

1 However, the Complaint provides no specifics as to which *facts* Ms. Evers is alleged to have
2 disclosed that are confidential. Based on the factual background provided in the Complaint, the only
3 specific “fact” which Ms. Evers is accused of stating is her opinion that certain actions taken by
4 Complainant could constituted insurance fraud.² This is not a fact at all, but an opinion.³ While Ms. Evers
5 did express both her opinion on that matter, and the facts which underlie it, it is not clear from the
6 Division’s Complaint if the issue being raised by this action is the disclosure of Ms. Evers’ opinion, or the
7 underlying facts upon which that opinion was based. While this is an important distinction that might, in
8 other contexts, be outcome determinative, here the response is the same in either case. This is because, for
9 the reasons explained in more detail below, both the facts that underlie Ms. Evers’ opinion stated at the
10 April 18, 2025 board meeting and the opinion itself were *never* confidential because they do not fall into
11 any established category of confidential information under statute. Even assuming, *arguendo*, that Ms.
12 Evers’ opinion, or the facts that underlie them, *ever were* confidential (which they were not), they surely
13 were not at the time Ms. Evers made her statements on April 18, 2025 because the facts had been disclosed
14 to the community by complainant months prior.⁴

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16 ² The characterization of this comment is at the heart of this matter. While the complaint states that Ms. Evers
17 “clearly” accused Complainant of insurance fraud, a careful review of what was actually said exposes much more
18 nuance in the presentation than is apparent from the Division’s characterization. Applying the ‘gist or sting’ analysis
19 articulated for the evaluation of civil defamation claims by the Nevada Supreme Court, it is clear that Ms. Evers’
20 overall message was based on a hypothetical situation in which the CDL board had accepted and relied on
21 information relied by Complainant, and not strictly a description of Complainant’s actual actions. *See Rosen v.*
22 *Tarkanian*, 135 Nev. 436, 437, 453 P.3d 1220, 1222 (2019). Thus, in a civil context, this would not be actionable
23 defamation but constitutionally protected rhetorical hyperbole – particularly since Ms. Evers’ comments were made
24 during a discussion related to a recall election that was initiated by Complainant and directly related to the facts at
25 issue. While this is not a civil defamation action, this guiding judicial principle provides interpretive guidance. Ms.
26 Evers’ response to the recall petition spans from approximately the 50:00 mark to the 1:33:45 mark of Exhibit E.
27 The undersigned counsel encourages the Commission to listen to that portion in its entirety, so that Ms. Evers’
28 comments can be evaluated in their full context.

23 ³ Again, while this is not a civil defamation action, it bears noting here that the Nevada Supreme Court has uniformly
24 held on numerous occasions that opinions are not facts that can be proven true or false. *See, e.g., Wilson v. Rangen*,
25 550 P.3d 811, 813–14 (Nev. 2024), (holding that a HOA board member’s characterization of a homeowner’s
26 behavior as “stalking” and “harassment” during a public meeting were non-actionable opinion, citing *Abrams v.*
27 *Sanson*, 136 Nev. 83, 89, 458 P.3d 1062, 1068 (2020); *Smith v. Silverberg*, 137 Nev. 65, 70, 481 P.3d 1222, 1228
28 (2021) (holding that characterizing behavior as “bullying” is an opinion incapable of being false)). Since the
categories of information afforded specific statutory presumptions of confidentiality focus on verifiable facts, such
as the assessment of fines, architectural plans and the like, a similar line of reasoning could be argued to apply here:
that there is no such thing as a confidential opinion – only an opinion based on confidential facts.

⁴ These facts, in addition to being shared by the Complainant, thus vitiating any confidentiality that may have
previously existed, are true, meaning their disclosure is not legally actionable in any context.

