



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Gerald Antinoro, Sheriff, Storey
County, State of Nevada,

Request for Opinion No. **17-21C**

Subject. /

OPINION

I. INTRODUCTION AND PROCEDURAL HISTORY

Pursuant to NRS 281A.440(2)(b), a *Third-Party Request for Opinion* ("Complaint") was filed with the Nevada Commission on Ethics ("Commission") on June 26, 2017, alleging that Gerald Antinoro, ("Antinoro"), Storey County Sheriff, violated various provisions of the Ethics in Government Law set forth in Chapter 281A of the Nevada Revised Statutes ("Ethics Law").¹

On or about July 12, 2017, the Commission served Antinoro via certified mail with a *Notice to Subject* advising him of the allegations set forth in the Complaint implicating NRS 281A.400(2) (using public position to grant an unwarranted advantage to himself or others), NRS 281A.400(7) (using governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest) and NRS 281A.400(9) (attempting to benefit a personal or pecuniary interest through the influence of a subordinate).

On July 17, 2017, Antinoro, by and through his attorney, Katherine F. Parks, Esq., with Thorndal Armstrong Delk Balkenbush & Eisinger, provided a waiver of statutory time limits for an investigation and a hearing in this matter pursuant to NRS 281A.440(6) and submitted a response to the allegations on September 28, 2017.

On February 26, 2018, the Commission's Review Panel ("Panel") issued its *Panel Determination* finding just and sufficient cause for the Commission to hold a hearing and render an opinion in this matter based on credible evidence that alleged Antinoro violated NRS 281A.400(2) and (7) related to Antinoro's use of the Sheriff's Office for his step-child's supervised visitation appointment.² Additionally, Under NAC 281A.435, the Panel concluded that the facts did not establish credible evidence to substantiate just and sufficient cause for the Commission to consider the alleged violations of NRS

¹ Senate Bill 84 of the 79th Session of the Nevada Legislature (2017) amends NRS Chapter 281A, effective July 1, 2017. Pursuant to S.B. 84, the amendatory provisions governing administrative proceedings applies to any pending or subsequent matter. However, other amendatory enactments to the Ethics Law are effective on July 1, 2017, after the conduct at issue in this matter. Consequently, the Commission applied the version of the Ethics Law in effect at the time of the alleged conduct. See Section III.B, Relevant Statutes, below.

² Commissioners Gruenewald, Stewart and Yen served on the Investigatory Panel and are precluded by NRS 281A.220(4) from participation in further matters after issuance of the Panel Determination. Accordingly, the necessary quorum to act upon this matter and the number of votes necessary is reduced as though these members were not members of the Commission under NAC 281A.200. All other Commissioners are eligible to participate in the consideration of this matter.

281A.400(2) and NRS 281A.400(9) related to the investigation conducted by Antinoro's subordinate of a child welfare matter involving Antinoro's step-child. Therefore, those allegations were dismissed. Pursuant to NRS 281A.740, the Panel determined that Antinoro's conduct could be corrected by a deferral agreement that contained certain conditions. However, no deferral agreement was presented to the Panel for approval. Consequently, in furtherance of its determination, the Panel issued a Referral Order on March 22, 2018, referring the Complaint to the Commission to render an opinion in the matter.

On March 29, 2018, the Commission issued a *Notice of Hearing and Scheduling Order and Notice of Hearing and Meeting to Consider Your Character, Alleged Misconduct, Professional Competence or Health (NRS 241.033)* setting a hearing for June 20, 2018 to consider dispositive motions. Thereafter, each party filed a Motion for Summary Judgment (collectively the "Motions"), which were fully briefed and submitted for the Commission's consideration. After considering the parties' briefs and arguments, presented by their representative counsel, and considering the entire record, the Commission issued an order on July 2, 2018, denying both Motions. In addition, the Commission instructed Commission Counsel to issue a *Notice of Adjudicatory Hearing and Scheduling Order ("NOAHSO")* allowing further discovery and scheduling an adjudicatory hearing before the Commission on October 17, 2018, which was issued on July 2, 2018. Later amendments of the NOAHSO were issued to clarify certain procedural matters.

On July 10, 2018, Antinoro signed a *Waiver of Notice Required under NRS 241.033(1) to Consider Character, Misconduct, or Competence of Person in Ethics Complaint Adjudicatory Hearing and Other Proceedings to be Heard by the State of Nevada Commission on Ethics*.

On September 13, 2018, the Executive Director filed a *Motion in Limine to Exclude Certain Evidence or Testimony ("Motion in Limine")*. Subject Antinoro's opposition to the *Motion in Limine* was served on the Executive Director on September 24, 2018 and was filed with the Commission on September 25, 2018. On October 9, 2018, the Chair issued an *Order granting in part and denying in part the Motion in Limine*.

On October 8, 2018, the Executive Director filed *Executive Director's Objection* to certain evidence or testimony. On October 10, 2018, the Chair of the Commission held a Prehearing Conference which was attended by Executive Director Nevarez-Goodson represented by Associate Counsel Prutzman and Subject Antinoro represented by Ms. Parks, Esq. The Chair provided the parties information on the adjudicatory hearing process established in Section 58 of Approved Regulation of the Commission on Ethics, LCB No. R108-18, and received comments from the parties on exhibit objections, use of declarations, stipulations and redactions, among other matters. On October 10, 2018, an order was issued detailing pre-hearing rulings issued by the Chair.

On October 17, 2018, the Commission held an adjudicatory hearing to consider whether Antinoro had violated NRS 281A.400(2) or NRS 281A.400(7). At the conclusion of the adjudicatory hearing and after fully considering the record, testimony, evidence and arguments of the parties, in accordance with the requirements of the law including, without limitation, the mitigating factors set forth in NRS 281A.475, the Commission deliberated and announced its decision on the record that, based upon a preponderance of evidence, Subject Antinoro engaged in one willful violation of NRS 281A.400(7). No violation was found with regard to NRS 281A.400(2). A penalty in the amount of \$2,500.00

was imposed on Antinoro. The Commission now renders this written opinion setting forth its formal findings of fact and conclusions of law in compliance with NRS 233B.125.

