislators and ask them to carry such a bill.

Commissioner Frank stated that he disagrees with Commissioner Friedrich and is not interested in having criminal prosecution powers. Commissioner Frank stated he is going to keep working to try to find a solution. Commissioner Frank stated that he does not want this issue to be removed from the agenda. Commissioner Frank stated that he plans to keep this an agenda item until he gets solutions.

**10-G) For possible action: Discussion and possible action regarding the Commission response to commissioners representing themselves as a commissioner in a public forum.**

Chairman Watkins stated that he was made aware of two issues. Chairman Watkins stated that he was made aware that a commissioner went to a public meeting and wore a badge identifying himself as a commissioner.

Chairman Watkins stated that he was made aware that an affidavit was filed with a court with jurisdiction in Clark County and a commissioner signed an affidavit as a commissioner. Chairman Watkins stated that purports that the affidavit was signed with the knowledge of the Commission. Chairman Watkins stated that he recalls no such action by the Commission for anyone to represent themselves to a court or to anyone else as a commissioner without the permission of the Commission. Chairman Watkins stated that the commissioner's opinion in the

affidavit is not of his concern but that commissioner is not entitled to sign a document as a commissioner unless the Commission passes a motion.

Chairman Watkins stated that in past Commission meetings during legislative session the Commission authorized commissioners to write letters of support, suggestions or not in favor of legislative bills. Chairman Watkins stated that those letters were authorized by the Commission to sign as a commissioner. Chairman Watkins stated that this should be the case with all Commission actions. Chairman Watkins stated that the Commission has a regular agenda item regarding Commissioner's speaking engagements so that the Commission knows who, where and to what body a commissioner is speaking in front of.

Commissioner Lein stated that he read the affidavit that was signed and was shocked. Commissioner Lein stated that he thinks it was an abuse of power and would censor that commissioner if the Commission had that ability. Commissioner Lein stated that he thinks that commissioner knew very clearly the position of the Commission.

Commissioner Friedrich stated that he was the commissioner who issued the affidavit. Commissioner Friedrich stated that nowhere in the affidavit does it state that it is the opinion of the Commission. Commissioner Friedrich stated that he was identifying himself.

Chairman Watkins stated that the issue is that the affidavit was signed as a commissioner and not the content of the affidavit.

Commissioner Friedrich stated that at the last Commission meeting it was a 3 to 2 decision to go forward with an Attorney General opinion as to whether or not the Commission has legal authority to issue advisory opinions. Commissioner Friedrich stated that based upon discussion that he had with Senior Deputy Attorney General Henna Rasul months ago, Ms. Rasul told Commissioner Friedrich that the Commission does not have authority to issue advisory opinions.

Senior Deputy Attorney General Henna Rasul stated that she told Commissioner Friedrich that she does not see language but her conversation with Commissioner Friedrich was unofficial and the official opinion of the Attorney General's Office would be represented by the Attorney General's Opinion which had not been issued until recently.

Chairman Watkins stated that the Commission has been issued a temporary restraining order and the Commission is not allowed to talk about the particular opinion as of yet.

Commissioner Friedrich stated that nowhere in the statute does it state that the Commission has authority to do what it has done since 2007. Commissioner Friedrich stated that he has objected to the goings on of certain industries within this industry. Commissioner Friedrich stated that he felt obligated as a commissioner to put forth his feelings on the fact that the Commission has done something that he does not feel is proper.

Ms. Rasul stated that the manner that Commissioner Friedrich went about that was inappropriate because Commissioner Friedrich signed the affidavit as a commissioner. Ms. Rasul stated that if Commissioner Friedrich had filed the affidavit with his personal opinion and simply signed the

affidavit with his name, this would not be an issue. Ms. Rasul stated that the Commission is taking issue with the fact that Commissioner Friedrich signed a document as a commissioner without getting it ratified at a meeting prior where the Commission could agree that Commissioner Friedrich could represent the Commission in that matter.

Commissioner Frank stated that this kind of situation is not unique. Commissioner Frank stated that he has a life time appointment as an air force colonel and uses that title because it is a lifetime title. Commissioner Frank stated that if Commissioner Friedrich had signed that letter for the Commission, he would be wrong but Commissioner Friedrich did not sign it for the Commission. Commissioner Frank stated that he is confused as to why no member of this Commission can ever sign their name as a commissioner on their opinion. Commissioner Frank stated that he understands that he could never sign on behalf of the Commission unless authorized by the Commission.

