STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of
the Request for Opinion Concerning
the Conduct of CATHERINE CORTEZ-MASTO,
Attorney General,
State of Nevada,
Subject. /

Request for Opinion No.: 09-03C

INVESTIGATOR'S REPORT (Panel Book 1, Tab A):

Introduction:

On January 5, 2009, an Ethics Complaint was filed against Catherine Cortez Masto (Masto), State of Nevada Attorney General, alleging that she used her position to secure unwarranted privileges for herself and others, and used governmental time, property and equipment to benefit her personal interest.

Jurisdiction:

As the Nevada Attorney General, no dispute exists that Masto is a public officer, as defined by NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to render an opinion in this matter, pursuant NRS 281A.280 and NRS 281A.440.

Request for Opinion No. 09-03C (Ethics Complaint). (Panel Book 1, Tab B):

The Ethics Complaint filed by Edward T. Reed, Esq. (Reed) contains the following allegations:

On the dates noted in the Complaint, Masto allegedly violated NRS 281A.400.2 when she used her position to benefit Senator Michael Schneider (Schneider) and his alleged associates Dr. Daniel Royal (Daniel Royal), and Dean Friesen (Friesen), and NRS 281A.400.7 when she allegedly used government time, property and equipment to benefit her personal interest.

Notice of Additional Issues and Facts. (Panel Book 1, Tab C):

During the course of investigation, additional facts and issues relating to alleged violations of NRS 281A.400.9 were discovered by the Investigator. A Notice of Additional Issues and Facts was mailed to Masto and her legal counsel Clark G. Leslie, Esq. (Leslie), on January 9, 2009.

Response to Ethics Complaint and to Notice of Additional Issues and Facts. (Panel Book 1, Tab D):

A response to the Ethics Complaint and to the Notice of Additional Issues and Facts was received on January 26, 2009. Legal counsel Leslie stated that Masto did not violate any provisions of NRS281A because she had acted within her authority and responsibility.
In addition, Leslie stated that the Complaint is based on vague assertions of a disgruntled ex-employee unable to acknowledge that he is the sole cause of the events brought before the Ethics Commission.

Finally, Leslie stated that Masto had no motive in risking her license as an attorney, her future and her ethical bearings for any of the individuals involved. There was no commitment in a private capacity to any of the aforementioned individuals.

Investigation Summary:

I interviewed the following individuals and reviewed the following documents:

Witnesses interviews and responses (Panel Book 1, Tab E):

- Response to Complaint No. 09-02C, (Panel Book 1, Tab E, Exhibit 14).
- Catherine Cortez Masto, Subject of the Ethics Complaint No. 09-03C, in person on January 28, 2009. (Panel Book 1, Tab E, Exhibit 1).
- Christine Guerci-Nyhus, Chief Deputy Attorney General, witness, in person on January 28, 2009. (Panel Book 1, Tab E, Exhibit 3).
- George Taylor, Open Meeting Law Deputy Attorney General, via e-mail on February 11, 2009. (Panel Book 1, Tab E, Exhibit 5).
- Randall Munn, former Assistant Attorney General, via e-mail on February 11, 2009. (Panel Book 1, Tab E, Exhibit 6).
- Jim Spencer, Attorney General's Chief of Staff, via e-mail on February11, 2009. (Panel Book 1, Tab E, Exhibit 7).
- Keith Marcher, Senior Deputy Attorney General, via e-mail on February 11, 2009. (Panel Book 1, Tab E, Exhibit 8).
- Wayne Howle, Solicitor General, via e-mail on February 11, 2009. (Panel Book 1, Tab E, Exhibit 9).

- Wayne Fazzino, Attorney General's Special Investigator, via e-mail on February 11, 2009. (Panel Book 1, Tab E, Exhibit 10).

- Dr. Daniel Royal, via e-mail on February 11, 2009. (Panel Book 1, Tab E, Exhibit 11).

- Senator Michael Schneider, in person on February 12, 2009. (Panel Book 1, Tab E, Exhibit 13).

- Edward T. Reed, Requestor of the Ethics Complaint No. 09-03C, in person on February 12, 2009. (Panel Book 1, Tab E, Exhibit 2).

- Nancy Savage, Deputy Attorney General, witness, via e-mail on February 18, 2009. (Panel Book 1, Tab E, Exhibit 4).

- Dr. Daniel Royal, via e-mail on February 20, 2009. (Panel Book 1, Tab E, Exhibit 11).

- Gloria Navarro, Chief Personnel Officer, Office of Attorney General, via e-mail on February 20, 2009. (Panel Book 1, Tab E, Exhibit 15).

- Dean Friesen, sent via e-mail on February 9. 2009. (Response not received at the time of completion of this report), (Exhibit 12).