II. FINDINGS OF FACT

In rendering this opinion, the Commission reviewed and considered all evidence and testimony set forth in the record including the following facts to be established under the preponderance of evidence standard set forth in NRS 281A.480:

1. Antinoro is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
2. Storey County is a political subdivision as defined in NRS 281A.145.
3. The Storey County Sheriff's Office is a local agency as defined in NRS 281A.119.
4. The Storey County Sheriff has a station located at 205 South C. Street, Virginia City, Nevada ("Main Station") and a substation located in Lockwood, Nevada ("Lockwood Substation").
5. The Main Station is open to the public for business Monday through Friday, 8 a.m. to 5 p.m., and the Lockwood Substation is open to the public for business Tuesday through Thursday, 10 a.m. to 3 p.m.
6. The Main Station and the Lockwood Substation ("Stations") are not regularly open to the public for business outside of the posted public business hours. There are certain exceptions to the weekend closures for special events. In addition, the public may request assistance by calling dispatch or 911, or possibly knock on the locked door of the respective station to determine whether a deputy is on duty and/or available to respond.
7. During the relevant time period, Antinoro was married to Laura Antinoro, the prior spouse of Clarence Gempel ("Gempel").
8. Laura Antinoro and Clarence Gempel were divorced on November 30, 2011.
9. The Divorce Decree awarded sole legal and physical custody of a minor child to Laura Antinoro. Gempel was granted supervised visitation with the minor child every other Saturday from 9 a.m. until 1 p.m. Laura Antinoro was permitted to choose the location for the supervised visitation and who would provide the supervision.
10. On approximately May 5, 2017, Gempel contacted Mrs. Antinoro requesting visitation with the minor child.
11. On approximately May 14, 2017, Gempel and Mrs. Antinoro agreed that supervised child visitation would occur on Saturday, May 20, 2017, at a local park.
12. Thereafter, in a conversation between Mrs. Antinoro and Antinoro, Mrs. Antinoro expressed a concern about the upcoming supervised child visitation because Gempel had not seen the minor child in approximately 6 years. In that conversation, Antinoro offered the Main Station for the visitation since it is a secure location. No other alternatives were considered.

13. Antinoro has a significant personal interest in assuring his step-child was properly supervised during the child visitation with Grempel.
14. Mrs. Antinoro testified that whenever her ex-husband Grempel requested visitation with their minor child, she “never at any time said no” to the visitation. On this occasion, Mrs. Antinoro told Grempel that she would be “happy to meet him wherever he wanted” and suggested a park. Within minutes, she changed her mind and altered the location to the Main Station. Her reasons for the change pertained to her concerns about the length of time between supervised child visitations and because she believed Grempel had contact with a person that she found to be deranged, therefore, she did not want the visitation to be conducted in the “open.”
15. Grempel resided in Arizona and was agreeable to a supervised child visitation in accordance with the Divorce Decree. He brought his current spouse to Nevada for the visitation. The record and testimony before the Commission did not establish facts supporting the existence of any implied or actual threat made by Grempel associated with the safety of the minor child or that of Mrs. Antinoro.
16. On May 20, 2017, the Main Station was closed to the public. Antinoro unlocked the doors of the Main Station for the supervised child visitation.
17. Grempel and his current spouse arrived mid-morning for the supervised child visitation and the visitation occurred mainly in the squad room of the Main Station. The squad room is a large open room with work stations.
18. Two deputies were on duty on May 20, 2017, and they were busy conducting a shift change at the time of the supervised child visitation and advising one another of matters relevant thereto. Neither deputy provided any assistance nor did they involve themselves with the visitation.
19. Prior to opening the Main Station, Antinoro did not know that the two deputies were on duty at the Main Station. Antinoro welcomed the Grempels and supervised the child visitation, which was without incident.
20. Antinoro testified that his use of the Main Station for supervised child visitation could be classified as a “civil standby” to protect the welfare of the mother and minor child. However, Mrs. Antinoro did not request a civil standby and Antinoro did not seek the services of the on-duty deputies, contact dispatch to report the civil standby, or complete an incident report as is protocol because there were no problems with the visitation.
21. Antinoro testified that for officer safety, it was best practices or standard procedure for an officer to call dispatch and complete an incident report when conducting a civil standby. He did not contact dispatch for this matter because he felt it was a “low-level” issue.
22. The Storey County Sheriff’s Office has established a policy manual. In synopsis, the policy manual contains the following provisions that apply to all members of the Sheriff’s Office, including the Sheriff, and which the Commission determines are relevant:

- a. Policy 106.1 – Establishes that all members [of the Storey County Sheriff's Office], regardless of assignment (Detention or Sheriff's Office), are required to conform to the provisions of the manual.
- b. Policy 204 – Establishes methods by which the policy manual may be amended pursuant to departmental directives or special orders.
- c. Policy 214.5 – Establishes that a departmental directive or special order to ensure the effective operations of the Sheriff's Office are promulgated by either the Sheriff or authorized designee.
- d. Policy 320.2 – Requires that members of the Sheriff's Office responding to incidents of domestic violation and violation of related court orders must stress enforcement of the law to protect the victim and shall communicate the philosophy that domestic violence is a criminal behavior. It is also the policy of the Sheriff's Office to facilitate victims' and offenders' access to appropriate civil remedies and community resources whenever feasible.
- e. Policy 472 – Establishes policy on civil disputes that mandates members of the Sheriff's Office must not become personally involved in the dispute and shall at all times remain impartial. The policy does not reference providing supervised visitation for a child custody civil matter. Instead, the policy references civil standbys to maintain the peace at the scene of a civil dispute with the goal of safeguarding persons and property, provided that the member refrain from providing legal advice or inappropriate advice. The policy details two forms of civil disputes for standby assistance: (1) standby to retrieve personal property and (2) procedures for violation of court orders should be addressed by issuing court, unless there is an immediate need for an arrest, which arrest must be approved by a supervisor.
- f. Policy 1050 – Establishes policy on "Nepotism and Conflicting Relationships" which defines "conflict of interest" to be "any actual, perceived or potential conflict of interest in which it reasonably appears that an employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationships." The policy defines "relative" to include a spouse and step-child. The policy mandates that whenever an employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative, the employee shall notify their supervisor. If there is no supervisor, the employee shall notify dispatch to have another uninvolved employee to relieve the involved employee or remain present to witness the action.

