

NEVADA STATE BOARD OF ACCOUNTANCY
Minutes
July 2, 2019

An open meeting of the Nevada State Board of Accountancy was called to order at 9:00 A.M. by past President, Brian Wallace, July 2, 2019 at the offices of the Nevada Society of CPAs, 5422 Longley Lane, Suite A, Reno, Nevada.

Board Members Present:

Candace Johnson, President	Michael E. Davis, Secretary/Treasurer	
Kerry Eaton	Nicola Neilon	L. Ralph Piercy
Jannet Vreeland	Brian Wallace	

Board Staff Present:

Karen Peterson, Counsel
Viki A. Windfeldt, Executive Director
Leslie C. Walsh, Deputy Director

- A. Call to Order, Roll Call and Establish a Quorum
- B. **Public Comment Section:** In accordance with NRS 241.020 Public Comment will be taken prior to the beginning of the meeting.

Anna Durst, CPA, COO Nevada Society of CPAs was present and provided a summary of informational items for the Board.

◆ ◆ ◆ ◆ CONSENT AGENDA ◆ ◆ ◆ ◆

The Consent Agenda contains matters of routine acceptance. The Board Members may approve the consent agenda items as written or, at their discretion, may address individual items for discussion or change.

- *1. Approval of May 15, 2019 Board Meeting Minutes *(For Possible Action)*
- *2. Approval of Applications for Certified Public Accountant – Non-Appearance *(For Possible Action):*
- | | | | |
|-------------------|--------------------|------------------|------------------|
| Sataraj Berde | Robert Covarrubias | Matthew Diggins | Robert Eash |
| Tony Ennenga | Kendon Galloway | Susan Heltsley | Gabriel Horowitz |
| Katrina Humlick | Matthew Hurley | Jamie Hyde | Drew Ilda |
| Magali Leal | Samuel Lee | Kyung Park | Zachary Pehling |
| Shamnika Ratwatte | Heather Samudio | Angelique Senour | Gary Spicer |
| Gerald Yann | | | |

Shannon Maynard – Military Spouse License Issued 5/21/2019

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- *3. Approval of Change to License Status *(For Possible Action)*:
Retired Status: Randall Broadhead Jim Lin
Return Active Status: Jen Nakata
- *4. Approval of Finances *(For Possible Action)*
A. Monthly Income & Expense
- *5. Board Approval of CPA Exam Scores (2019 2nd Quarter) *(For Possible Action)*
- *6. Board Approval of Fictitious Name Use: *(For Possible Action)*
A. Taxed Right LLC
- *7. No Items Scheduled for this Agenda Item.

The consent agenda and supporting documents were reviewed by the Board. Motion was made, seconded and carried to approve the consent agenda items. Board Members abstained from voting on applications for CPA Certification for the following: L. Ralph Piercy for Kendon Galloway and Brian Wallace for Angelique Senour.

◆ ◆ ◆ ◆ REGULAR AGENDA ◆ ◆ ◆ ◆

Agenda Item 8: Grievance Report and Grievance Matters *(For Possible Action)*

Note: NRS 241.020 requires the Board to list individuals that may have administrative action taken against them in connection with the Board's disciplinary grievance report. The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health for any of the grievances filed with or disciplinary action considered by the board.

A. Review of Grievance Report *(For Possible Action)*

Motion was made, seconded and carried to close complaint matter I2019.008 based on the matter considered to be a fee dispute.

Motion was made, seconded and carried to close complaint matter I2019.009 based on lack of cause.

In Non-Licensee Complaint matter NL2019.001, motion was made, seconded and carried to authorize Board staff to initiate a civil action against Richard Peters for unlawful practice. Board member Nicola Neilon abstained from the vote.

Note: Board Member Candace Johnson abstained from voting on grievance matters.

Agenda Item 9: Report of Legal Counsel *(For Possible Action)*

Legal Counsel provided a summary of the legislative bills that passed through the 2019 session and require board follow up and compliance.

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Agenda Item 10: Report of Executive Director (*For Possible Action*):

A. Nevada State Required Reporting (Informational Only)

Executive Director provided information to the Board that indicates all of the areas that the Board is required to report to the State of Nevada. The report shows the ongoing monitoring and compliance of these requirements.

Agenda Item 10 (Cont.)

B. NASBA/AICPA Proposed Revisions to CPE Provider Standards

Executive Director provided the Board with the proposed revisions to the CPE Provider Standards from the NASBA/AICPA.