1 **II. Response to Factual Allegations**

- 2 1. In responding to the allegations contained in Paragraph 1-3, Respondent does not possess enough
3 information to determine the truth or falsity of the allegations contained in these paragraphs, and
4 on that basis denies the same.
- 5 2. Respondent avers that the allegation contained in Paragraph 4 constitutes a legal conclusion, and
6 not an allegation of fact, and thus no response is required. To the extent that a response is required,
7 Respondent asserts that her words, when considered in their totality,⁵ speak for themselves, and
8 further asserts her disagreement with the characterization of her comments as an accusation of
9 insurance fraud.
- 10 3. In responding to the allegations contained in Paragraphs 5-6, Respondent does not possess enough
11 information to determine the truth or falsity of the allegations contained in these paragraphs, and
12 on that basis denies the same.
- 13 4. In responding to the allegations contained in Paragraphs 7-12, Respondent does not possess
14 enough information to determine the truth or falsity of the allegations contained in these
15 paragraphs, and on that basis denies the same.
- 16 5. In responding to the allegations contained in Paragraph 13, Respondent admits.
- 17 6. In responding to the allegations contained in Paragraphs 14-15, Respondent does not possess
18 enough information to determine the truth or falsity of the allegations contained in these
19 paragraphs, and on that basis denies the same.
- 20 7. In responding to the allegations contained in Paragraph 16, Respondent admits.

21 **III. Additional Factual Background**

22 In addition to the facts summarized by the Division in Paragraph 7 of the Complaint, several other
23 facts must be noted in order to understand the comments made during the April 18, 2025 board meeting
24 in their full context. These facts were all articulated by Ms. Zanetti in the letter referenced by the Division
25 in Paragraph 7.

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28 ⁵ To aid in the Commission’s factual determination related to the same, a copy of the complete audio recording of
the April 18, 2025 board meeting is provided herewith as Exhibit “E”.

- 1 • In 2024, CDL’s insurance carrier, American Family Insurance (AFI) informed CDL that their
2 insurance policy would not be renewed effective October 31, 2024.⁶
- 3 • In part because of increased wildfire danger impacting the entire region, and in part because of the
4 presence of aluminum wiring in certain CDL units, the premiums for available replacement
5 coverage were significantly higher than AFI’s premiums had been.⁷
- 6 • On October 17, 2024, a board meeting was held which Complainant attended during which the
7 impacts of the aluminum wiring on insurance rates were discussed at length.
- 8 • Complainant sent multiple letters to the community at large criticizing Ms. Evers’ handling of the
9 insurance situation, and implying that Ms. Evers had made poor decisions, or had made decisions
10 for improper reasons.⁸
- 11 • Complainant, without authorization from the CDL board, obtained insurance quotes for the CDL
12 community that did not disclose the presence of aluminum wiring in some units and were
13 significantly lower in price than those under consideration by the board.⁹
- 14 • Complainant obtained and passed these insurance quotes on to the CDL board on or about October
15 27, 2024 without disclosing that he did not inform the carrier of the aluminum wiring.¹⁰

16 Further, the board became aware of Complainant’s efforts to solicit insurance quotes on the board’s
17 behalf, and sent him a formal letter to cease and desist from doing so on October 3, 2024.¹¹

18 It also must be noted that on no fewer than three occasions, Complainant sent correspondence to a
19 significant portion of CDL community criticizing Ms. Evers’ handling of the insurance situation and
20 claiming (falsely) that Ms. Evers had allowed improper claims to be filed against CDL’s AFI policy,
21 questioning her choice of insurance broker, and implying that it was Ms. Evers’ failed leadership that had
22 caused the jump in premiums, and not the presence of aluminum wiring or wildfire risks.¹²

24 ⁶ CICCH 62
25 ⁷ *Id.*
26 ⁸ *Id.*
27 ⁹ CICCH 64
28 ¹⁰ *Id.*

¹¹ Exhibit “A”, Cease and Desist Letter to Complainant dated October 3, 2024.
¹² Exhibit “B”, Letter from Complainant to Community dated October 20, 2024; Exhibit “C”, Email from
Complainant to Community dated November 7, 2024 and; Exhibit “D”, Email from Complainant dated December
16, 2024.

