

1 Commission on Ethics has jurisdiction to investigate and take appropriate action regarding
2 allegations involving public officers, and therefore has jurisdiction in this matter pursuant NRS
3 281A.280 and NRS 281A.440.

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5 **3. Issues:**

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7 The issues are whether Marshall violated:

8 **I.** NRS 281A.400(2) by using her position in government to secure unwarranted
9 privileges, preferences, exemptions or advantages by placing her government
10 office telephone number on a candidate form which caused it to appear on the
11 State website.

12 **II.** NRS 281A.400(7) by using government time, property, equipment and other
13 facility by causing and allowing the State Treasurer's office employees to respond
14 to calls to the government office related to her campaign.

15
16 **4. Notices to Subject: (Tab C):**

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18 A notice to Subject of RFO 10-24C was issued to Marshall on April 22, 2010. A postal
19 service record indicates that Marshall received the Notice on April 24, 2010. (Tab C).

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21 **5. Response to Ethics Complaint. (Tab D):**

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23 The Commission received Marshall's response to the Ethics Complaint on May 19,
24 2010. Marshall denied having violated any provisions of NRS 281A.400. Marshall admitted
25 placing her office number on the abovementioned forms but stated that she never sought or
26 received any unwarranted privileges or preferences nor did she ever use government time,
27 equipment or facility to further her personal interests. (Response, Tab D).

1 **Investigation Resources:**

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3 I interviewed the following individuals and reviewed their responses:

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5 **1. Witnesses interviews and responses. (Tab E):**

- 6
7 • Kate Marshall, subject of RFO 10-24C. (Response, Tab D), telephone interview on May
8 26, 2010 incorporated in the report. (Investigator's Report, Tab A, p. 5).
9 • Sandy Dombrowski, Executive Assistant to Kate Marshall, witness, telephone interview
10 on May 26, 2010. (Investigator's Report, Tab A, pp. 5-6).
11 • Matt Griffin, Deputy Secretary of State for Elections, witness, telephone interview on
12 May 6, 2010. (Investigator's Report, Tab A, p. 6).
13 • Sherry Dilley, requester, on April 5, 2010 and April 15, 2010. (Investigator's Report, Tab
14 A, p. 7).
15 • Steve Sanson, president of Veterans in Politics, witness, telephone interview on June 1,
16 2010. (Investigator's Report, Tab A, p. 7).
17

18 **2. Documents. (Tab F):**

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20 I obtained and reviewed the following relevant documents and materials:

- 21
22 • Print out of Nevada Secretary of State Website on April 23, 2010. (Exhibit 1).
23 • Print out of Kate Marshall's campaign website and Facebook website on June 1, 2010.
24 (Exhibit 2).
25

26 **3. Relevant Statutes and Commission Opinions. (Tab G):**

- 27
28 • NRS 281A.400(2), (7) and (9).

- 1 • NRS 281A.420(8).
- 2 • In re Stix, Jr., NCOE RFO No. 06-71.
- 3 • In re Swafford, NCOE RFO No. 06-44. (Executive Director's Recommendation and
- 4 Panel Determination only).
- 5 • In re Augustine, NCOE RFO 04-47. (Stipulated Agreement).
- 6 • In re Heller, NCOE RFO No. 02-19.
- 7 • In re Kirkland, NCOE RFO No. 98-41.
- 8 • In re Titus, NCOE RFO No. 96-60.

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10 **Investigative findings:**

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12 Marshall was elected state treasurer in 2006 to a four-year term, expiring in 2010.

13 Marshall is currently a candidate for reelection.

14 On March 1, 2010, Marshall filed a Declaration of Candidacy, a mandatory form

15 completed by every candidate for office. In completing the form, Marshall listed her

16 government office telephone number, 775-684-7109, in the blank marked "Telephone Number."

