



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Third-Party Request
for Opinion Concerning the Conduct of
Shirley Matson, Assessor, Nye
County, State of Nevada,

Request for Opinion No. **14-70C**

Subject. /

OPINION

I. INTRODUCTION AND PROCEDURAL HISTORY

Pursuant to NRS 281A.440(2)(b), a *Third-Party Request for Opinion* ("RFO") was filed with the Nevada Commission on Ethics ("Commission") on October 6, 2014, alleging that Shirley L. Matson, ("Matson" or "Subject"), Nye County Assessor, violated various provisions of the Ethics in Government Law ("Ethics Law") set forth in Chapter 281A of the Nevada Revised Statutes ("NRS").

On November 4, 2014, the Commission served Subject via certified mail with a *Notice to Subject* advising her of the alleged allegations set forth in the Third-party Request for Opinion ("RFO").

On November 10, 2014, the Commission received *Subject's Response to the RFO* and Subject filed submitted a *Supplemental Response to the RFO* on December 10, 2014.

On December 18, 2014, the Executive Director served Subject via certified mail with a *Notice of Additional Issues and Facts*.

On December 23, 2014, Subject waived the statutory time limits for a hearing in this matter pursuant to NRS 281A.440(6) and on January 5, 2015, Subject filed a *Response to Notice of Additional Issues and Facts*, with *Supplemental Responses to Notice of Additional Issues and Facts* being filed on January 5, 2015, January 20, 2015 and February 2, 2015.

On June 2, 2015, the Commission's Investigatory Panel issued its *Panel Determination*¹ finding just and sufficient cause for the Commission to hold a hearing and render an opinion in this matter based on credible evidence that Matson used her official position as the Assessor to benefit her private campaign for re-election and engage in official activities based on improper personal motivations to: 1) hinder Nye County Assessor's Office employee (and Matson's subordinate) Sheree Stringer's ("Stringer") political campaign for office of Assessor and, when that failed, issue a Notice of County's *Intent to Terminate* Stringer's employment and related circumstances, in violation of NRS

¹ Vice-Chair Weaver and Commissioner Carpenter served on the Panel and are precluded 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.020 and 281A.400(1) and (2); 2) retaliate against a subordinate and terminate Nye County Assessor's Office's part-time, casual employee Tammy McGill ("McGill") due to McGill's husband's role with respect to an investigation he was assigned as a volunteer Detective with the Nye County Sheriff's Office and related matters, in violation of NRS 281A.020 and 281A.400(2); and 3) direct her staff members to conduct certain reappraisals of property in violation of NRS 281A.020 and 281A.400(7) and (9).

Thereafter, a series of Notice of Hearing and Scheduling Orders were issued by the Commission on June 16, 2015, July 21, 2015, August 26, 2015, and September 23, 2015. In addition, on September 28, 2015, a *Motion for Summary Judgment* and an *Offer of Proof* (collectively "Dispositive Motions" or "Pending Motions") were filed. Subject was not responsive to the above referenced Notice of Hearing and Scheduling Orders and had not filed any opposition to the Dispositive Motions.

On or about November 9, 2015, the Commission served Subject with a *Fourth-Amended Notice of Hearing and Scheduling Order* by certified mail scheduling a hearing for December 16, 2015. On November 20, 2015, Matson's attorney, Ms. Rasmussen, Esq., sent a letter advising that she now represented the Subject.

On December 22, 2015, a *Fifth-Amended Notice of Hearing and Scheduling Order* was issued continuing the hearing on the Dispositive Motions to March 16-17, 2016, for the purpose of allowing Subject's newly retained attorney time to prepare for the hearing. Subject, through her attorney, confirmed attendance at the scheduled hearing. Further, the *Fifth-Amended Notice of Hearing and Scheduling Order* provided Subject the opportunity to request leave of the Commission to file an opposition to the Dispositive Motions, based upon good cause, which request for leave was due on January 14, 2016. If leave was granted, Subject's opposition to the Dispositive Motions was to be filed by January 28, 2016.

On January 14, 2016, Subject filed a *Motion for Extension of time to Respond to Motion for Summary Judgment* requesting an additional two weeks to properly provide a response. On January 25, 2016, the Associate Counsel, on behalf of the Executive Director, filed an *Opposition to the Motion for Extension of Time to Respond to Motion for Summary Judgment*, indicating that there was no specific objection to the additional time; however, a request for leave from the Commission must first be filed prior to the filing of an opposition to the motion for summary judgment pursuant to the provisions of the *Fifth-Amended Notice of Hearing and Scheduling Order*.