23. Antinoro admitted that the written policies of the Sheriff's Office do not specifically reference supervised child visitations and that he used the Main Station for the supervised child visitation under the "generalized" civil standby policy.

24. Neither the Sheriff nor his designee issued a departmental directive or special order that permitted a member of the Sheriff's Office to hold or supervise a private child visitation during non-business hours at the Main Station pursuant to Policy 204.

25. Neither the Sheriff nor his designee issued a departmental directive or special order establishing an exception to the public hours established for the Main Station to

permit a member of the Sheriff's Office to provide supervised child visitations services for himself or for the public pursuant to Policy 214.5.

26. The Sheriff's Office does not provide information to the public regarding child visitation services, it has no established program or protocols governing such services, and it does not train its administrative staff or police officers on child visitation services.
27. Ms. Gavenda, Administrative Assistant II, Storey County Sheriff's Office, testified the Main Station was open from 8 to 5, Monday through Friday, and the doors are locked when the facility is not open to the public. She also testified that if a deputy was in the Main Station after hours, the deputy might be able to respond should someone knock on the door for assistance.
28. Ms. Gavenda did not recall ever having received a request for the Sheriff's Office to provide supervised child visitation services. She testified that if she had received such a call, no written or other protocols had been established to allow administrative staff to schedule or permit supervised visitation in the Sheriff's office. The matter would be referred to dispatch or alternatively, if a deputy was available to take the call, it could be transferred accordingly.
29. Storey County Dispatch produced dispatch records ("CAD Incident Reports") that detailed domestic or child custody incidents occurring between May 1, 2016 and May 1, 2018. These records pertained to responses to child welfare matters and associated child custody exchanges which occurred at various locations.
30. In responding to interrogatories, Antinoro identified one CAD record he thought pertained to a previous supervised child visitation that lasted 30 minutes and occurred at the Main Station on December 1, 2017. See ED 557.
31. A detail review of the CAD Incident Record ED 557 and testimony associated with its verification confirmed that it was an incomplete version or redacted record. ED 623 represented the complete document.
32. ED 623 indicates that the reporting party was directed to the Detention Facility (identified as "911" in the record) for assistance and the matter was a civil standby for an issue pertaining to a custody agreement which took approximately 20 minutes. Upon review of ED 623, Antinoro could not confirm whether the reported incident pertained to a 30-minute supervised child visitation at the Main Station.
33. When questioned about the other CAD Incident Records, Antinoro was unable to confirm whether any supervised child visitation had occurred at the Main Station or at the Lockwood Substation between May 1, 2016 and May 1, 2018.
34. Based upon a review of the entire record, the Commission does not find that the CAD Incident Records establish that any supervised child visitation had occurred between May 1, 2016 and May 1, 2018, at either the Main Station or the Lockwood Substation.
35. Antinoro testified that, in his history with the Sheriff's Office, he had personal knowledge of the Sheriff's Office being open for members of the public as a place to conduct child custody exchanges. Separately, he recalled one prior supervised child visitation, which possibly occurred in 2011 or 2012.

36. Ms. Parsons, a Senior Communications Specialist employed by Storey County Dispatch for over 10 years, testified that, during her service as a dispatcher, she was aware of requests for civil standbys for child custody exchanges, but did not recall ever receiving or processing any requests for supervised child visitation by law enforcement or from the public. If Dispatch had received such a request, the protocol would be to route the inquiry to the Sheriff's Office.
37. Additionally, Ms. Parsons does not recall ever receiving a call from the public to utilize the Storey County Sheriff's Office for supervised child visitation services, including a request for such services after hours.
38. Sergeant Kern, who has been employed approximately 9 years by the Storey County Sheriff's Office, testified that civil standbys usually pertain to property exchanges or child custody exchanges. A civil standby generally takes approximately 5 to 30 minutes, however, they could be longer. He recalls possibly one family utilizing the squad room at the Main Station for a supervised child visitation in the past, but could not confirm any specific details because he was not involved in the matter. Sergeant Kern testified that the recalled visitation was the only one of like nature that he was aware of during his term of service for Storey County. In addition, Sergeant Kern confirmed that it is not part of the Sheriff's Office training or written protocols for officers to make its facilities available for supervised child visitations.
39. Sergeant Kern, as a supervisor in the Sheriff's Office, testified that he was aware of the nepotism policy [Policy 1050], which defines a "conflict of interest" as: "[a]ny actual, perceived or potential conflict of interest in which it reasonably appears that an employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship." When asked whether he would allow a deputy he supervised to use his official position to supervise a child visitation for his own step-child, Sergeant Kern indicated he would comply with the policy and, at a minimum, have another officer who was not related to the matter be present.
40. The Commission finds that there was not an established policy governing supervised child visitations by the Storey County Sheriff's Office. The record demonstrates that supervised child visitations would be very unusual and so infrequent as to have no written policies or protocols.
41. The Commission does not find that a policy had been created by custom or practice that would permit the after-hour use of the squad room at the Main Station for a private supervised child visitation matter. The testimony presented on the prior use of the Main Station for one supervised child visitation years ago was inconclusive and without specifics as to whether it was conducted pursuant to a court order or as a civil standby. The testimony did not provide evidence that government resources or facilities were provided for private supervised child visitation matters for employees and members of the Sheriff's Office. Furthermore, use of government facilities for a private purpose benefitting a relative would be inconsistent with other established written policies of the Sheriff's Office.
42. Based upon the record, the Commission does not find credible evidence establishing that the supervised child visitation constituted a civil standby. The matter was not of an urgent nature, did not constitute an emergency situation, and no established protocols for a civil standby were followed, such as reporting to dispatch, asking

another deputy to assist given the nepotism policy, completion of an incident report and other relevant protocols.