17 (Complaint, Tab B, p. 10). Additionally, Marshall submitted the Candidate Filing for Partisan

18 Office form, where she listed the same number: 775-684-7109. (Complaint, Tab B, p. 13).

19 Finally, the same day, March 1, 2010, Marshall filed a Candidate Media Sheet, a voluntary form

20 that contains information to be distributed to all media outlets. Under "Campaign headquarters

21 address and phone number," Marshall listed her campaign telephone number (702) 388-7788

22 and included her campaign website address MarshallforNevada.com. (Complaint, Tab B, p. 12).

23 (Exhibit 2).

24 According to Matt Griffin, Deputy Secretary of State for Elections, candidate's forms are

25 usually reviewed the same day or the day following their filing. Therefore, Marshall's form was

26 most likely reviewed on March 1 or March 2, 2010. The Secretary of State's office staff used

27 the telephone number from the Declaration of Candidacy or Candidate Filing for Partisan Office

28

1 as a contact number for Marshall and placed it on the State's elections website. (Complaint, Tab
2 B, p. 5).

3 The complaint alleges that by listing her government office number, Marshall violated
4 provisions of NRS 281A because she was using government time, equipment, property or other
5 facility for her personal benefit, and therefore, she received an unwarranted benefit.
6

7 **Telephone interview with Kate Marshall on May 26, 2010.**

8 I spoke with Marshall on May 26, 2010 and questioned why she used her office number
9 on the Declaration of Candidacy and Candidate Filing for Partisan Office forms. Marshall stated
10 that she was under the impression that blank was to be completed with a number where the
11 candidate could be easily reached and added that there were no specific instruction as to the
12 type of number required. Marshall then added that her Candidate Media Sheet included her
13 campaign number (702) 388-7788 and her campaign website address and e-mail because this
14 form specifically asked for campaign contact number.

15 Furthermore, I asked Marshall about the call her office received from Stave Sanson.
16 (Complaint, Tab B, p. 8). Marshall stated that she was informed by her assistant Sandy
17 Dombrowski about the call and noted that Dombrowski followed the proper procedure when
18 she told Sanson to call her campaign manager's number. Finally, Marshall stated that her office
19 staff has been instructed not to engage in any political activities and she never asked her
20 employees to participate in her campaign. All employees in her office received an Office Policy
21 Manual which prohibits engaging in political activities during work hours. (Response, Tab D,
22 pp. 16-17). Finally, Marshall stated that as soon as she learned of the issue with the telephone
23 number, she contacted the Secretary of State and asked to have her contact number changed to
24 the number to her campaign office. (Exhibit 1).
25

26 **Telephone interview with Sandy Dombrowski on May 26, 2010.**

27 I spoke to Marshall's assistant Sandy Dombrowski on May 26, 2010 and questioned her
28 as to the call from Steve Sanson. Dombrowski affirmed the existence of the call and the

1 message left on her answering machine as noted in Sanson's statement. (Complaint, Tab B, p.
2 8). Dombrowski stated that the message was left on her office answering machine on April 7,
3 2010. The caller intended to invite Marshall for an interview and provided a call back number.
4 After reviewing the message, Dombrowski thought that the name of the caller was "Sandsele."
5 (Response, Tab D, p. 32). She called the number provided by the caller and informed him to
6 contact Marshall's campaign manager Gary Gray.

7 Finally, Dombrowski stated that the Treasurer's office staff is prohibited from engaging
8 in any political activities during work hours and she has never done so. She was instructed not
9 to engage in any campaign-related conversations and suggest that any relevant callers contact
10 Marshall's campaign office number. (Response, Tab D, p. 31).

11
12 **Telephone interview with Matt Griffin on May 6, 2010.**

13 I spoke to Matt Griffin, Deputy Secretary of State for Elections, on May 6, 2010 and
14 questioned the intent of requesting a phone number on the candidacy form and the procedure
15 used for placing information on the State website. Griffin stated that, in his opinion, the number
16 listed should be the easiest way to reach the candidate if there were any question regarding the
17 candidacy, not regarding the campaign. Griffin added that if an issue arose, he would need to
18 speak to a candidate, not to a campaign manager or someone in the campaign headquarters.