Chairman Watkins yielded the chair to the Vice-Chair Breslow and asked to be recognized to make a motion.

Commissioner Watkins moved that no commissioner may sign a document as a commissioner without the expressed majority of the remainder of the Commission in a public meeting. Seconded by Commissioner Lein.

Vice-Chairman Breslow stated that in order to avoid this tug of war in the future, the Commission might need a black letter rule to prevent this type of discussion and disagreement so that the Commission can stay on task for more important things.

Commissioner Frank asked if the chairman of the Commission can sign letters as the chairman of the Commission without consulting the Commission because he does it. Commissioner Frank stated that the secretary of the Commission has been allowed to sign things in the past because of designated authority. Commissioner Frank stated that he has a problem with the chairman of the Commission signing letters on behalf of the Commission without telling other members.

Commissioner Schwenk stated that he respects Commissioner Friedrich for his knowledge and ability to present issues fairly but Commissioner Friedrich overstepped his boundaries and it was done to make himself look important. Commissioner Schwenk stated that he is the secretary of the Commission and he has not signed one thing for the year and a half that he has been secretary.

Commissioner Lein stated that it is important that the Commission is an unbiased body of individuals with vast experience. Commissioner Lein stated that when someone is promoting a certain aspect or talking about opinions outside of this body, it becomes biased and the Commission is hurting the industry at large. Commissioner Lein stated that internal opinions should be kept to themselves. Commissioner Lein stated that the Commission has to be neutral so that the Commission can decide facts that are presented to the Commission and the public will have faith in what the Commission does. Commissioner Lein stated that Commissioner Friedrich has discredited the Commission.

Commissioner Friedrich stated that the affidavit says that it supports part of what the Division is doing. Commissioner Friedrich stated that he did not do it for his own ego but so that the court knows who Commissioner Friedrich is. Commissioner Friedrich stated that he did not speak on behalf of the Commission.

Commissioner Watkins stated that he has signed a lot of documents on behalf of the Commission and for the Division. Commissioner Watkins stated that ninety-nine percent of those documents were subpoenas.

Vice-Chair Breslow stated that as the chair of the Commission there is certain implied authority to do administrative tasks and assist the Division. Vice-Chair Breslow stated that he does not equate what the chair does as a regular and ordinary part of his position as the chair with the current discussion.

Motion carried 4 to 2 with Commissioners Frank and Friedrich opposed.

Vice-Chair Breslow relinquished the chair back to Commissioner Watkins.

### **13) Public Comment**

In Las Vegas: Donald Schaefer, board member of Sun City Aliante, commented. Mr. Schaefer stated that he would like to applaud the Ombudsman's Office for the educational things that they are offering to board members on a monthly basis. Mr. Schaefer stated that board members need to be educated. Mr. Schaefer stated that board members have a responsibility to take classes. Mr. Schaefer stated that educated professionals are needed to management homeowners' associations.

In Las Vegas: Norman McCullough, member of a homeowner association in Henderson, commented. Mr. McCullough stated nothing gets accomplish at these Commission meetings.

In Las Vegas: John Radocha commented. Mr. Radocha stated that he just got back from a meeting at the Division and something is wrong. Mr. Radocha stated that the Division is understaffed and need more money get stuff done. Mr. Radocha asked why it takes seventy-five days or longer to determine if someone is in violation. Mr. Radocha stated that the Division's charts and numbers are ninety percent accurate.

### **15) For possible action: Adjournment**

The meeting was recessed at 4:45 p.m. on February 25, 2014 and will resume at 9:00 a.m. on February 26, 2014.



**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM  
HOTELS MEETING  
FEBRUARY 26, 2014  
GAMING CONTROL MEETING ROOM  
555 E. WASHINGTON AVENUE, ROOM 2450  
LAS VEGAS, NEVADA 89101**

**VIDEO CONFERENCED TO:  
GAMING CONTROL MEETING ROOM  
1919 COLLEGE PARKWAY  
CARSON CITY, NEVADA 89706**

**FEBRUARY 26, 2014**

**9:07 A.M.**

**1-A) Introduction of Commissioners in attendance.**

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Senior Deputy Attorney General Henna Rasul was present as Commission Counsel.

Scott Sibley was not present.