Documents:

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

- Excerpt from Open Meeting Law Manual of the Attorney General's Office, December 2005. (Panel Book 1, Tab B, Exhibit 19).

- Legal Opinion from Legislative Counsel Bureau issued upon request of Senator Michael Schneider, dated January 31, 2007. (Panel Book 1, Tab B, Exhibit 11).

- Letter from Edward Reed to Daniel Royal, dated April 4, 2007. (Panel Book 2, Exhibit O).

- Letter from Edward Reed to Dean Friesen, dated April 4, 2007. (Panel Book 2, Exhibit P).

- Letter from Daniel Royal to Edward Reed, dated April 10, 2007. (Panel Book 2, Exhibit Q).

- Letter from Edward Reed to Lawrence Semenza, dated April 19, 2007. (Panel Book 2, Exhibit T).

- Letter from Edward Reed to Daniel Royal, dated April 23, 2007. (Panel Book 2, Exhibit S).

- Letter from Edward Reed to Lawrence Semenza, dated May 4, 2007. (Panel Book 2, Exhibit U).

- Letter from Daniel Royal to Nancy Eklof, dated May 25, 2007. (Panel Book 2, Exhibit R).

- Letter from Edward Reed to Lawrence Semenza, dated June 7, 2007. (Panel Book 2, Exhibit V).

- Letter from Lawrence Semenza to Edward Reed, dated June 12, 2007. (Panel Book 2, Exhibit W).

- Letter from Edward Reed to Lawrence Semenza, dated June 27, 2007. (Panel Book 2, Exhibit X).

- Letter from Lawrence Semenza to Edward Reed, dated July 5, 2007. (Panel Book 2, Exhibit Z).

- Letter from Edward Reed to Lawrence Semenza, dated August 24, 2007. (Panel Book 2, Exhibit BB).

- Legal Opinion from Legislative Counsel Bureau issued upon request of Senator Michael Schneider, dated September 13, 2007. (Panel Book 1, Tab B, Exhibit 10).

- Letter from Lawrence Semenza to Edward Reed, dated September 14, 2007. (Panel Book 2, Exhibit CC).

- Agenda and minutes from the Nevada Board of Homeopathic Medical Examiners meeting on September 15, 2007. (Panel Book 2, Exhibit EE).

- Order of Summary Suspension in the matter of Dr. Daniel Royal, dated September 15, 2007. (Panel Book 1, Tab B, Exhibit 9).

- Letter from Edward Reed to Daniel Royal, dated October 12, 2006. (Panel Book 2, Exhibit D).

- Open Meeting Law Complaint filed by Thomas Lee on October 18, 2007 and a response from the Office of Attorney General. (Panel Book 1, Tab B, Exhibit 21).

- Agenda and minutes from the Nevada Board of Homeopathic Medical Examiners meeting on October 18, 2007. (Panel Book 1, Tab B, Exhibit 13).

- Open Meeting Law Complaint filed by Juanita Cox on October 19, 2007 and a response from the Office of Attorney General. (Panel Book 2, Exhibit LL).

- Memorandum to General Masto from Christine Guerci-Nyhus, dated October 15, 2007, and October 23, 2007. (Panel Book 2, Exhibit C).

- Letter from Chief Deputy Christine Guerci-Nyhus to the Board of Homeopathic Medical Examiners, dated October 24, 2007. (Panel Book 2, Exhibit HH).

- Declaration of Masto, (Panel Book 2).

- Declaration of Guerci-Nyhus, (Panel Book 2).

- Declaration of Taylor, (Panel Book 2).

- Declaration of Munn, (Panel Book 2).

- Declaration of Linda Fitzgerald, Executive Assistant for Catherine Cortez Masto, (Panel Book 2).

- Declaration of Fazzino, (Panel Book 2).

- Declaration of Ann Pongracz, Deputy Attorney General, (Panel Book 2).

- Excerpts from appointment of Linda Fitzgerald, (Panel Book 2, Exhibit GG).

Investigative findings:

The following are my investigative findings:

Masto is a public officer as defined in NRS 281A.160, holding an elected position as defined in NRS Chapter 228 and the Nevada Constitution, article 5. Masto was sworn into her position in January 2007.

On or about April 10, 2007, Schneider called Masto to express his concerns that investigators from the Attorney General's office came to his office to serve subpoenas on Daniel Royal and Dean Friesen (Declaration of Masto ¶ 8). Masto stated that prior to this date she was unaware that her office was conducting an investigation into matters related to Daniel Royal and Dean Friesen. During the telephone conversation, Masto advised Schneider that her investigators were carrying out their duties, and she was unwilling to or allowed to say more on the subject. Per Masto's declaration and our interview, this was her first contact with Schneider aside from a prior limited (working) relationship.