43. Based upon the record, the Commission finds that the supervised child visitation was a private civil matter and the Sheriff's Office had a practice of referring private civil matters to appropriate resources.
44. Even arguably if the supervised child visitation constituted a police matter, Antinoro did not comply with established policies of the Sheriff's Office, including the nepotism policy restricting handing matters for relatives who are persons to whom there is a private commitment. He did not direct his spouse to administration, dispatch or another member of the Sheriff's Office to ascertain the availability of police resources to handle the subject civil matter because it was "easier" to deal with it himself.
45. Although other officers were present at the Main Station, performing other duties on the weekend day of the subject supervised child visitation, Antinoro did not request any other member to handle the situation or be present during the visitation given his conflict.
46. The record establishes that Antinoro violated NRS 281A.400(7) by using his authority as Sheriff of Storey County to personally and singularly offer, schedule and oversee a supervised child visitation for his own step-child in furtherance of his significant personal interest. In particular Antinoro offered the Main Station as a secure location and personally opened government facilities for a private civil matter at a time the facility was closed to the public. In doing so, the record establishes that Antinoro did not follow established Storey County Sheriff's Office policies and procedures, which were designed to prevent him from utilizing his official authority to use government property and resources in furtherance of a private, civil matter.
47. Pursuant to the Divorce Decree, Antinoro, as a private citizen, certainly could have supervised the subject child visitation at a private location rather than utilizing Storey County government facilities.
48. The record does not establish by a preponderance of evidence that Antinoro violated NRS 281A.400(2), pertaining to improper use of a government position to grant an "unwarranted" preference or privilege given the definition of "unwarranted" set forth therein.

III. STATEMENT OF THE ISSUE AND RELEVANT STATUTES

A. ISSUE

The issues considered by the Commission are whether Antinoro's conduct in utilizing government property to benefit a significant personal interest constitutes a violation of either NRS 281A.400(2) or NRS 281A.400(7). The Nevada Legislature has expressly declared that public office is a public trust to be held for the sole benefit of the people. The Ethics Law governs the conduct of public officers and employees and requires that public officers and employees must avoid conflicts between their private interests and those of the general public they serve. See NRS 281A.020(1) and NRS 281A.400 (Code of Ethical Standards).

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B. RELEVANT STATUTES

1. Duty to Avoid Conflicts - NRS 281A.020(1) provides:

1. It is hereby declared to be the public policy of this State that:
 - (a) A public office is a public trust and shall be held for the sole benefit of the people.
 - (b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

2. Use of Government position to secure or grant “unwarranted” privileges, preferences or advantages – NRS 281A.400(2) provides:

A public officer or employee shall not use the public officer’s or employee’s position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest or any person to whom the public officer or employee has a commitment in a private capacity. As used in this subsection, “unwarranted” means without justification or adequate reason.

3. Improper use of Government Resources and Property - NRS 281A.400(7) provides:

Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee. This subsection does not prohibit:

- (a) A limited use of governmental property, equipment or other facility for personal purposes if:
 - (1) The public officer or employee who is responsible for and has authority to authorize the 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;
 - (2) The use does not interfere with the performance of the public officer’s or employee’s public duties;
 - (3) The cost or value related to the use is nominal; and
 - (4) The use does not create the appearance of impropriety;
- (b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or
- (c) The use of telephones or other means of communication if there is not a special charge for that use.

.....If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

4. Standards for Determining Willful Violation – NRS 281A.475 provides:

1. In determining whether a violation of this chapter is a willful violation and, if so, the amount of any civil penalty to be imposed on a public officer or employee or former public officer or employee pursuant to NRS 281A.480, the Commission shall consider [:], without limitation:

(a) The seriousness of the violation, including, without limitation, the nature, circumstances, extent and gravity of the violation;

(b) The number and history of previous warnings issued to or violations of the provisions of this chapter by the public officer or employee;

(c) The cost to the Commission to conduct the investigation and any hearing relating to the violation;

(d) Any mitigating factors, including, without limitation, any self-reporting, prompt correction of the violation, any attempts to rectify the violation before any complaint is filed and any cooperation by the public officer or employee in resolving the complaint;

(e) Any restitution or reimbursement paid to parties affected by the violation;

(f) The extent of any financial gain resulting from the violation; and

(g) Any other matter justice may require.

2. The factors set forth in this section are not exclusive or exhaustive, and the Commission may consider other factors in the disposition of the matter if they bear a reasonable relationship to the Commission's determination of the severity of the violation.

3. In applying the factors set forth in this section, the Commission shall treat comparable situations in a comparable manner and shall ensure that the disposition of the matter bears a reasonable relationship to the severity of the violation.

5. Definitions applicable to Willfulness Determination:

NRS 281A.105 “Intentionally” defined:

“Intentionally” means voluntarily or deliberately, rather than accidentally or inadvertently. The term does not require proof of bad faith, ill will, evil intent or malice.

NRS 281A.115 “Knowingly” defined:

“Knowingly” imports a knowledge that the facts exist which constitute the act or omission, and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

NRS 281A.170 “Willful” defined:

“Willful violation” means a violation where the public officer or employee:

1. Acted intentionally and knowingly; or
2. Was in a situation where this chapter imposed a duty to act and the public officer or employee intentionally and knowingly failed to act in the manner required by this chapter,

↳ unless the Commission determines, after applying the factors set forth in NRS 281A.475, that the public officer's or employee's act or failure to act has not resulted in a sanctionable violation of this chapter.