**1-B) Introduction of Division Staff in attendance.**

In Las Vegas: Gail Anderson, Administrator; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator.

**4) Regulation workshop for LCB File No. R125-12**

Introduction of Commissioners in attendance:

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Senior Deputy Attorney General Henna Rasul was present as Commission Counsel.

Scott Sibley was not present.

Introduction of Division staff in attendance:

Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator.

Workshop began at 9:08 a.m. on February 26, 2014 and ended at 9:24 a.m. on February 26, 2014.

**10-B-1) For possible action: Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to LCB File No. R125-12; including review of public comments from regulation workshop held February 26, 2014.**

Commissioner Lein commented on section 1(8). Commissioner Lein stated that he has a question for the Division as it relates to the payment of the fee. Commissioner Lein stated that the expectation is that once the mediator submits his statement, the mediator will be paid. Commissioner Lein stated that he assumes that the process of payment would take about thirty days.

Senior Deputy Attorney General Michelle Briggs stated that the Division would rather have a reasonable time set as opposed to number days.

Commissioner Lein asked if section 1(9) is necessary because there is already a subsection (3) that prohibits mediation for the same unit in a fiscal period.

Commissioner Lein asked what “program” is being referred to in section 1(9) on the third line.

Ms. Briggs stated that NRS 38.325 is referencing the referee program that the Division administers. Ms. Briggs stated that the process for the referee program is already subsidized. Ms. Briggs stated that parties who go through the referee program cannot come back and say that they want to mediate and have mediation subsidized as well.

Commissioner Lein stated that he would like to add the word “referee program” to be clear.

Commissioner Friedrich asked what “qualify” means in section 1(5)(b).

Commissioner Breslow stated that he understood that to mean that as long as parties do not violate sections (3) or (9) meaning parties have not gone through the referee program or subsidized mediation in the prior year.

Chairman Watkins suggested changing the language in section 1(5)(b) to state “or \$250 for each party who qualifies under this regulation for a subsidy.”

Commissioner Breslow suggested the language “for each party who is eligible here under” and strikes the word “qualifies”.

Commissioner Friedrich commented on section 1(9). Commissioner Friedrich asked if there is a time period. Commissioner Friedrich stated that he was told that if one party refuses to go through the referee program, the case goes to a mediator. Commissioner Friedrich asked if that information should be inserted in the proposed regulation.

Commissioner Breslow commented on section 5(b). Commissioner Breslow stated that the Division wanted to add language to the effect that the subsidy only applies to the time spent in mediation. Commissioner Breslow stated that there is a significant amount of time preparing

particularly if each side presents their position in writing. Commissioner Breslow stated that the language “only for the time spent in mediation” might be unduly restrictive.

Commissioner Breslow stated that in two different places in the proposed regulation the mediator is to indicate whether the mediation was successful or unsuccessful. Commissioner Breslow stated that it should say that the mediator is tasked with identifying whether the mediation was successful or unsuccessful in resolving the dispute. Commissioner Breslow stated that way it is clear what definition of successful or unsuccessful the Commission is really talking about. Commissioner Breslow suggested that section 1(7)(b) and section 8 add to the end of the sentence “in resolving the dispute”.

Chairman Watkins reviewed the changes to the proposed regulation.

- Section 1(2)(c) adding “and with the Secretary of State” at the end of the subsection.
- Section 1(5)(b) deleting the word “qualifies” and adding “is eligible here under.”
- Sections 1(7) and 1(7)(b) adding to the end the sentence the language “in resolving the dispute”
- Section 8 adding to the end the sentence the language “in resolving the dispute”
- Section 8 deleting “this section at the time the Division receives” and adding “the State’s accounting procedures after receiving”.
- Section 9 deleting “a” and inserting “the referee” within the last line of the section

Commissioner Friedrich moved that the Commission accept the changes as presented to LCB File No. R125-12. Seconded by Commissioner Lein. Motion carried unanimously.

### **5) Regulation workshop for LCB File No. R049-13**

Introduction of Commissioners in attendance:

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Senior Deputy Attorney General Kimberly Arguello was present as Commission Counsel.

Scott Sibley was not present.

Introduction of Division staff in attendance:

Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator.

Workshop began at 11:01 a.m. on February 26, 2014 and ended at 11:13 a.m. on February 26, 2014.