C. NASBA Western Regional Meeting Follow Up

Executive Director provided the Board with follow up information from the NASBA Western Regional Meeting which included the topic of the Evolution of the CPA Profession and the steps moving forward.

D. Board Review & Approval of Sexual Harassment Policy and Public Records Policy

Executive Director provided the Board with the amended proposed policies for public records and sexual harassment. Motion was made, seconded and carried to approve the Public records policy as amended. A revised Sexual Harassment Policy will be reviewed at the next Board meeting.

E. State Executive Branch Audit Committee – Phase II Audit Report

Executive Director provided the Board with the Phase II Audit Report from the Executive Branch Audit Committee. The Board reviewed the information provided and discussed the proposed recommendations.

Agenda Item 11: Board 2019 Legislative Session Update with Lobbyist Liaison

Michael Hillerby

Appearance 9:00 AM

Board Lobbyist Michael Hillerby was present and provided an update from the 2019 Legislative Session which included information regarding implementation of bills the Board will need to comply with.

Agenda Item 12: Nevada Board of Accountancy Sexual Harassment Training (*For Possible Action*)

Appearance 10:00 AM

Attorney Joel Locke was present to provide the Board with the required Sexual Harassment Training. Attached to the minutes are the training documents.

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- Agenda Item 13: Board Approval of Contract for Governmental Affairs/Lobbyist Services (*For Possible Action*)
A. Kaempfer Crowell Ltd.

Executive Director stated that the Board's current contract for services with Kaempfer Crowell Ltd is due to expire on December 31, 2019. Approval for continued services is requested so that the contract process can be completed prior to the contract expiration. Motion was made, seconded and carried to approve the contract for the next three-year period.

- Agenda Item 14: Board Approval of 2019 CPE Documentation Audit Report (*For Possible Action*)

Executive Director provided the Board with the 2019 CPE Documentation Audit Report. Motion was made, seconded and carried to approve the report as provided.

- Agenda Item 15: President's Report (*For Possible Action*)

No information was provided under this agenda item.

- Agenda Item 16: Next Board Meeting: September 11, 2019 Las Vegas

- C. **Public Comment Section:** In accordance with NRS 241.020 Public Comment will be taken prior to the adjournment of the meeting.
Note: No one was present for this section of the public comment agenda item.

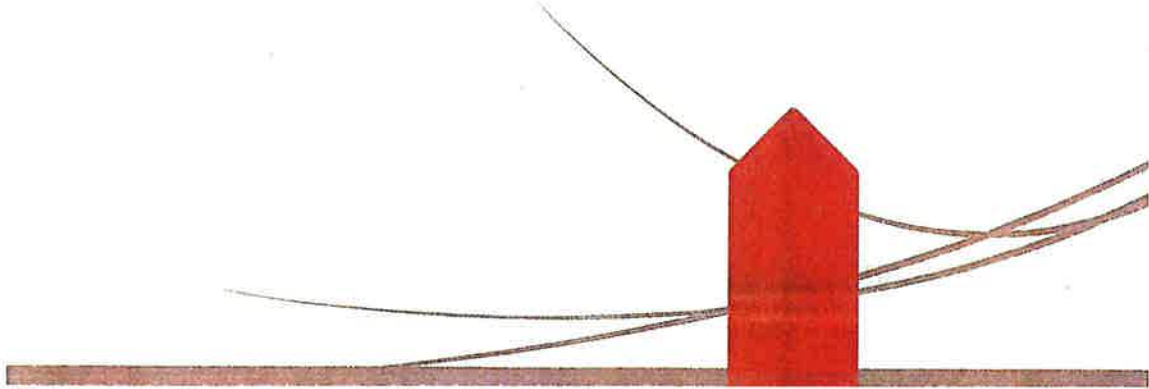
Board member Nicola Neilon provided information to the Board on CPA exam applicants. Ms. Neilon indicated that the expense associated with taking the CPA exam can be a significant demotivator for applicants.

- D. Adjournment

Sexual Harassment Policy and Training

Presented by Joel W. Locke

Allison MacKenzie, Ltd.





Introductions:

Joel W. Locke, Esq.



Executive Order 2019-01

- ▶ Order Establishing the Governor's Task Force on Sexual Harassment and Discrimination Law and Policy
- ▶ Issued January 7, 2019
- ▶ Established Governor's Task Force on Sexual Harassment and Discrimination Policy within the executive department, Office of the Governor
- ▶ Required all executive branch agencies to review their own policies and procedures, and orientation and training protocol for complying with State of Nevada Executive Branch Sexual Harassment and Discrimination Policy, and submit a report of the policies, procedures, and training protocol to the Attorney General or its designee



What is Sexual Harassment?