6. Civil Penalties for Willful Violations – NRS 281A.480 provides in pertinent part:

1. In addition to any other penalties provided by law and in accordance with the provisions of NRS 281A.475, the Commission may impose on a public officer or employee or former public officer or employee civil penalties:

- (a) Not to exceed \$5,000 for a first willful violation of this chapter;
- (b) Not to exceed \$10,000 for a separate act or event that constitutes a second willful violation of this chapter; and
- (c) Not to exceed \$25,000 for a separate act or event that constitutes a third willful violation of this chapter.

9. A finding by the Commission that a public officer or employee has violated any provision of this chapter must be supported by a preponderance of the evidence unless a greater burden is otherwise prescribed by law.

IV. DECISION

A. WILLFUL VIOLATION OF NRS 281A.400(7) - IMPROPER USE OF GOVERNMENT RESOURCES AND PROPERTY

The Ethics Law is designed to preserve the public trust and ensure that public officers and employees maintain proper separation between their public duties and private interests. See NRS 281A.020. In furtherance of State policy to protect the public trust, the Code of Ethical Standards was enacted to require proper separation of private interests and commitments from public duties. See NRS 281A.400. The Commission has recognized that public officers and employees should not participate or be involved with matters that directly pertain to relatives because such participation, at a minimum, creates an appearance of impropriety and often creates an impermissible conflict under the Ethics Law. See *In re Murnane*, Comm'n Op. No. 15-45A (2016) and *In re Murray*, Comm'n Op. No. 08-07C (2008).

Based upon the preponderance of evidence standard, the Commission does not find there to be a violation of NRS 281A.400(2). Remaining at issue is whether Antinoro's conduct in personally using government facilities was for a significant personal interest and, if so, whether the use constitutes a violation of the Ethics Law or is permitted under NRS 281A.400(7). NRS 281A.400(7) contains a strict prohibition against a public officer or employee from using government time, resources, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or public employee. Pursuant to NRS 281A.400(7)(a), a limited-use exception to the strict prohibition is established when the use is either the result of an emergency or the governmental agency established a policy permitting the use. In either case, the use must not interfere with the performance of public duties, the cost or value must be nominal and the use may not create an appearance of impropriety.

Antinoro contends that his use of the government facility (Main Station) for a supervised child visitation between his spouse, her ex-husband and his minor step-child was similar to an authorized use previously provided to the general public by the Sheriff's Office. Specifically, Antinoro contends that the use was permitted under his official authority and public duty to maintain public safety through civil standby services, as addressed in Policy 472 of the Storey County Sheriff's Office. Alternatively, Antinoro asserts that should Policy 472 not be controlling, a *de facto* policy was created by custom and practice of the Sheriff's Office that permits supervised child visitations to occur at the Main Station.

The Commission's analysis determines whether Antinoro had a significant personal interest in using the Main Station for the supervised child visitation and whether the use of government property was for an official purpose or private matter within the prohibition set forth in NRS 281A.400(7). The Commission then considers whether the limited-use exception applies. The Commission considers whether the use of government property was permitted under NRS 281A.400(7)(a) because it was a result of an emergency or otherwise permitted by an established policy of the Storey County Sheriff's Office.

1. Antinoro's Use of the Main Station for the Supervised Child Visitation was for a Substantial Personal Interest Prohibited by NRS 281A.400(7)

Antinoro contends his use of the Main Office for the supervised child visitation was in performance of his public duties. Certainly, police services may be requested by the public to assist in keeping the peace and maintaining the safety of persons involved in civil disputes. However, the record does not establish that police intervention was requested or necessary to keep the peace or that an emergency situation existed in which the safety of any person was at issue.

Antinoro holds a significant personal interest in assuring the child visitation for his step-child was properly supervised. Even though Antinoro's spouse expressed a concern about the visitation, the record did not establish that Grepel, who resided out of state, had made any implied or actual threats to Antinoro, his spouse or the minor child. Contrary to the concern, Mrs. Antinoro testified that she would not "at any time" say "no" to visitation. On this particular occasion, Mrs. Antinoro told Grepel that she would be "happy to meet him wherever he wanted" and suggested a park. In communications with his spouse, Antinoro testified that he offered the Main Station for the supervised child visitation. Mrs. Antinoro then moved the supervised visitation to the Main Station, without objection from Grepel.

The supervised child visitation was held on a weekend when the Main Station was closed to the public and took approximately one hour. Antinoro used his official authority to open the Main Station to conduct the supervised child visitation. Antinoro confirmed he did not know whether the Main Station would even be occupied at the time he opened the doors. Present during the supervised child visitation were Antinoro, his spouse, Mr. Grepel, Mr. Grepel's spouse, and the minor child. Antinoro indicated that two deputies were on duty conducting a shift change at the time. However, Antinoro did not discuss the matter with the deputies nor did he utilize their services because the supervised child visitation was a "low-level" issue he could handle himself. By all accounts, the visitation was friendly, lacking any dispute and without incident. No party testified that the visitation created an emergency situation or necessitated or required police intervention to protect the safety of any person.

Credible evidence was not provided to establish that Antinoro's personal supervision of his step-child's visitation constituted a police civil standby situation. Antinoro, himself, had no safety concerns. Moreover, Gempel had not made any threats and Mrs. Antinoro did not specifically request police intervention, a civil standby or the use of police facilities. The record and policies of the Sheriff's Office establish that child exchanges and property exchanges are likely of short duration and are the type of civil standbys usually conducted by the Storey County Sheriff's Office. Antinoro testified that it was proper procedure for officer safety to report a civil standby to dispatch and complete an incident report. However, Antinoro did not notify dispatch or contact on-duty deputies to notify them that he was conducting a civil standby and he did not prepare a police incident report. If Antinoro considered the supervision of his own step-child's visitation to be a police matter or a safety concern, it should have been properly handled pursuant to established policies and protocols of the Storey County Sheriff's Office.