**10-B-2) For possible action: Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to LCB File No. R049-13 held February 26, 2014.**

Commissioner Lein stated that this regulation is in statute as NRS 116A.620. Commissioner Lein stated that he took the statute, compared it to the regulation and there are some differences. Commissioner Lein stated that on page 2 under section 1(1)(f) on the second line where it says “the community manager”, Commissioner Lein suggested adding “or employer of the community manager”.

Commissioner Lein commented on page 3 section 1(1)(l)(1). Commissioner Lein stated that he would like to remove the language and replace it with the language from NRS 116A.620(1)(k)(1).

Commissioner Lein commented on section 1(1)(l)(2). Commissioner Lein stated that to the best of his knowledge a fidelity bond is not required. Commissioner Lein stated what is required is crime insurance by the association pursuant to NRS 116.3113(1)(c). Commissioner Lein suggested adding a new subsection (3) that states “The client will maintain crime insurance in accordance with NRS 116.3113(1)(c).”

Senior Deputy Attorney General Kimberly Arguello stated that it is sometimes difficult to put the specific statute into the regulation because the statute number might change later. Ms. Arguello suggested the language state “in accordance with NRS 116.”

Commissioner Lein stated that subsection (4) is only in the regulation and not in statute.

Commissioner Lein commented on section 1(2)(b). Commissioner Lein stated that he would like for it to state “provide for indemnification of the community manager or the employer of the community in accordance with and subject to the appropriate provisions of title 7 of NRS and the governing documents.”

Commissioner Breslow suggested adding a new section 1(1)(f)(3) that states “Late charges imposed but not collected.” Commissioner Breslow stated that this would balance the concern for abuse with the realization that managers and management companies need to make money and this is a way that they are allowed to negotiate.

Commissioner Breslow commented on section 1(2)(b). Commissioner Breslow stated that after Commissioner Lein’s addition of “and governing documents” add the language “provided there is no indemnity for intentional misconduct, gross negligence or criminal misconduct.” Commissioner Breslow stated that there have been a number of management agreements that he has looked at over the years where the manager or management company attempted to have the association reimburse, defend, hold harmless and indemnify them for everything that could go wrong. Commissioner Breslow stated that it is not fair or reasonable to suggest that an association needs to reimburse a manager for those types of actions.

Commissioner Schwenk asked if this proposed language covers employees of management companies such as accountants or bookkeepers.

Commissioner Breslow moved to approve the regulation with the suggested changes. Seconded by Commissioner Lein.

Commissioner Friedrich asked if the Commission is allowing a percentage of late charges to be paid to the management company.

Chairman Watkins stated that the Commission is not allowing a percentage to management companies in the regulation. Chairman Watkins stated that the Commission is saying that management companies can collect a percentage if it is negotiated with the association.

Commissioner Lein stated that he understood that by the proposed regulation the Commission is prohibiting a fee based on a percentage or portion of late charges imposed but not collected.

Motion carried unanimously.

**6) Regulation workshop for LCB File No. R052-13**

Introduction of Commissioners in attendance:

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Senior Deputy Attorney General Kimberly Arguello was present as Commission Counsel.

Scott Sibley was not present.

Introduction of Division staff in attendance:

Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator.

Workshop began at 1:03 p.m. on February 26, 2014 and ended at 1:24 p.m. on February 26, 2014.

**10-B-3) For possible action: Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to LCB File No. R052-13; including review of public comments from regulation workshop held February 26, 2014.**

Commissioner Friedrich commented on the section line in section 1 regarding the language “issued a decision”. Commissioner Friedrich suggested that the word “decision” is changed to “order” to keep it uniform.

Senior Deputy Attorney General Kimberly Arguello stated that she would disagree because an order is a decision but there can be other decisions by the Commission that may be subject to a petition for rehearing. Ms. Arguello stated that the word “decision” encompasses order.

Commissioner Schwenk commented on Section 1(1) regarding fifteen days. Commissioner Schwenk stated that he would like to see that changed to fifteen business days and throughout the regulation regarding fifteen days to be change to fifteen business days.

Ms. Arguello stated that if it says fifteen days it is referring to fifteen actual days. Ms. Arguello stated that the problem is that it would be running into the thirty days for the petition for judicial review.

Commissioner Schwenk commented on section 3(6) regarding the language “the Division may stay enforcement.” Commissioner Schwenk stated that he would like that change from “may” to “shall”.

Gail Anderson stated that there are criteria for petitioning for a rehearing. Ms. Anderson stated that there has to be some discretion by the Division.