19 I questioned Griffin as to the procedure of posting candidate's contact number on the
20 State website. Griffin explained that posting the list of candidates and their contact numbers is
21 not mandatory; it is a courtesy of the Election Department. Griffin noted that the Election
22 Department staff takes the Declaration of Candidacy form and uses the same number listed as
23 the contact number on the State website; the staff does not scrutinize the number. Griffin added
24 that after he became aware of the issue regarding the telephone numbers, the Election
25 Department started posting the numbers listed on Candidate Media Sheets instead.

- 1 ▪ NRS 281A.400(2) provides, in relevant part:

2 A public officer or employee shall not use the public officer's or employee's
3 position in government to secure or grant unwarranted privileges, preferences,
4 exemptions or advantages for the public officer or employee, any business entity
5 in which the public officer or employee has a significant pecuniary interest, or
6 any person to whom the public officer or employee has a commitment in a
7 private capacity to the interests of that person. As used in this subsection:

8 (a) "Commitment in a private capacity to the interests of that person" has the
9 meaning ascribed to "commitment in a private capacity to the interests of
10 others" in subsection 8 of NRS 281A.420.

11 (b) "Unwarranted" means without justification or adequate reason.

12 As to the allegation that Marshall used her position in government to secure unwarranted
13 privileges, preferences, exemptions or advantages by using government time, equipment
14 property or other facility, the evidence is as follows:

15 Marshall listed her office number on the Declaration of Candidacy form on March 1,
16 2010. The same number was listed on the State's website by the office staff of the Election
17 Department. The evidence provided shows only one call having been received. (Complaint, Tab
18 B, p. 8). Sanson claims that Marshall's assistant Sandy Dombrowski directed him to call
19 different number, which appears to follow the policy that Marshall gave to her office staff. The
20 Declaration of Candidacy form and Candidate Filing for Partisan Office form do not ask for a
21 specific number to be listed. The only document directing the candidate to use a campaign
22 headquarters address and a telephone number is the Candidate Media Sheet. In this case,
23 Marshall provided her campaign website address and the campaign headquarters telephone
24 number. Aside from the call placed by Sanson, the complaint does not provide any support for
25 the claim that Marshall's office staff was engaged in Marshall's campaign using the State's time,
26 property, equipment or other facility or that Marshall received an unwarranted benefit as
27 provided in subsection 2 of NRS 281A.400.

28 Finally, similarities and differences to this case may be found in several Opinions issued
29 by the Commission, notably: a non-binding panel determination, In re Swafford, RFO 06-44,
30 (use of government telephone number on a campaign-related materials); and In re Augustine,
31 04-77, (use of government time, property, equipment or other facility).

1 **2. Allegation two:** Between March 1, 2010 and or about April 13, 2010, Marshall
2 violated NRS 281A.400(7) by causing and allowing her office's employees to
3 use their government time, government property equipment or other facility by
4 working on her campaign.

- 5 ▪ NRS 281A.400(7) provides, in relevant part:

6 A public officer or employee, other than a member of the Legislature, shall not
7 use governmental time, property, equipment or other facility to benefit his
8 personal or financial interest. This subsection does not prohibit:

9 (a) A limited use of governmental property, equipment or other facility for
 personal purposes if:

10 (1) The public officer who is responsible for and has authority to authorize the
11 use of such property, equipment or other facility has established a policy
 allowing the use or the use is necessary as a result of emergency circumstances;

12 (2) The use does not interfere with the performance of his public duties;

13 (3) The cost or value related to the use is nominal; and

14 (4) The use does not create the appearance of impropriety;

15 As to the allegation that Marshall caused and allowed employees in her office to use
16 government time, property equipment or other facility, the evidence is as follows:

17 The complaint provides evidence of only one campaign-related telephone call to
18 Marshall's office. The caller is a witness to the complaint and stated that he was directed to call
19 Marshall's campaign manager. (Complaint, Tab B, p. 8), (Investigator's Report, Tab A, p. 7).
20 (Response, Tab D, p. 32, Sworn Statement of Sandy Dombrowski).

21
22 Dated this 1 day of June 2010.

23 NEVADA COMMISSION ON ETHICS

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26

27 Mike Vavra, MPA
28 Investigator