Antinoro should have complied with Policy 320.2 associated with facilitating civil disputes to appropriate civil remedies and community resources. Antinoro did not consider nor discuss with his spouse any alternate locations or resources. Further, Policy 472, addressing civil disputes and civil standbys, mandates that members of the Sheriff's Office must not become personally involved in the disputes and shall at all times remain impartial. Here, the opposite occurred. Antinoro was personally involved in the matter as the child's step-father. Antinoro singularly supervised his step-child's visitation in accordance with the Divorce Decree. However, in doing so, Antinoro did not comply with Policy 472 or Policy 1050 pertaining to conflicts of interest. Policy 1050 addresses handling police matters for relatives and instructs on proper avoidance of a conflict of interest. However, Antinoro did not follow the Policy's directives to contact a supervising deputy or notify dispatch. Two deputies were on duty and available at the Main Station and neither were advised of the situation. Instead, Antinoro chose to use his official authority to permit use of the Main Station for his private matter. The lack of compliance with written policy directives of the Storey County Sheriff's Office confirms that Antinoro's use of the Main Station was a private use rather than a civil standby situation requiring implementation of police powers.

By handling the matter himself, Antinoro acted outside of the established policies and protocols of the Sheriff's Office. Antinoro should not have placed himself in a compromising situation between private interests and public duties. Accordingly, based upon the record, the Commission determines that Antinoro's use of the Main Station for his step-child's supervised visitation was in furtherance of a significant personal interest and was restricted by NRS 281A.400(7).

2. The Limited-use Exception set forth in NRS 281A.400(7)(a)

The Commission next considers whether the subject use was permitted by the limited-use exception established in the statute. NRS 281A.400(7) is not violated when the circumstances confirm there is a limited use of governmental property, equipment or other facility for personal purposes provided that:

- (1) The public officer or employee who is responsible for and has authority to authorize the 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;
- (2) The use does not interfere with the performance of the public officer's or employee's public duties;
- (3) The cost or value related to the use is nominal; and
- (4) The use does not create the appearance of impropriety.

All four requirements must be met by the public officer or employee to be entitled to application of the limited-use exception. Initially, it is noted that the record does not establish the existence of an emergency nor does Antinoro contend that to be the case. Consequently, the Commission focusses on analyzing whether the use was permitted by an established and controlling policy. Antinoro contends that his use was permitted by Policy 472 governing civil standbys. Alternatively, he asserts that a *de facto* policy had been created permitting the use by custom and practice. In support of his positions, Antinoro asserts that, as the Sheriff, he could authorize the use, there was no interference with his job duties, the cost was nominal, and there was no appearance of impropriety.

Certainly, Antinoro can establish policies, directives or special orders under his authority as the Sheriff of Storey County. The central issue presented is not one of authority, but whether a policy had actually been established in writing or by custom or practice (a *de facto* policy), which would have permitted the personal or private use of the Main Station to benefit a significant personal interest. A policy is a standard course of action that has been officially established by an organization. See Black's Law Dictionary, 10th Edition, 2014. At a minimum, establishment of a policy, given the reference to the past-tense of the verb "established," connotes a past action, whether it be established by transmission to the organization and its personnel in writing or through knowledge, instruction, training or other relevant act.

Policy 472 governs the conduct of members of the Sheriff's Office in performing a civil standby under established protocols. The Commission is not persuaded that Policy 472 applies or governs this situation because it does not apply to the use of government property for a private matter by a member of the Sheriff's Office given the policy's stated impartiality requirements. Furthermore, Policy 472 does not establish protocols or even reference the rendering of supervised child visitations to the general public. Likewise, details permitting an after-hours use of government facilities for supervised child visitation are absent. It is further noted that Policy 320.2 establishes a protocol to refer civil domestic issues to appropriate civil resources.

Significantly, the directives of Policy 472 safeguard impartiality. Antinoro did not take any steps to remain impartial in compliance with established policy, which at a minimum, creates an appearance of impropriety under the Ethics Law given Antinoro's private use of government property. Antinoro handled his relatives' matter himself, without notification or assistance from other officers or notification to dispatch, without completion of an incident report and without referral to other civil resources. The conflict of interest is evident because Antinoro used the authority of his public office to handle his own significant private matter. Policy 1050 governing nepotism applies to the situation and the matter should have been handled by a disinterested member of the Sheriff's Office, including associated notification and reporting protocols. The policies of the Sheriff's Office do not permit or excuse the personal use of the government facility presented under the circumstances. Here, impartiality and conflict policy mandates applied, but were disregarded.

Separately, the Commission is not convinced and does not find that a *de facto* policy had been established based upon the prior use of the Main Station for a supervised child visitation. Child exchanges are not the same as conducting a private supervised visitation of a relative's child after-hours in a government facility.³ The record and policy

³ The fact that the Storey County Dispatch facility now has a designated area to promote public safety, which is monitored by cameras, is irrelevant and not determinative.³ The area was established after the conduct at issue to provide a secure location for the private sales of goods and to conduct child exchanges.

parameters establish that child exchanges and property exchanges are likely of short duration and are the type of civil standbys usually conducted by the Storey County Sheriff's Office. Supervised child visitations vary and would be of longer duration, requiring dedicated resources, and are not addressed in policy.