Commissioner Lein commented on section 1(5). Commissioner Lein suggested adding the Commission as respondents to the petition.

Ms. Arguello stated that if the language is left as “respondent” that gives either party to the original action the ability to file a petition for rehearing and that could be either the original respondent or the Division.

In Las Vegas: Tim Stebbins, Henderson resident, commented. Mr. Stebbins stated that he likes the clarification that was given that opens the door for either party in the action to file for rehearing.

Commissioner Breslow moved to approve the proposed regulation as drafted with no changes. Seconded by Commissioner Friedrich. Motion carried unanimously.

**10-G) For possible action: Discussion and possible action regarding the Commission response to commissioners representing themselves as a commissioner in a public forum.**

Commissioner Friedrich asked if there is a legal statute or regulation prohibiting Commissioner Friedrich from having issued the affidavit.

**2) Public Comment**

In Las Vegas: Fredrick Wilkening, homeowner, commented. Mr. Wilkening thanked Chairman Watkins for the opportunity to speak on behalf of a particular agenda item after the Commission has had discussion.

**15) For possible action: Adjournment**

The meeting was recessed at 1:33 p.m. on February 26, 2014 and will resume on February 27, 2014 at 9:00 a.m.

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM  
HOTELS MEETING  
FEBRUARY 27, 2014  
GAMING CONTROL MEETING ROOM  
555 E. WASHINGTON AVENUE, ROOM 2450  
LAS VEGAS, NEVADA 89101**

**VIDEO CONFERENCED TO:  
GAMING CONTROL MEETING ROOM  
1919 COLLEGE PARKWAY  
CARSON CITY, NEVADA 89706**

**FEBRUARY 27, 2014**

**9:00 A.M.**

**1-A) Introduction of Commissioners in attendance.**

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Chief Deputy Attorney General Gina Session was present as Commission Counsel.

Scott Sibley was not present.

**1-B) Introduction of Division Staff in attendance.**

In Las Vegas: Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator

**2) Public Comment**

No comment

**7) Regulation workshop for LCB File No. R153-13**

Introduction of Commissioners in attendance:

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Chief Deputy Attorney General Gina Session was present as Commission Counsel.

Scott Sibley was not present.

Introduction of Division staff in attendance:

In Las Vegas: Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator

Workshop began at 9:32 a.m. on February 27, 2014 and ended at 9:36 a.m. on February 27, 2014.

**10-B-5) For possible action: Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to LCB File No. R153-13; including review of public comments from regulation workshop held February 27, 2014.**

Commissioner Lein asked if the consent form could be posted on the Division's website.

Gail Anderson stated that the current form is already posted on the Division's website but does not include NRS 116 or NRS 116B. Ms. Anderson stated that the form will be modified if the Commission agrees to adopt the form.

Chairman Watkins asked if the form is referenced in the proposed regulation. Chairman Watkins suggested adding language that states "on a form provided by the Division in section 1(1).

Commissioner Breslow stated that the consent form provided by Ms. Anderson needs to be changed. Commissioner Breslow stated that the form should request the name of the financial institution, the financial institution's address, the name of the representative who is authorized to execute this on behalf of the financial institution, that person's position and certifying that they have such authority.

In Las Vegas: Don Schaefer, Sun City Aliante homeowner, commented. Mr. Schaefer stated that he would like to see it stated in the proposed regulation that it is the responsibility of the association to obtain this form.

Commissioner Lein stated that he does not see anywhere in the regulations to tie Mr. Schaefer's comment in.

Commissioner Breslow moved that the regulation be approved with the change to section 1(1). Seconded by Commissioner Friedrich. Motion carried unanimously.

**8) Regulation workshop for LCB File No. R152-13**

Introduction of Commissioners in attendance:

Gary Lein, Barry Breslow, Robert Schwenk, Jonathan Friedrich, Robert Frank, Randolph Watkins, Chief Deputy Attorney General Gina Session was present as Commission Counsel.

Scott Sibley was not present.

Introduction of Division staff in attendance:

In Las Vegas: Gail Anderson, Administrator; Sharon Jackson, Ombudsman; Sonya Meriweather, Administrative Program Officer; Ken Richardson, Program Training Officer; Jennifer Oerding, Education Officer; Teralyn Thompson, Commission Coordinator; Marisu



Abellar, Legal Secretary, Senior Deputy Attorney General Michelle Briggs serving as Division Counsel.