1 Specifically, Complainant publicly alleged:

- 2 • Ms. Evers breached her fiduciary duties to the Association in the handling of a water damage claim
3 made by a homeowner.¹³
- 4 • Ms. Evers should have caused the water damage claim to be denied and failed to properly
5 investigate the claim.¹⁴ He further claimed Ms. Evers’ “gross incompetence on handling the claim
6 has caused a serious financial impact to all owners.”¹⁵
- 7 • Ms. Evers misrepresented the increased premiums were attributable to increased wildfire risk when
8 the water damage was the primary reason for the higher premiums incurred by CDL and that the
9 water damage claim “was concealed and the impact of the claim was camouflaged.”¹⁶
- 10 • That higher premiums on the policy from Alliant Insurance that was ultimately accepted were a
11 result of “lack of experience on behalf of the Board President, Mrs. Evers.”¹⁷
- 12 • That Ms. Evers’ “actions have now contributed to elevated premiums / deductibles, unnecessary
13 aluminum wire remediation costs.”¹⁸
- 14 • *He knew about the aluminum wiring at CDL when he submitted the Menath quote for acceptance*
15 *by the Board on October 27, 2024, and he further speculated that the Menath carriers would permit*
16 *post-inspection remediation within 30–60 days. In the email that submitted the Menath quote to*
17 *the Board, Complainant stated that “after inspections, if any carrier requires the aluminum wire*
18 *remediation, we already have crossed that bridge with the recent assessment and will have 30-60*
19 *days to meet their requirements.”¹⁹*

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24 ¹³ Exhibit “B” at 7

25 ¹⁴ *Id.* at 2.

26 ¹⁵ *Id.* at 7

27 ¹⁶ *Id.*

28 ¹⁷ *Id.*

¹⁸ Exhibit “C” at 2

¹⁹ Exhibit “D”. His assumption was later proven incorrect when the Menath carrier rescinded the quote because it does not insure properties with non-remediated aluminum wiring.

- His proposed quote from Menath (which was later revoked due to non-disclosure of the aluminum wiring) should have been selected instead of the Alliant quote. He went on state that “[W]e [CDL] could have gone with this quote [Menath] and saved owners thousands of dollars as well as obtained drastically lower deductibles” but “Menath later rescinded the quote after Mrs. Evers notified Menath of the aluminum wiring.”²⁰

These messages further called into question Ms. Evers’ competence to serve on the CDL board, and her motivations for doing so.²¹ The December 16, 2024 email went so far as to include a copy of an email sent by Complainant to the CDL board on October 27, 2025 including a quote from Menath insurance and encouraging the board to accept it.²² The December 16, 2024 closes by expressing Complainant’s desire for a clear record for all involved “as I am sure, many of you were not made aware of this information.”²³

Further, all comments made by Ms. Evers during the April 18, 2025 board meeting that referred to Complainant were made in the context of responding to a recall petition initiated against Ms. Evers by Complainant.²⁴ This recall petition was initiated in March 2025 after Complainant had already circulated his communications with insurers and the Board, along with his views about both, to the community at large.²⁵ Ms. Evers’ comments regarding the pending removal action were a noticed agenda item at the April 18, 2025 meeting and were made in direct response to those allegations.²⁶ Ms. Evers’ stated intention was to explain to homeowners the importance of fully disclosing material property conditions to insurance carriers and the potential consequences of failing to do so, including the risk that such conduct could constitute insurance fraud and jeopardize CDL’s coverage by exposing the Association to a potential uninsured loss.²⁷

²⁰ *Id.*

²¹ *Id.*

²² *Id.* It cannot be overstated that the facts contained in this email are a significant part of the basis for the opinion disclosed by Ms. Evers that is the apparent subject of this action. These facts were shared with a significant portion of community by Complainant months before the statements that are at issue here. Further, the facts shared by Ms. Evers are true as she understood them, and are echoed by Complainant’s own statements here.

