



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of NORA GARCIA,
Hearings Officer, Department of
Administration, Hearings Division, Las Vegas,
State of Nevada

Request for Opinion No.: 09-54C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

Request for Opinion No. 09-54C (Ethics Complaint). (Tab B):

On July 7, 2009, complainant Deirdre Masten (Masten) filed an Ethics Complaint against public employee Nora Garcia (Garcia), a hearing officer for the State of Nevada Department of Administration Hearings Division (Hearings Division), alleging that she violated NRS 281A.430, by having a pecuniary interest in a contract between the State of Nevada and Cost Containment Strategies Inc. (CCSI), a company owned by her husband Barry Siskind (Siskind).

Jurisdiction:

As a hearing officer for the Hearings Division, no dispute exists that Garcia is a public employee as defined in NRS 281A.150. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to investigate and take appropriate action in this matter, pursuant NRS 281A.280 and NRS 281A.440.

1 **Issues:**

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3 The issues are whether Garcia violated:

- 4
5 **1.** NRS 281A.430, by having a pecuniary interest in a contract between the State of Nevada
6 and CCSI, a company owned by her husband Barry Siskind.

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8 **Response to Ethics Complaint¹. (Tab C):**

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10 A response to the Ethics Complaint was received from Garcia on July 23, 2009. Garcia stated
11 that she did not violate any provision of NRS 281A because CCSI's contract with the VOCP is
12 not connected to any aspect of her position as a hearing officer. In addition, Garcia stated that
13 CCSI does not provide any input related to any determination made by the VOCP nor does CCSI
14 benefit by any determination rendered by the VOCP. (Response, Tab C, page 1).

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16 **Investigation Summary:**

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18 I interviewed the following individuals and reviewed their responses:

19
20 **Witnesses interviews and responses. (Tab D):**

- 21
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 - Deirdre Masten, via e-mail on August 31, 2009. (Exhibit 1).
 - Rebecca Salazar, administrative assistant IV, Hearings Division, via e-mail on
23 August 25, 2009. (Exhibit 2).
 - Kim Perondi, assistant chief procurement officer, State of Nevada Purchasing
24 Division, via e-mail on August 12, 2009. (Exhibit 3).

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27
28 ¹ Pages in subject's responses were numbered by the investigator for easier identification. Pages are numbered with prefix "Response 09-54C" followed by the appropriate page number.

- 1 • Patricia Moore, victims of crime compensation officer, via telephone on August
- 2 11, 2009. (Telephone conversation only).
- 3 • Nora Garcia, subject, in person on August 10, 2009. (Exhibit 4).
- 4 • Bryan Nix, Esq., (Nix), VOCP coordinator, via e-mail on August 10, 2009.
- 5 (Exhibit 5).

6

7 **Documents. (Tab E):**

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9 I obtained and reviewed the following documents and materials relevant to the investigation:

10

- 11 • A letter from Nix to Andrew Clinger (Clinger), director of the Department of
 - 12 Administration, dated May 7, 2009. (Exhibit 6).
 - 13 • Contract between CCSI and the State of Nevada, effective January 1, 2009.
 - 14 (Exhibit 7).
 - 15 • Legislative Bureau Audit of VOCP, dated October 18, 2007. (Exhibit 8).
 - 16 • Department of Administration, Hearings Division FY 2009 case load data.
 - 17 (Exhibit 9).²
- 18

19 **Relevant Statutes and Commission's Opinions. (Tab F):**

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- 21 I. NRS 281A. 430
 - 22 II. Statutes cited by witnesses.
 - 23 III. Commission's Opinions In re Harris, Nos. 06-20 and 06-21.
- 24
- 25
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27 ² Received during an interview with Garcia; not an official record.

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1 **Investigative findings:**

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3 **Background:**

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5 Garcia is a hearing officer for the Hearings Division. The Hearings Division's primary role is to
6 adjudicate workers' compensation claims. In addition, the Hearings Division conducts hearing
7 services for other state agencies such as VOCP. Garcia was first appointed to her position in
8 1993. (Exhibit 4). Garcia married Siskind, an owner of CCSI in 1996. (Complaint, Tab B, pages 7
9 and 13). Siskind's company (CCSI) has a contract with the VOCP to provide medical billing
10 review, paperless solutions, custom designed case management system, and other services.
11 (Exhibit 6, page 4). (Exhibit 7). According to the public records, Siskind is the sole owner of
12 CCSI; Garcia is not listed as co-owner, officer or any other entity.

13
14 **Investigation:**

- 15
16 **1. Allegation one: Garcia violated NRS 281A.430 by having a pecuniary interest in a**
17 **contract between the State of Nevada and CCSI, a company owned by her husband**
18 **Barry Siskind.**

19
20 The NRS 281A.430 provides:

21 **NRS 281A.430** Contracts in which public officer or employee has interest
22 prohibited; exceptions.