In Carson City: Christopher Cook, Compliance Audit Investigator

Workshop began at 9:32 a.m. on February 27, 2014 and ended at 9:36 a.m. on February 27, 2014.

**10-B-4) For possible action: Discussion and decision on proposed changes, additions and deletions to NAC 116, NAC 116A or NAC 116B including but not limited to LCB File No. R152-13; including review of public comments from regulation workshop held February 27, 2014.**

Chairman Watkins yielded the chair to the vice-chair Commissioner Breslow to make a motion.

Commissioner Watkins moved to accept LCB File No. R152-13. Seconded by Commissioner Schwenk. Motion carried unanimously.

Commissioner Breslow gave the seat back to the chair.

**10-D) For possible action: Discussion and possible action regarding the Attorney General's Opinion dated February 14, 2014.**

This item was removed from the agenda.

**10-E) For possible action: Discussion and possible action regarding independent counsel pertaining to Case No. A-13-688795-B.**

This item was removed from the agenda.

**10-F) For possible action: Discussion and possible action regarding the status of Commission issued advisory opinions.**

In Las Vegas: Patrick Reilley, attorney with Holland and Hart representing Nevada Association Services, commented. Mr. Reilley stated that the deputy attorney general for the Division has made the argument that the Commission does not have statutory authority to issue advisory opinions. Mr. Reilley stated that this is contrary to Nevada Supreme Court case, State of Nevada vs. NAS 128 Nev. Adv. Op. No. 34 from 2012 in which the Court stated that this Commission has the authority to interpret NRS 116 and placed no limitations on the form of that opinion. Mr. Reilley stated that the Division has the authority to interpret NRS 116. Mr. Reilley stated that if the Division is correct in that the Commission had no authority to issue an advisory opinion in December 2010, that means that all advisory opinions that the Commission has issued in the past dating back to 2007 turn to dust. Mr. Reilley stated that each time the Commission has issued an advisory opinion; the Commission had a deputy attorney general sitting as counsel. Mr. Reilley stated that if the Commission does not have the statutory authority to issue an advisory opinion; the Commission does not have statutory authority to withdraw an advisory opinion either. Mr. Reilley stated that there is nothing for the Commission to do on this issue unless the Commission wants to clarify that the advisory opinion from December 2010 is simply a written opinion as to the Commission's interpretation of the law under NRS 116 and consistent with the NAS/State of Nevada case.

In Las Vegas: Tim Stebbins, Henderson resident, commented. Mr. Stebbins stated that as he looks at the law it is very clear that the Division has the authority to issue advisory opinions. Mr. Stebbins stated that there is no language that gives any authority to the Commission to issue advisory opinions. Mr. Stebbins stated if the Commission lacks that authority that means that the previous advisory opinions go to dust. Mr. Stebbins stated that he feels that is what should happen.

Commissioner Breslow stated that the 2012 Supreme Court case does say that the Commission has the authority to interpret NRS 116. Commissioner Breslow asked where that authority begins and ends. Commissioner Breslow asked if that authority includes the right to issue advisory opinions or not. Commissioner Breslow stated that it is not a straight line to say that the Commission has the sole or concurrent authority to issue advisory opinions in the form that the previous opinions have taken or in the form as the one at issue in District Court.

Commissioner Breslow stated that Mr. Reilley suggested that for the Commission to move and the motion succeed to withdraw the Commission's advisory opinion would mean that the Commission would have to withdraw all advisory opinions issued by the Commission. Commissioner Breslow stated that this would be a point of law that may or may not be found to be valid. Commissioner Breslow stated that it boils down to does the Commission have information that the Commission did not have at the time the most recent advisory opinion of the Commission was entered into.

Chief Deputy Attorney General Gina Session stated that the reference to the Supreme Court case regarding the Department of Business and Industry vs. NAS that is dated August 2, 2012 has a specific paragraph regarding advisory opinions which references NRS 116.623 which was passed by the 2009 Legislature. Ms. Session stated that the provision in NRS 116 gives the Division, alone, the authority to issue advisory opinions regarding NRS 116A or 116B. Ms. Session stated that in terms of advisory opinions that were issued by the Commission prior to 2009 when that provision was placed into the statutes, the Commission would have had the authority to issue advisory opinions under the broader law in NRS 233B. Ms. Session stated that based on the timing of the effective dates of this statute and the state of the law at the time that the advisory opinions were issued; the Commission had authority to issue those advisory opinions that were issued prior to 2009.