²³ *Id.*

²⁴ Exhibit “E”, Audio Recording of April 18, 2025 Board Meeting.

²⁵ CICCH 20

²⁶ Exhibit “F”, Agenda of April 18, 2025 Board Meeting.

²⁷ Exhibit “E”.

1 **IV. Summary of Defense – Ms. Evers Disclosed No Confidential Information**

2 **a. Legal Standards**

3 **i. NAC 116.405(4)**

4 NAC 116.405(4) states:

5 Except as otherwise required by law or court order, disclosed confidential
6 information relating to a unit's owner, a member of the executive board or
7 an officer, employee or authorized agent of the association unless the
8 disclosure is consented to by the person to whom the information relates.

9 In order for any information disclosed to be in violation of NAC 116.405(4), it must be confidential
10 information. Further, baked into the statutory text are three carve-outs for the disclosure of information
11 that would otherwise be confidential: requirement by law, requirement by court order, and consent by the
12 person about whom the disclosure is made.

13 **ii. Records Deemed Confidential**

14 While NAC 116.405(4) prohibits the disclosure of confidential information about a unit's owner,
15 the provision itself does not define what is confidential information.

16 NRS 116.31175 provides that the "books, records and other papers" of an HOA must be
17 maintained and made available to community members on demand.²⁸ Exceptions to this requirement, and
18 therefore presumably information subject to confidentiality include employment records, minutes of and
19 materials from executive sessions where the subject is still under consideration and has not been made
20 public, and "records of the association relating to another unit's owner" with specific reference to
21 architectural plans submitted for consideration.²⁹ The statute further provides that an HOA must keep
22 records of sanctions imposed, but with information that could be used to identify the offender removed.³⁰

23 Further guidance as to what information is confidential can be found in NRS 116.31085(3), which
24 states that an executive board may meet in a closed session only to: (1) confer with an attorney, where that
25 communication would be privileged, (2) discuss the competence, health, or alleged misconduct of an
26 employee or manager and (3) discuss alleged violations of governing documents or failure to pay a fee by

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²⁸ NRS 116.31175(1)

28 ²⁹ NRS 116.31175(4)

³⁰ NRS 116.31175(5)

1 a community member.³¹ The statute makes clear that other matters of business discussed by an HOA are
2 to be done in a public meeting which can be attended by any member of the community.³²

3 Further, NRS 116.757 provides that all records related to a Complaint filed with the Division or
4 an investigation related to the same are confidential unless and until a formal complaint is filed with the
5 Commission.³³

6 **iii. A Board Member Subject to Removal Has a Statutory Right to Respond**

7 NRS 116.31036(3) specifically allows a board member subject to a recall election to request a
8 meeting of the board to discuss and respond to the removal petition.³⁴

9 **iv. Waiver**

10 Waiver requires the intentional relinquishment of a known right.³⁵ A waiver may be inferred from
11 conduct, so long as the conduct clearly evidences the party's intent to waive their right.³⁶ The waiver of a
12 right may be inferred from conduct when a party engages in conduct so inconsistent with an intent to later
13 enforce their right as to induce a reasonable belief the right has been relinquished.³⁷

14 While the Nevada Supreme Court has never addressed the question of waiver in the context of
15 NAC 116.405(4), the question has been addressed directly in the similar context of an attorney client
16 relationship.³⁸ The *Wardleigh* court noted that “[i]t has become a well-accepted component of waiver
17 doctrine that a party waives his privilege if he affirmatively pleads a claim or defense that places at-issue
18 the subject matter of privileged material over which he has control.”³⁹ The doctrine of waiver by
19 implication reflects the position that the attorney-client “privilege ‘was intended as a shield, not a
20 sword.’”⁴⁰ Generally, the *Wynn* and *Wardleigh* cases stand for the proposition, in relevant part, that a party

21 ³¹ NRS 116.31085(3)

22 ³² NRS 116.31085(3)

23 ³³ NRS 116.757(1) and (2).