23 **1.** Except as otherwise provided in this section and NRS 281A.530 and
24 332.800, a public officer or employee shall not bid on or enter into a contract
25 between a governmental agency and any private business in which he has a
significant pecuniary interest.

26 **4.** A public officer or employee, other than an officer or employee described
27 in subsection 2 or 3, ***may bid on or enter into a contract with a governmental***
28 ***agency if the contracting process is controlled by rules of open competitive***
bidding, the sources of supply are limited, he has not taken part in developing
the contract plans or specifications and he will not be personally involved in

1 opening, considering or accepting offers. If a public officer who is authorized to
2 bid on or enter into a contract with a governmental agency pursuant to this
3 subsection is a member of the governing body of the agency, the public officer,
4 pursuant to the requirements of NRS 281A.420, shall disclose his interest in the
5 contract and shall not vote on or advocate the approval of the contract.
(Emphasis added).

6 The VOCP is a state agency established for the purpose of assisting victims of crime. The
7 assistance varies from case-to-case and may include help with medical bills, lost wages and other
8 expenses. The VOCP was established by the Nevada Legislature in 1969 and it is codified in
9 NRS Chapter 217. VOCP operates under the patronage of the Nevada State Board of Examiners
10 (BOE). The BOE establishes policies and procedures for the VOCP.

11 As to the assistance provided to the victims, the following is a brief description of the process:

12
13 The applicant (victim) files an application supported by the required documents as described in
14 NRS Chapter 217. (Tab F, section II). The VOCP compensation officer reviews the application
15 and determines if the applicant is eligible for compensation. Upon rendering the decision, the
16 applicant is notified in writing. An applicant aggrieved by a compensation officer's decision may
17 appeal the decision by filing a request for a hearing before a hearing officer. If the hearing officer
18 denies the appeal, the applicant may appeal to an appeals officer.

19
20 As noted above, Garcia is a hearing officer with the Hearings Division. Since the VOCP cases
21 are not the primary function of the Hearings Division, Garcia's involvement in VOCP is very
22 limited. In FY 2009, Garcia was assigned to hear 1688 cases. However, the majority of hearings
23 were related to the workers' compensation; VOCP cases were approximately 1% of the total
24 number of cases. (Exhibit 9).

25
26 There is no evidence that Garcia "bid on" or "entered into" the CCSI contract: CCSI began
27 performing various services for VOCP in 1994. At the time, CCSI's fee was based on a
28 percentage of what it was able to save for the program. Since the original contract, CCSI's

1 services expanded and the terms of the contract, including its fees changed. Under the terms of
2 the 2009-2011 contract, CCSI receives a set monthly fee (Exhibit 7). The fee is not dependent on
3 the number of VOCP cases processed.

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5 An argument is made by the complainant that CCSI's fees rose by 173%, which is documented
6 by legislative audit. (Complaint, Tab B, page 3), (Exhibit 8, page 3). Nix's letter to Clinger notes
7 the expansion of services provided by CCSI (Exhibit 6), which perhaps explains the increased
8 fees noted by the complainant. In addition, Nix provided a chart of savings as a result of services
9 provided by CCSI. (Exhibit 6, page 5). Furthermore, an e-mail from Salazar (Exhibit 2) offers
10 additional explanation of CCSI's contract history and its fees.

11
12 CCSI's contract was awarded through the competitive bidding process, as required by NRS
13 Chapter 333. The process was handled exclusively by the Nevada State Purchasing Division
14 (Purchasing) on behalf of the contracting agency (VOCP). During the award process, Purchasing
15 was the sole point of contact. All information was confidential until the final award was made.
16 The final decision was made by the BOE. The process is further described in an e-mail from Kim
17 Perondi (Perondi) assistant chief procurement officer, Purchasing. (Exhibit 3). It is the opinion of
18 this investigator that any possible influence from the contracting agency was highly unlikely, if
19 not impossible.

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21 As to any allegation that Garcia has a conflict of interest due to her marriage to Siskind (Exhibit
22 1), I note that there is no evidence that Garcia benefitted in any way by her actions as a hearing
23 officer. Garcia's decisions do not appear to have any influence on CCSI's fees, as their fees are
24 set by the contract. Such fees are independent of the number of cases adjudicated or the outcome
25 of those cases. In addition, the contract was awarded through the competitive bidding process,
26 the mere fact that she is married to Siskind does not appear to violate the provisions of NRS
27 281A.430.

1 As noted above, CCSI receives a set fee for its services, and it is not involved in VOCP
2 decisions; its compensation is not dependent on Garcia's decisions, whether such decisions
3 results in approval or denial of the claim. Finally, there is no evidence that Garcia bid on or
4 entered into the contract but even if she had, the contract went through the competitive bidding
5 process pursuant to subsection 4 of NRS 281A.430 and got the final approval by the BOE.
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7 Dated this 26 day of August 2009.
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9 NEVADA COMMISSION ON ETHICS
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13 By: Mike Vavra, Investigator.
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