Further, the record does not contain any documented instance verifying that a member of the Sheriff's Office used government facilities to supervise a child visitation for his own benefit or for the benefit of a relative, with the sole exception of Antinoro. Notably, supervised child visitations were so unusual that a testifying dispatcher and administrative personnel did not recall any calls requesting the use or the actual use of Sheriff's Office facilities for supervised child visitation. Antinoro recalls one supervised child visitation at the Main Station that occurred possibly in 2011 or 2012. Sergeant Kerns recalls one family using the facility for supervised child visitation purposes years ago.⁴ With the exception of the prior supervised child visitation recalled, no witness testified to specific facts or details pertaining to prior supervised child visitations, no incident reports were produced, no member of the Sheriff's Office testified whether any such visitations were supervised by law enforcement or whether government facilities were made available for such visitations after hours. The witnesses' recollections pertaining to the prior supervised child visitation were general in nature, lacked detail, and established that such a situation was infrequent, if not rare. Importantly, the record does not establish any protocols or associated training for a deputy or other member of the Sheriff's Department regarding scheduling or supervising child visitation matters in a government facility. The lack of uniformity, absence of protocols and infrequent occurrences serve to negate the existence of a *de facto* policy established by custom or practice.

The Commission determines that not all requirements of the limited-use exception have been established. Antinoro's use of the Main Station to supervise his own step-child's visitation created an appearance of impropriety, constituted a conflict and was not permitted by an established written policy or *de facto* policy of the Sheriff's Office. Antinoro either could have, but did not, participate in the supervised child visitation at a non-government location, or properly follow the policies of the Sheriff's Office and directives of the Ethics Law to avoid the conflict or appearance of impropriety for a supervised child visitation at the Main Station. Based upon the record, the Commission determines that Antinoro violated NRS 281A.400(7) because his private use of government facilities benefitted his own significant personal interests and such use was not permitted by the limited-use exception.

B. INTENTIONAL AND KNOWINGLY

Prior to application of the mitigating factors set forth in NRS 281A.475, the Commission considered whether Antinoro's use of government property for his step-child's supervised visitation was intentional and knowing, which terms are defined in NRS 281A.105 and NRS 281A.115. The legislative history enacting these provisions associated with the definition of a willful violation of NRS Chapter 281A requires the Commission to interpret the meanings of "intentional" and "knowing" consistent with Nevada case law. See Legislative Minutes of Assembly Committee on Elections, Procedures, Ethics and Constitutional Amendments, May 12, 2009, and Senate Committee on Judiciary, May 21, 2009, regarding Senate Bill 160 of the 75th Legislative Session of Nevada (2009).

⁴ It is likely that both recollections involved the same supervised child visitation. However, even if there were two incidents, it would not have been determinative to the analysis.

For an act to be intentional, NRS 281A.105 requires that Antinoro acted “voluntarily and deliberately.” See *In re Fine v. Nevada Commission on Judicial Discipline*, 116 Nev. 1001 (2000) (“the relevant inquiry regarding willful misconduct is an inquiry into the intentional nature of the actor’s conduct.”). Here, Antinoro offered the Sheriff’s Main Station for the supervised child visitation, even when other options were available to him. Antinoro’s conduct was not accidental or inadvertent nor did he claim it to be. *Id.*⁵

The Ethics Law requires that Antinoro had knowledge of his actions or use of the government facilities for a private purpose. See NRS 281A.115 (definition of “knowingly”). It is properly noted that the provisions of NRS Chapter 281A do not require Antinoro to have actual knowledge that his conduct violated the Ethics Law but it does impose constructive knowledge on a public officer when other facts are present that should put an ordinarily prudent person upon inquiry. See *Garcia v. The Sixth Judicial District Court of Nevada*, 117 Nev. 697, 30 P.3d 1110 (2001) (“constructive knowledge fulfills a statutory requirement that an act be done ‘knowingly.’ State of mind need not be proved by positive or direct evidence but may be inferred from conduct and the facts and circumstances disclosed by the evidence.”); and *State v. Rhodig*, 101 Nev. 608, 707 P.2d 549 (1985) (“... the law does not require knowledge that such an act or omission is unlawful.”).

The Commission confirmed in a recent opinion that the Subject’s conduct was willful pursuant to NRS 281A.170 because he acted intentionally and knowingly, as those terms are defined in NRS 281A.105 and 281A.115, respectively. See *In re Boldt*, Comm’n Op. No. 17-37C (2018). As established in NRS 281A.400(7), the impropriety in using government facilities for a private use when no exception applies is clear and unambiguous. As in *Boldt*, the record before the Commission established that Antinoro intentionally and knowingly acted when he used the Main Station, a government facility, after hours for a private child visitation, which he accessed for the supervised visit.

C. NRS 281A.475 - MITIGATING FACTORS AND CIVIL PENALTY

The Commission considers all relevant mitigating factors set forth in NRS 281A.475 in determining whether a civil penalty is appropriate. However, each factor may not necessarily be present or be provided equal weight. In synopsis, these factors are:

1. Seriousness of Violation,
2. History of Warnings or Violations,
3. Cost of Investigation and Hearings,
4. Mitigating Factors (cooperation, self-reporting, correction of violation, etc.),
5. Restitution or Reimbursements paid to Affected Parties,
6. Extent of Financial Gain, and
7. Other Matters as Justice Requires.

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⁵ The law does not require proof that the intentional behavior was engaged in bad faith or with malicious motive to be deemed willful. See *In re Matson*, Comm’n Op. No. 14-70C (2016).

NRS 281A.400(7) establishes a strict prohibition against use of public facilities and resources unless the use is permitted by the limited-use exception. The Commission considered the lack of associated costs and absence of financial gain and the history of Antinoro's two previous violations, which occurred prior to the conduct at issue. The Commission provided less weight to the two prior violations than other factors given that Antinoro stipulated to resolve RFO No. 14-59C as a non-willful violation, and RFO No. 16-54C remains subject to appellate proceedings.⁶

The Commission provided greater weight to factors pertaining to the seriousness of this violation as established by the record, including the strict prohibition in the Ethics Law restricting public officers and employees use of public facilities to benefit a significant personal interest, the obvious conflict associated with handling matters for relatives benefiting Antinoro's own significant private interests, lack of self-reporting or correction of the violation, lack of personal responsibility, failure to mitigate, and other matters justice required. Antinoro did not comply with established policies and procedures of the Sheriff's Office or the Ethics Law, which he is charged with enforcing as the head of the organization. Antinoro's reticence in taking personal responsibility or steps to mitigate the circumstances, such as implementing additional training in the proper use of government facilities or instituting other actions to properly avoid similar conflicts in the future, is also provided greater weight.