24 ³⁴ NRS 116.31036(3)

25 ³⁵ *Nevada Yellow Cab Corp. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 123 Nev. 44, 49 152 P.3d 737, 740
(2007)

26 ³⁶ *Id. See also Host Int'l, Inc. v. Summa Corp.*, 94 Nev. 572, 583 P.2d 1080 (1978)

27 ³⁷ *Nevada Yellow Cab Corp.*, 123 Nev. At 49, 152 P.3d at 740. *See also Hudson v. Horseshoe Club Operating Co.*,
112 Nev. 446, 457, 916 P.2d 786, 792 (1996)

28 ³⁸ *See generally, Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 133 Nev. 369, 399 P.3d 334
(2017) and *Wardleigh v. Second Jud. Dist. Ct. In & For Cnty. of Washoe*, 111 Nev. 345, 891 P.2d 1180 (1995)

³⁹ *Wardleigh*, 111 Nev. at 354, 891 P.2d 1186, quoting *Developments in the Law—Privileged Communications*, 98
Harv. L. Rev. 1450, 1637 (1985).

⁴⁰ *Id.*, quoting *GAB Business Services, Inc. v. Syndicate* 627, 809 F.2d 755, 762 (11th Cir.1987)

1 may not seek advantage in legal proceedings by revealing a portion of what would otherwise be
2 confidential and/or privileged information, and using confidentially as a both a sword and shield to prevent
3 the other side from fully defending against those allegations.⁴¹

4 **b. Argument**

5 **i. The Information Disclosed by Ms. Evers was Not Confidential**

6 The following broad factual contentions were made by Ms. Evers in support of her opinion that
7 Complainant's actions constituted potential insurance fraud: (1) that Complainant solicited insurance
8 quotes on the board's behalf without authorization, (2) that in so doing Complainant did not disclose
9 necessary information regarding the existence of aluminum wiring present in some units, (3) that, if he
10 did not know before, Complainant became aware of the aluminum wiring no later than October 17, 2024,
11 10 days prior to encouraging the board to accept a quote he solicited that did not disclose the presence of
12 aluminum wiring, a material fact. None of these pieces of information fall under any of the categories
13 presumed to be confidential under statute. None relate to employment records, matters discussed in an
14 executive session, or violations or fines assessed against a unit owner. All of these issues were directly in
15 controversy at multiple public meetings prior to April 18, 2025.

16 Ms. Evers also did not discuss any information related to Complainant's mental or physical health
17 or fitness, share any confidential architectural drawings related to his unit, or any other information. No
18 underlying fact shared by Ms. Evers on April 18, 2025 was confidential at any time. Therefore, unless the
19 synthesis from fact to opinion based on the available facts imputes confidentiality, no confidential
20 information was shared by Ms. Evers on April 18, 2025. Indeed, no information about Complainant's
21 actual conduct was shared that had not been placed at issue by Complainant himself by virtue of his public
22 letters to a significant portion of community – only Ms. Evers opinion about what that conduct amounted
23 to.

24 It also bears repeating that all of the statements made by Ms. Evers during the April 18, 2025 board
25 meeting were made in response to a recall petition that Complainant initiated. Responding to a recall
26 petition is a statutorily protected right, so long as the board member properly places the topic on the
27 meeting's agenda, which was done here. The response was made directly to the statements made by

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⁴¹ *Wynn*, 133 Nev. at 380, 399 P.3d at 345.

1 Complainant in his multiple open letters to the community. In doing so, Complainant placed the Menath
2 insurance quote, the circumstances surrounding its procurement, the nondisclosure of aluminum wiring to
3 the carriers, and his unauthorized efforts to obtain insurance quotes squarely at issue before the
4 homeowners of CDL.