Chairman Watkins stated that the Nevada Supreme Court's order says to him that the Commission and the Division, and no other Commission or Division, interpret NRS Chapter 116.

Commissioner Lein stated that the issue centers on advisory opinions. Commissioner Lein asked if the Commission changed what the opinion of the Commission is called, would that make a difference.

Ms. Session stated that Commissions are creatures of statute and are limited in the specific statutes and authority that is granted by those statutes. Ms. Session stated that she does not believe that there is any authority granted in the statute to issue opinions.

Commissioner Breslow moved that as to any Commission issued opinions which came out after NRS 116.623 became law be withdrawn because the Commission finds that the Commission lacked legal authority to issue such advisory opinions. Seconded by Commissioner Frank.

Commissioner Friedrich disclosed that he issued an affidavit concerning this issue and it was stating that advisory opinions were done in conflict with NRS 116.623. Commissioner Friedrich stated that he feels he can be fair.

Commissioner Lein disclosed that many years ago he had a client who was in the collection business. Commissioner Lein stated that at the time when the Commission was going through developing regulations for collection costs, NAC 116.470 and the advisory opinion, that company was no longer a client of Commissioner Lein's firm or himself. Commissioner Lein stated the does not have a conflict and does not have any existing clients that are in the collection business. Commissioner Lein stated that there were several people in the industry that he personally knew but does not socialize with.

Chairman Watkins disclosed that he knows David Stone. Chairman Watkins stated that NAS is an agent for some of the associations that Chairman Watkins' management company manages. Chairman Watkins stated that he does not get any direct or indirect compensation from NAS because of that business relation between those associations. Chairman Watkins stated that he will not be abstaining from voting.

Motion failed 3 to 3 with Commissioners Lein, Schwenk and Chairman Watkins opposed.

No other motions were presented.

**12) For possible action: Discussion and decision on date, time, place and agenda items for upcoming meetings.**

- June 3-5, 2014 meeting will be in southern Nevada
- August 26-28, 2014 meeting will be in northern Nevada

**13) Public Comment**

In Las Vegas: Chuck Niggermeyer, Summerlin resident, commented. Mr. Niggermeyer thanked the Commission for approving the education courses. Mr. Niggermeyer commented on possibly getting with some law enforcement agencies for violations that occur. Mr. Niggermeyer stated that they saw the effect of the bullying law that was well intended but the Commission drew a conclusion in December that the law is unenforceable. Mr. Niggermeyer commented on a comment about real estate agents with prospective clients who did not want to see homes within a homeowner association. Mr. Niggermeyer stated that statistics do not back that up. Mr. Niggermeyer stated that statistics prove that the homeowner association industry is very successful and is not broken. Mr. Niggermeyer stated that he would love to see positive comments come out from the homeowner representatives to go in that direction.

In Las Vegas: Tim Stebbins, Nevada Homeowner Alliance, commented. Mr. Stebbins stated that in the past the Commission has made comments about how few cases come before the Commission. Mr. Stebbins stated that there have been complaints from homeowners who are

frustrated with the Office of the Ombudsman for not getting the relief that they are seeking. Mr. Stebbins stated that a case has come to his attention where a homeowner filed a complaint and was told that they had no standing to file that complaint and it was thrown out. Mr. Stebbins stated that the same homeowner in a different situation went to arbitration. Mr. Stebbins stated that the arbitrator ruled that the homeowner did have standing to do it. Mr. Stebbins stated that there is a direct conflict between the investigator at the Division and the arbitrator with the homeowner caught in the middle.

Mr. Stebbins stated that there have been comments about the number of investigators that are available to handle the large number of complaints that come in. Mr. Stebbins stated that the CIC section had five investigators and presented six cases to the Commission. Mr. Stebbins stated that the real estate section has four investigator and they presented fifty-eight cases to the Real Estate Commission. Mr. Stebbins stated that something seems to be wrong with this as well.

In Las Vegas: Don Schaefer, North Las Vegas homeowner, commented. Mr. Schaefer asked if the regulations from these meetings will come back for public opinion.