- Unwelcome advances, requests for sexual favors or any conduct of a sexual nature when:
 - Submission to or rejection of such speech or conduct is made, either explicitly or implicitly, a term of condition of employment;
 - Submission to or rejection of such speech or conduct is used as the basis for employment decisions affecting the employee; or
 - Such speech or conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment is unlawful under federal and State law.



Sexual Harassment Violates Both Federal and State of Nevada Public Policy

- Section 703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a) prompted The U.S. Equal Employment Opportunity Commission to adopt and issue guidelines declaring Sexual Harassment a violation of Title VII (See 29 C.F.R. §1604.11), which reiterated the Federal statutory public policy against Sexual Harassment
- At the State level, and pursuant to NRS 284.065 and 284.155, NAC 284.771 was adopted and provides as follows:
 - 1. Sexual harassment violates the policy of this State and is a form of unlawful discrimination based on sex under state and federal law. An employee shall not engage in sexual harassment against another employee, an applicant for employment, or any other person in the workplace.
 - 2. Sexual harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on, or dismiss, persons who commit sexual harassment, including, without limitation, first-time offenders.



EEOC Guidelines

- Defined Sexual Harassment
 - Whether conduct constitutes sexual harassment
 - Look at the record as a whole
 - Totality of Circumstances
 - Nature of sexual advances
 - Context of occurrence
 - Factual determination on a case by case basis
- Employer is responsible for acts of sexual harassment if knew or should have known the conduct was occurring between employees
 - Employer can also be responsible for non-employee harassment if knew about it and did nothing to stop it
 - Prevention is best tool to eliminate harassment



EEOC Guidelines: Preventative tools

- Affirmatively raising subject
- Expressing strong disapproval
- Develop appropriate sanctions
- Informing employees of their right to raise the issue and how to report it under Title VII
- Develop methods to sensitize all concerned
 - Supervisors, employees, and non-employees



EEOC Guidelines: Other Potential Liability

- ▶ Where employment opportunities or benefits are granted to an individual because of that individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against the other persons who were qualified for but denied that employment opportunity or benefit.



U.S. Supreme Court Interpretation of the EEOC Guidelines

- Meritor Savings Bank v. Vinson, 106 S. Ct. 2399 (1986): The Court affirmed the basic premises of the Guidelines as well as the Commission's definition.
- Issues before the Court:
 - Does unwelcome sexual behavior that creates a hostile work environment constitute employment discrimination on the basis sex;
 - Can a Title VII violation be shown when the district court found that any sexual relationship that existed between the plaintiff and her supervisor was a "voluntary one"; and
 - Is an employer strictly liable for an offensive working environment created by a supervisor's sexual advances when the employer does not know of, and could not have reasonably known, of the supervisor's misconduct.



Vinson Decision and Applicable Standards

- A Hostile Environment does violate Title VII, but it must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.
- The gravamen of a sexual harassment claim is whether the conduct is "Unwelcome" (voluntary engagement is not unwelcome)
- The correct inquiry is whether the employee by her conduct indicated that the alleged sexual advances were unwelcome, not whether her participation in sexual activity was voluntary.
- Employer Liability is not automatic or strict liability, but established under agency principles



Determining Whether a Work Environment is “Hostile”

- Vinson Decision: Sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment
- Hostile environment factors: 1) whether the conduct was verbal or physical or both; 2) how frequently it was repeated; 3) whether the conduct was hostile or patently offensive; 4) whether the alleged harasser was a co-worker or a supervisor; 5) whether others joined in perpetrating the harassment; and 6) whether the harassment was directed at more than one individual
- Central inquiry is whether the conduct unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, or offensive working environment



Harassment / Hostile Standard

- Isolated Instances: Sexual flirtation or innuendo, even vulgar language that is trivial or merely annoying, is not likely to establish a hostile environment, unless quite severe.
- Instead, applying a “reasonable person” standard is appropriate, but involves two steps:
 - 1. Reasonable person standard should be applied to a basic determination of whether a reasonable person would feel that the challenged conduct is even of a sexual nature; and
 - 2. The victim’s perspective should be analyzed; meaning, a reasonable person’s reaction to a similar environment under similar or like circumstances.

