



**In the Matter of the Request for Opinion  
Concerning the Conduct of  
KELLY CUSANELLI, Staff member,  
Washoe County District Attorney's Office  
State of Nevada,**

**Request for Opinion No.: 10-120C**

**Subject.**

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### **EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION**

The following report and recommendation is based on the Commission staff's consideration and investigation of the Third-Party Request for Opinion (RFO) filed against Mr. Kelly Cusanelli ("Subject"), a public employee, and on the Subject's written response to the RFO, both attached as exhibits to this report and recommendation, and the other exhibits attached hereto. This Executive Director's Report and Recommendation and its exhibits are provided for the consideration of the two-commissioner investigatory panel, pursuant to NRS 281A.240.

#### **Facts:**

The main parties involved are Mr. Cusanelli, the Law Office Manager for Washoe County District Attorney Dick Gammick; Sherry Powell, an individual interested in the D.A.'s office's victim services programs; and Tonja Brown, the Requester.

In September 2010, during the 2010 campaign season, at an evening presentation at which Mr. Gammick presented a slide show regarding the District Attorney's office, and at which Mr. Cusanelli voluntarily attended on his own time to deliver yard signs for Gammick's campaign, Mr. Cusanelli was approached by a member of the public, Sherry Powell. Ms. Powell engaged him in a brief conversation about the D.A.'s office's victim services programs and about Mr. Gammick's campaign. See Tab D marked page 25 of 32. Mr. Cusanelli recalls informing Ms. Powell that he is employed as the Law Office Manager, although Ms. Powell claims he introduced himself as Mr. Gammick's campaign manager. Mr. Cusanelli gave Ms. Powell his Washoe County business card on which his personal email address was written. See *id.* In his role as the Law Office Manager for the D.A., Mr. Cusanelli oversees the victim services program.

Tonja Brown was not a part of the conversation between Mr. Cusanelli and Ms. Powell. Mr. Cusanelli was unaware that she was nearby. Ms. Brown alleges that she overheard

Mr. Cusanelli state that he was the campaign manager rather than the law office manager, and that she witnessed him handing Ms. Powell a county business card.

In September 2010, several days after the evening presentation, Ms. Powell presented herself at the D.A.'s office location she found on Mr. Cusanelli's business card, inquired about the victim services program and was assisted by one of Mr. Cusanelli's staff members. See page 28 of 40 at Tab C.

In November, Ms. Powell (hillbillywife1999@yahoo.com) included Mr. Cusanelli's personal email address (kcusanelli@yahoo.com) in a string of emails unrelated to the victim services program. Using his cell phone, on his day off from work, Mr. Cusanelli responded curtly, asking that she discontinue sending him such emails. Ms. Powell then forwarded the email string to several people, including Ms. Brown. (tonjamasrod40@aol.com). See Exhibit 1 to RFO at Tab A

### **Allegations:**

The main allegation is that Mr. Cusanelli violated NRS 281A.400(7), which prohibits a public officer or employee to use government resources to further a personal or financial interest, by using his county business card to further his personal interest in D.A. Gammick's re-election.

### **Nevada Revised Statutes:**

The applicable statute, NRS 281A.400(7), permits a limited use of government resources if certain criterion are met, including: 1) a policy has been established authorizing such use, 2) the use does not interfere with the public employee's public duties, 3) the cost or value of the use is nominal, and 4) the use does not create the appearance of impropriety.

### **Analysis:**

It appears that Mr. Cusanelli used his business card for a proper public purpose. i.e. to provide a resource for a person interested in more information about the victim assistance program in Washoe County, and, perhaps, to provide a personal contact for more information about Mr. Gammick's campaign.

In the first instance, sufficient credible evidence exists to explain the use of the business card for purposes related to the victim assistance program, and it is bolstered by the fact that Ms. Powell actually visited the office to inquire further about the topic. If this was the only issue, the discussion might end here.

However, the allegation that Mr. Cusanelli introduced himself as the campaign manager rather than as the law office manager, and used his law office manager card with his personal email address written on it to provide a personal contact for the campaign

makes the alleged use more complex. But even had Mr. Cusanelli introduced himself as such, which he denies, his subsequent interactions with Ms. Powell indicate that it was not his intent to provide her a means to communicate about the campaign after all.

**NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)**

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics complaint **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics complaint must be unanimous.

3. As used in this section, **“credible evidence” means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

The Requester failed to provide the minimal level of any reliable or competent form of proof, other than supposition, that Mr. Cusanelli gave his business card to Ms. Powell to enhance Mr. Gammick's campaign. Mr. Cusanelli explained his view of the events, and Ms. Powell's subsequent visit to the D.A.'s office enhances his credibility.

Mr. Cusanelli also can provide credible evidence that 1) a policy has been established authorizing employee's of the D.A.'s office to distribute business card for nearly any purpose, 2) the use of his business card in this circumstance did not interfere with his public duties, 3) the cost or value of one business card is nominal, and 4) providing a business card to a person interested in the programs of his office did not create the appearance of impropriety. The Requester has provided only conjecture that the opposite is true.

**Conclusion and Recommendation:**

Based on the foregoing, I recommend that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission render an opinion on the above allegations against Kelly Cusanelli, including the alleged violations of NRS 281A.400(7).

**I hereby provide this, my recommendation, to this honorable panel.**

  
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Caren Jenkins, Esq.  
Executive Director

Date: 2/28/11