Masto's second contact with Schneider occurred on October 8, 2007 when Schneider requested appointment with Masto in her Las Vegas office. (Dated as October 9, 2007 in Declaration of Masto ¶ 9. This date is in conflict with others recollection. See Panel Book 2, Exhibit GG and Panel Book 2, Declaration of Guerci-Nyhus ¶3). The meeting was attended by Schneider, Masto and Chief Deputy Attorney General Christine Guerci-Nyhus. Besides some other subjects unrelated to this investigation, Schneider expressed his concerns about the Nevada Board of Homeopathic Medical Examiners (NBHME), his concern about the legal counsel to the NBHME Reed, and his concern regarding the summary suspension of Daniel Royal's homeopathic license.

All parties present on this meeting independently stated that there were no promises made as to the outcome of the Daniel Royal's summary suspension (Declaration of Masto ¶¶ 9-11), (Declaration of Guerci-Nyhus ¶ 3), (Panel Book 1, Tab E, Exhibit 14). Subsequently, Masto directed the appropriate inquiries to the members of her staff in order to investigate Schneider's concerns. Furthermore, Masto stated that she never personally contacted any members of the NBHME nor Dean Friesen, and she had no contact with Schneider after the meeting on October 8, 2007.

As to the NBHME Open Meeting Law violation complaint issue raised by the complainant, Masto stated the she had no knowledge of such complaints being filed (Panel Book 1, Tab E, Exhibit 1), (Declaration of Masto ¶ 22). Furthermore, she never discussed this matter with George Taylor (Taylor), nor did she direct him to proceed in a particular way. The NBHME "non-meeting" that was followed by an emergency meeting on October 18, 2007 was initiated at direction of Guerci-Nyhus.

The complainant notes "suspicious circumstances" related to Nancy Pongracz (Pongracz), the hearing officer appointed in Daniel Royal's matter. Masto stated that she never discussed Daniel Royal's case with Pongracz, nor she was involved in hiring Pongracz (Panel Book 2, Declaration of Masto, ¶ 24). The issue whether Pongracz was hired for the position of Deputy Attorney General as *quid pro quo* is being disputed by Pongracz, but it remains exceedingly coincidental.

Pongracz stated that she applied for the position with the Attorney General's Office via public announcement (Panel Book 2, Declaration of Pongracz, ¶ 4), (Panel Book Tab E, Exhibit 15), and was allegedly required to cease all "outside employment" if hired. Pongracz was interviewed by Guerci-Nyhus on undisclosed date in October 2007, shortly before the hearing on Daniel Royal's license was set to take place and mentioned her interest in hearing of Daniel Royal's case (Panel Book 2, Declaration of Pongracz, ¶ 5). Subsequently, Pongracz withdrew from

Daniel Royal's matter (Panel Book 1, Tab B, Exhibit 29), and started employment in the Attorney General's Office on November 19, 2007.

Examination of the evidence obtained during my investigation shows that a threat of litigation can by inferred from the correspondence between Semenza, Royal and Reed (Panel Book 2, Exhibit D, O-Z, CC), (Panel Book 1, Tab E, Exhibit 4). Based on the said correspondence, it appears that Guerci-Nyhus recommended the emergency meeting on October 18, 2007, and Masto directed her to proceed. It appears that Guerci-Nyhus based her decision on the totality of circumstances including possible repercussions had not the Office of Attorney General taken immediate action. (Panel Book 1, Tab E, Exhibit 3), (Panel Book 2, Declaration of Guerci-Nyhus ¶¶ 7-10).

Based on the evidence gathered during the investigation, it appears that Masto had no commitment in a private capacity to Schneider, Daniel Royal and Friesen. Masto confirmed a telephone conversation and a meeting with Schneider, but explained such was a mere courtesy that she extended on previous occasions to numerous people.

In addition, Masto stated that she never personally met with Daniel Royal or Friesen, and she would not recognize them if she saw them. Furthermore, she never contacted any members of the NBHME to discuss Daniel Royal, Dean Friesen or any other matter. Based on the above findings, there is no sufficient evidence that Masto secured any unwarranted privileges for herself or others, used her subordinate to benefit her own interest or used the government time, equipment and property to benefit her personal interest.

Investigative conclusion:

The evidence DOES NOT support the claim that between April and October 2007, Masto violated NRS 281A.400.2, NRS 281A.400.7, and NRS 281A.400.9:

1. By using her position to obtain unwarranted privileges to her self and others.
2. By using the government time, equipment and property to benefit her personal interest.
3. By using her subordinate to benefit her personal interest.

Therefore, on the allegations in Ethics Complaint No. 09-03C, I conclude that Catherine Cortez Masto DID NOT violate the Ethics in Government Laws.

Dated this 19 day of February, 2009.

NEVADA COMMISSION ON ETHICS
Patricia D. Cafferata, Esq.
Executive Director

By: Mike Vayra, MPA, Investigator.