The nature of the violation and the totality of Antinoro's conduct is determined to be significant when measured against the public's trust and the public policy of the State of Nevada requiring public officers and employees to maintain a proper separation between the role of a public servant and a private citizen. NRS 281A.020(2) and NRS 281A.400(7). Based upon the record, the Commission determines that Antinoro's conduct constitutes a single willful violation of NRS 281A.400(7) and imposes a civil penalty of \$2,500 against Antinoro.

V. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Antinoro was a "public officer," as defined by NRS 281A.160.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. Antinoro, as a public officer, has a duty under the Ethics Law and its interpretive opinions to maintain proper separation between public duties and private interests. See NRS 281A.020.
4. Pursuant to NRS 281A.400(7), Antinoro, as a public officer, is prohibited from using government time, resources, property, equipment or other facility to benefit his significant personal or pecuniary interest, unless the limited-use exception applies to the circumstances.
5. Pursuant to the provisions of the Ethics Law and the record, all requirements of the limited-use exception set forth in NRS 281A.400(7)(a) are not met; therefore, the conduct is not excused by the exception.

⁶ In public comment occurring during the Commission's public meeting on October 17, 2018, assertions were made by a member of the public alleging improper conduct by Antinoro. This alleged conduct commented on was not part of Antinoro's adjudicatory hearing and was not considered by the Commission in rendering its determinations or this opinion.

6. Based upon the preponderance of evidence standard, Antinoro willfully violated NRS 281A.400(7) by using government property in furtherance of his significant personal interest in supervising the subject child visitation.
7. Based upon the preponderance of evidence standard, the Commission concludes there is insufficient evidence in the record to establish that Antinoro violated NRS 281A.400(2).
8. In accordance with the authority of the Commission under NRS 281A.475 and NRS 281A.480, civil penalties are imposed and Antinoro must pay a civil penalty in the amount of \$2,500. Authorization is provided for the Executive Director and Subject Antinoro to enter into a payment schedule, with payment being completed within six (6) months after the date of issuance of this opinion.

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law construed to constitute a Finding of Fact, is hereby adopted and incorporated as such to the same extent as if originally so designated.⁷

The following Commissioners participated in this Opinion:

Dated this 27th day of February, 2019.

NEVADA COMMISSION ON ETHICS

By: /s/ Cheryl A. Lau
Cheryl A. Lau, Esq.
Chair

By: /s/ Phillip K. O'Neill
Phillip K. O'Neill
Commissioner

By: /s/ Teresa Lowry
Teresa Lowry, Esq.
Commissioner

By: /s/ Kim Wallin
Kim Wallin, CPA
Commissioner

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⁷ Findings of Fact and Conclusion of Law are set forth separately in this opinion as required by NRS 233B.125; however, they are deemed interchangeable for interpretive purposes. See *State, Dep't of Commerce v. Soeller*, 98 Nev. 579, 586, 656 P.2d 224, 228 (1982)(concluding that when "the conclusion itself gives notice of the facts on which the Commission relied ... we may imply the necessary factual findings, so long as the record provides substantial evidence to support the Commission's conclusion").

Separate Statement:

This Commissioner did not vote in favor of the majority opinion even though he respects the opinion of the majority from a statutory construction and legal perspective. Instead, he made a motion, which did not receive a second, that referenced the mitigating factors contained in NRS 281A.475 and preponderance of evidence standards established in NRS 281A.480, to find that Antinoro's conduct constituted a single violation of the Ethics Law of NRS 281.400(7). The motion confirmed that the violation was not willful and no fine should be imposed because the welfare of a child was a proper concern of the sheriff's department and the sheriff, and there was testimony that the same accommodation would have been provided to any other member of the public. Further, the Commission could have instituted corrective measures including education and training, and direction to the Sheriff to properly establish a policy pertaining to the handling of supervised child visitations by members of the Storey County Sheriff's Office.

By: /s/ Brian Duffrin
Brian Duffrin
Commissioner

Dissent:

This Commissioner dissents from the majority opinion because the evidence demonstrated the existence of a safety concern for a child's welfare. The accommodation that what was offered to Antinoro's spouse and child was available to the general public despite the absence of clear evidence the general public used the benefit. Specifically, there was testimony that, even though requests were rare, if the Storey County Sheriff's Office had been asked by a member of the public to use its facilities for supervised child visitation purposes, such a request would have been routed to a deputy to determine whether the requested government facilities or deputy supervision and law enforcement resources would be available. As a matter of public policy, appropriate government facilities and resources should be made available for public use to address public safety concerns. Because Antinoro testified that his use of government facilities was in furtherance of a child welfare concern, he should proceed to establish a written policy and associated program so it is clear that the facilities and resources of the Storey County Sheriff's Office are available to the members of the public for public safety matters including supervised child visitations. The establishment of a written policy and program would assure that the general public has knowledge regarding and access to government facilities and resources and alleviate any claims of preference, impropriety or noncompliance with the Ethics Law.

By: /s/ Keith A. Weaver
Keith A. Weaver, Esq.
Vice-Chair

CERTIFICATE OF SERVICE

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I transmitted a true and correct copy of the **OPINION** in Request for Opinion No. 17-21C via U.S. Certified Mail and electronic mail to the Parties as follows:

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DATED: February 27, 2019



An employee, Nevada Commission on Ethics