Other Harassment Related Claims

Sex-based Harassment

- Although the Guidelines specifically address conduct that is sexual in nature, the Commission notes that sex-based harassment, or harassment not involving sexual activity or language, may also give rise to Title VII liability.
- There must be sufficiently patterned or pervasive harassment directed at employees based on their sex.

Constructive Discharge

- Claims of hostile environment and sexual harassment are often coupled with claims of constructive discharge.
- Constructive discharge is when an employer imposes intolerable working conditions when those conditions foreseeably would compel a reasonable employee to quit, whether or not the employer intended them to quit.



EEOC Preventive Action Recommendations

- ▶ Take all steps necessary to prevent sexual harassment from occurring
- ▶ Examples:
 - ▶ Affirmatively raising the subject
 - ▶ Expressing strong disapproval
 - ▶ Developing appropriate sanctions
 - ▶ Informing employees of their right to raise and how to raise the issue of harassment under Title VII
 - ▶ Develop methods to sensitize all concerned



EEOC Remedial Actions

- When an employer receives a complaint or learns of alleged sexual harassment in the workplace, the employer should:
 - Investigate promptly and thoroughly;
 - Take immediate and appropriate corrective action to stop the harassment (disciplinary action may range from reprimand to discharge, depending on the severity and persistence of the misconduct);
 - Make the victim whole by restoring lost employment benefits or opportunities;
 - Prevent the misconduct from reoccurring; and
 - Follow up with inquiries to ensure the misconduct has ceased, and the victim has not suffered any retaliation.



Vicarious Employer Liability

- ▶ In Burlington Industries, Inc. v. Ellerth, 118 S. Ct. 2257 (1998) and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998), the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors based upon two principles: 1) an employer is responsible for the acts of a supervisor; and 2) employers should be encouraged to prevent harassment and employees encouraged to avoid or limit the harm from the harassment.
- ▶ This liability is automatic of the supervisor's harassment culminates in a tangible employment action.



Exceptions to Vicarious Liability if There is No Tangible Employment Action

- ▶ The employer exercised reasonable care to prevent and correct promptly any harassing behavior.
- ▶ The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm otherwise.



Harassment by Supervisors

- In Vance v. Ball State University, 133 S. Ct. 2434 (2013), the Supreme Court defined Supervisor as an employee who has been empowered by the employer to take tangible employment actions against the victim.
- A Tangible Employment Action is defined: to effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Further, an individual is a supervisor if they have the authority to direct the employee's daily work activities.



Harassment by Supervisor That Does Not Result in a Tangible Employment Action

- When harassment by a supervisor creates an unlawful hostile work environment, but does not result in a tangible employment action, the employer can raise an affirmative defense to liability or damages, which it must prove by a preponderance of evidence (more likely than not that the facts are true).
- The defense consists of two necessary elements:
 - 1. The employer exercised reasonable care to prevent and correct promptly any harassment; and
 - 2. The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.



Affirmative Defenses: Reasonable Care and Unreasonable Employee

- Reasonable Care
 - Establish, disseminate, and enforce an anti-harassment policy and complaint procedure and take other reasonable steps to prevent and correct harassment
 - Follow through with written policies and procedures (investigations, curative measures, confidentiality)
 - Take other sufficient reasonable means of ensuring anti-harassment
- Unreasonable Employee
 - Failure to Complain (not automatic if there was reasonable fear of retaliation, obstacles to filing complaint, or reasonable perception that complaint process was ineffective)
 - Timing of Complaint (waited a long time and did nothing to curb harassment), or failure to follow employer's curative process



Liability for Harassment by Non-Supervisory Employees

- ▶ The Supreme Court stated that an employer is liable for the misconduct of a non-supervisory employee if the employer negligently failed to prevent harassment from taking place
- ▶ Factors in determining negligence are: 1) the nature and degree of authority wielded by the harasser; 2) evidence that the employer did not monitor the workplace, failed to respond to complaints, failed to provide a system for registering complaints, or effectively discouraged complaints from being filed.