Chairman Watkins stated that regulations will go to the Legislative Counsel Bureau for review for any changes. Chairman Watkins stated that if the Legislative Counsel Bureau has any changes, the regulation will come back to the Commission for another public workshop if the changes are significant. Chairman Watkins stated that if changes are not significant or have no changes, the regulation will come before the Commission for an adoption hearing.

Mr. Schaefer stated that there is nothing that encourages board members to get education when they are running multimillion dollar corporations.

In Las Vegas: Norman McCullough, Henderson resident, commented on advisory opinions. Mr. McCullough stated that he was charged by his association with a violation of code of conduct. Mr. McCullough stated that he had to hire a lawyer to defend him and discovered that there was no existing code of conduct. Mr. McCullough stated that it had been eliminated. Mr. McCullough stated that when his lawyer found out, he presented it to the association and the charge disappeared. Mr. McCullough stated that the association told him that he had to pay over five hundred dollars for the association's attorney to write Mr. McCullough a letter in addition to pay his own attorney. Mr. McCullough stated that he discovered later that there was an advisory opinion by the Attorney General to the effect that an association attorney could not represent a community manager who was making a complaint against Mr. McCullough. Mr. McCullough stated that he wanted to go to small claims court to recover the five hundred dollars based on the written opinion of the Attorney General. Mr. McCullough stated that the association stated the community manager had the right to do that under another part of law. Mr. McCullough stated that this needs to be address because people are being financially hurt.

In Las Vegas: Fredrick Wilkening, president of Frontier Estates Homeowners Association, commented. Mr. Wilkening stated that homeowner associations provide an outstanding benefit to cities, counties and the State. Mr. Wilkening stated that homeowner associations are not broken and there are a lot of things that can be done to encourage them. Mr. Wilkening agreed

with the need for education for members of the board. Mr. Wilkening stated that there are one hundred sixty-seven homes in his association and at any one time there are one or two individuals that are sideways with the association. Mr. Wilkening stated that no one is taking into consideration those who are not the squeaky wheels.

#### **14) Commissioner Comments**

Commissioner Frank stated that as a general rule there are two types of people who come: people who are aggrieved and have been mistreated by the system and professionals with pecuniary interest on keeping a lid on discontent because it is good business to be able to say that there are no problems in homeowner associations. Commissioner Frank stated that he enjoys living in a homeowner association. Commissioner Frank stated that he gets frustrated sometimes when professionals try to lecture him on his advocacy for homeowners who are abused. Commissioner Frank stated that it is his opinion that each citizen has the right to be protected by laws and statutes provided by government and extensions of government policies. Commissioner Frank stated that it is impossible to satisfy one hundred percent of human beings in millions of people who live in this country. Commissioner Frank stated that in his experience as a military commander that he failed at his duty if he did not try to protect the rights of every single person under his authority. Commissioner Frank stated that the right attitude is to protect the rights of individuals, make sure that the board and community management system do not abuse their authority against any individual.

Commissioner Friedrich stated that one person being abused is one person too many.

Commissioner Friedrich read a statement regarding his issuance of the affidavit discussed by Commissioner Friedrich. Commissioner Friedrich stated that he signed the affidavit as a commissioner in the attempt of offering transparency and no other reason. Commissioner Friedrich stated that he did not state that this was the position of the Commission only his own. Commissioner Friedrich stated that it is time to put this behind the Commission and move on.

#### **10-I) Discussion regarding Commissioners' speaking engagement requests.**

Commissioner Lein stated that he will be teaching a one hour class on February 28, 2014 that is being put on by CAI regarding regulations to business clients of members of CAI. Commissioner Lein stated that in early March he will be teaching six hours of the sixty hour course for pre-licensing.

Commissioner Frank stated that he has a number of invitations starting in March, April and May which he will send Ms. Thompson a confirmation of final dates.

Commissioner Friedrich stated that he has a number of two to three minute speaking engagements. Commissioner Friedrich stated that he is running for Assembly and is constantly invited to speak before assembled groups throughout the valley. Commissioner Friedrich stated that the past Saturday he was on a radio talk show with veterans in politics and he disclosed that he is a commissioner and is speaking on behalf of himself.

Chairman Watkins stated that he occasionally teaches the CAI decal financial class and is one of the instructors on the newly approved transition class that is being offered.

**15) For possible action: Adjournment**

Meeting adjourned at 10:41 a.m. on February 27, 2014.

Respectfully Yours,

Teralyn Thompson  
Commission Coordinator