5 **ii. Even Assuming, *Arguendo*, That The Information Was Confidential At Some**
6 **Point, Complainant Waived Confidentiality**

7 While is it clear that no information shared here was ever confidential, even if it *ever* had been
8 (which it was not) Complainant's actions in (1) sending multiple communications to a significant portion
9 of community accusing Ms. Evers of incompetence or worse with regard to the handling of CDL's
10 insurance situation, (2) making public private communications between Complainant and the CDL board
11 and (3) initiating a recall petition against Ms. Evers indicate that he has waived confidentiality with respect
12 to his interactions with insurance companies. Complainant's email dated December 16, 2025 included a
13 communication to the CDL board concerning the insurance quotes, as well as the quotes themselves,
14 which did not account for aluminum wiring and were later rescinded by the carriers once complete
15 information was provided to them. It was Complainant, not Ms. Evers, who injected this information into
16 the community discussion.

17 It would be appropriate for the Commission to find that Complainant had waived his right to
18 confidentiality with respect to information related to CDL's efforts to obtain insurance, even assuming
19 such a right existed to begin with. Even if information about Complainant's involvement in the process,
20 and Ms. Evers' opinion that that involvement could have been interpreted as insurance fraud, would have
21 otherwise been confidential (it would not have), Complainant waived that right when he forwarded
22 communications on the issue to the community at large in an apparent effort to undermine Ms. Evers'
23 leadership. Given that Complainant injected information related to his involvement in obtaining insurance
24 quotes to the community at large, used that information to question Ms. Evers' fitness for office, and
25 ultimately initiated a recall petition against her, Evers' response during the April 18, 2025 board meeting
26 was nothing more than clarifying the record that Complainant had selectively shared with the community.
27 A contrary finding would effectively ratify Complainant's use of confidentiality rules as both sword and
28 shield in exactly the manner contemplated by the *Wynn* and *Wardleigh* courts. While those courts were

1 discussing confidentiality in a different context, the fundamental principle that a party should not be able
2 to rely on confidentiality rules and requirements after themselves sharing some of that confidential is
3 universal in application, and thus no disciplinary action against Ms. Evers is warranted.

4 If anything, rather than a violation, Ms. Evers' statements are precisely in keeping with the purpose
5 of NRS 116.3103, as she was acting "on an informed basis, in good faith and in the honest belief that [her]
6 actions [were] in the best interest of the association"⁴² by expressing her opinion and the potential
7 hypothetical consequences if the board had acted in the manner suggested by a political opponent.

8 **V. Conclusion**

9 Based on the foregoing, Respondent respectfully requests that this action be dismissed with no
10 disciplinary action imposed.

11
12 DATED this 9th day of March, 2026

13 SPRINGEL & FINK LLP

14 */s/ Jeffrey D. Whipple*

15 By:

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24
25
26
27
28 _____
⁴² NRS 116.3103(1)

CERTIFICATE OF SERVICE
Real Estate Division v. Kelly Evers
NRED Case No.: 2025-526

I, Ella Wilczynski, declare:

I am a resident of and employed in Clark County, Nevada. I am over the age of eighteen years and not a party to the within action. My business address is 6180 Brent Thurman Way, Suite 260, Las Vegas, Nevada, 89148.

On **March 9, 2026**, I served the document described as *Respondent Kelly Evers' Response to Complaint* on the following parties:

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<input type="checkbox"/>	VIA ELECTRONIC TRANSMISSION: service has been completed by emailing the document(s) to the person(s) at the email address(es) listed on the Service List. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission of the document(s).
<input checked="" type="checkbox"/>	VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business.
<input type="checkbox"/>	VIA FACSIMILE: by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number at last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which transmitted. A confirmation of the transmission containing the facsimile telephone numbers to which the document(s) was/were transmitted will be maintained with the document(s) served.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Ella Wilczynski

An employee of Springel & Fink LLP