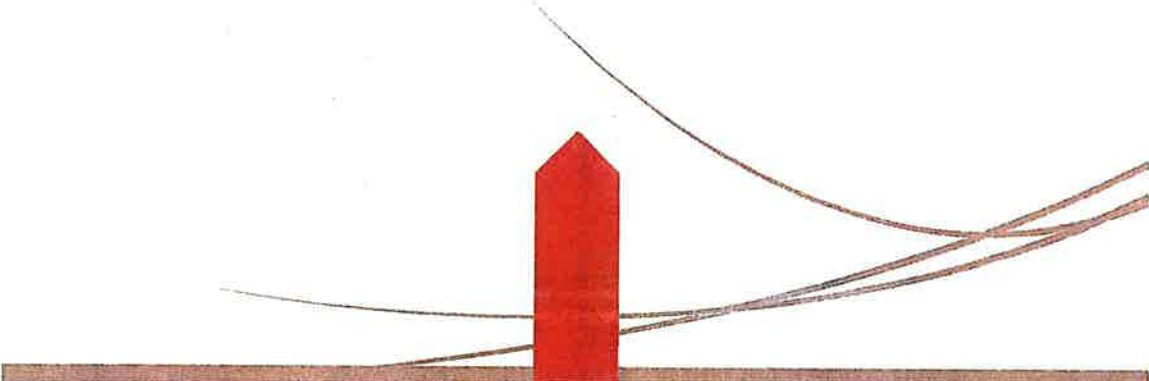
Reporting Sexual Harassment

- If an employee reports sexual harassment to a representative of an employer (supervisor, manager, human resources), that representative must report the incident to the employer.
- If an employee experiences or witnesses sexual harassment, it may be reported:
 - By contacting the Nevada agency coordinator;
 - By filing a claim in NEATS;
 - Reporting it on the Sexual Harassment/Discrimination Hotline at (800) 767-7381; or
 - Reporting to the EEOC, the Nevada Equal Rights Commission, or the EEO Sexual Harassment, Discrimination Investigation Unit



Sexual Harassment, Discrimination Investigation Unit

- ▶ The mission of the Investigation Unit is to conduct prompt, independent investigations of all allegations of sexual harassment and discrimination, as defined by Federal and State law. Each complaint is evaluated and investigated by trained personnel using consistent investigative procedures.
- ▶ Independent Investigators
- ▶ Neutral environment
- ▶ Well Trained, and prompt
- ▶ Offers continuous feedback to The Department of Administration's Division of Human Resources Management Team and other State agencies



And Now That We Have Almost Completed the Training...

I share with you a headline from The New York Times, published
December 11, 2017, by Claire Cain Miller

Sexual Harassment Training Doesn't Work.
But Some Things Do.





Traditional Methods Can Backfire

- ▶ Intro to NYT column:
 - ▶ “Many people are familiar with typical corporate training to prevent sexual harassment: clicking through a PowerPoint, checking a box that you read the employee handbook or attending a mandatory seminar at which someone lectures about harassment while attendees glance at their phones.”

Sound familiar?



Traditional Training

- ▶ Not only is traditional training required by law in order to comply with both Federal and State law, it is not worthless.
- ▶ You have learned what the definition of harassment is, how to report it, and how to take reasonable steps to prevent it in the workplace.
- ▶ Traditional training just isn't as effective as some other methods.
- ▶ Research has found that some people, when described in a legal context as harassers or victims, rejected the training because they didn't think that the labels applied to them. This is known as "identity threat reaction."
- ▶ In other words, the individuals who were probably more likely to be harassers were the ones least likely to benefit from traditional training.



Other Methods: Empower the Bystander

- Instead of offering two roles (harasser and victim), introduce another role: the bystander.
- Bystander Training asks: What should a bystander do when they witness sexual harassment?
 - Don't confront the harasser in the moment (Don't try and be a hero)
 - Disrupt the situation
 - Report the incident to a supervisor
 - Talk to the victim, because they often feel shamed or isolated
 - Urge them to report




Other Methods: Encourage Civility

- ▶ Traditional training focuses on what “not” to do and offers little other than reporting on what to do.
- ▶ Civility Training focuses on training that asks participants to brainstorm a list of respectful behaviors and participate in scripted role-playing that encourages positive behavior.
- ▶ Civility Training also offers supervisors training on how to listen to complaints without being dismissive, negative, or overly reactionary.



Other Methods: Train Seriously and Often, and Promote More Women

- According to research, the most effective training is at least 4 hours, in person, interactive, and tailored for the particular workplace.
- Both Men and Women should present the training, and should be done by the employees' supervisors, not the HR official with no direct oversight.
- Studies show that companies with more women in management have less sexual harassment (shows a reduction in gender inequality in promotion and pay of women and men equally).



Questions?

- ▶ Any questions?
- ▶ For any other information or if you have additional questions, feel free to contact me-

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