On February 1, 2016, Commission Counsel held a conference call with the parties during which the parties stipulated, and Commission Counsel approved, the following:

1. Ms. Matson's [Subject's] Request for Leave and Opposition to pending motions will be combined into one pleading, which shall be filed and served on February 11, 2016, as indicated in the Fifth-Amended Notice of Hearing and Scheduling Order ("NOHSO").
2. The Executive Director's opposition/reply will be filed and served on February 18, 2016, as indicated in the NOHSO.
3. The hearing on Pending Motions remains scheduled for March 16-17, 2016 and all other provisions of the NOHSO will remain in effect.

On February 16, 2016, the Commission issued an *Order Regarding Oral Argument* indicating that, although the Subject still had not filed a response to the Dispositive Motions, including the stipulated combined Request for Leave and Opposition to Dispositive Motions which was required to be filed on or before February 11, 2016, the hearing to consider oral arguments on the Dispositive or Pending Motions was to remain as scheduled on March 16, 2016, and each party was provided fifteen (15) minutes for presentations.

On March 16, 2016, the Commission heard and considered oral arguments, the Dispositive Motions and record on file and issued a decision on the record to grant the Motion for Summary Judgment.² The Commission ordered that the parties return to its next meeting for presentation on willfulness of the violations, any mitigating factors, and recommendations for associated fines.

On March 30, 2016, a *Notice of Hearing and Scheduling Order Regarding Briefing* issued scheduling a hearing for April 20, 2016, to allow the Commission to consider hearing briefs regarding Willful Violations, including any associated Mitigating Factors and Penalties (See NRS 281A.475 and 281A.480).

On April 12, 2016, the Executive Director filed *Executive Director's Brief Regarding Determination of Willfulness and Sanctions* and Subject filed *Shirley Matson's Brief in Mitigation of the Commission's Finding*.

On April 20, 2016, the matter came before a quorum of the Commission for a hearing at which the Commission heard and considered oral arguments, submitted briefs, the record on file, and related facts and circumstances (collectively "Record"). Subject Matson appeared through her legal representative, Jim Hoffman, Esq. of the Law Office of Lisa Rasmussen, Esq., and Executive Director Yvonne Nevarez-Goodson, Esq. appeared pursuant to NAC 281A.060.³

At the conclusion of the April hearing and after fully considering the Record in accordance with the requirements of 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 Matson engaged in multiple willful violations of the Ethics Law, which for purposes of imposing a civil penalty were combined into two willful violations since the conduct arose from two main courses of conduct. A penalty in the amount of \$2,500.00 was imposed on Matson for each willful violation, for a total combined civil penalty of \$5,000.00. The Commission now renders this written Opinion setting forth its formal findings of fact and conclusions of law.

II. FINDINGS OF FACT

In consideration of the Record and presentations at the hearings held on March 16, 2016 and April 20, 2016, the Commission grants summary judgment against Matson because there are no material issues of fact remaining in dispute and summary judgment

² The Offer of Proof was held in abeyance pending the decision on the Motion for Summary Judgment. The granting of the Motion for Summary Judgment rendered the Offer of Proof moot.

³ In accordance with NAC 281A.060, the Subject or his counsel and any staff of the Commission who investigate a third-party request for opinion and any other person who the Commission reasonably determines will be treated as a party in the matter before the Commission are considered "Parties."

is warranted as a matter of law.⁴ Matson's conduct is deemed to constitute two willful violations of the Ethics Law, as more particularly set forth in this Opinion, which determination of willfulness considered the mitigating factors set forth in NRS 281A.475. In rendering this Opinion, the Commission determines the following facts to be established under the preponderance of evidence standard set forth in NRS 281A.480:

1. Matson was the elected Nye County Assessor, a public officer as defined in NRS 281A.160.
2. McGill was a part-time employee, who worked less than half time, of the Nye County Assessor's Office in Pahrump, Nevada, a public employee as defined in NRS 281A.150.
3. Stringer was the Personal Property Appraiser of the Nye County Assessor's Office in Pahrump, Nevada, a public employee as defined in NRS 281A.150. Stringer was also Matson's opponent in the 2014 campaign for Assessor.
4. Julie Dudenski ("Dudenski") was a Property Appraiser of the Nye County Assessor's Office in Pahrump, a public employee as defined in NRS 281A.150.
5. Debbie Orrick ("Orrick") was the Mapping Administrator of the Nye County Assessor's Office in Pahrump, a public employee as defined in NRS 281A.150.
6. Brenda Baker ("Baker") was a Property Appraiser of the Nye County Assessor's Office in the Tonopah Office, a public employee as defined in NRS 281A.150.
7. Danelle Shamrell ("Shamrell") was the Human Resources Manager for Nye County, a public employee as defined in NRS 281A.150.
8. Brian Kunzi, Esq. ("DA Kunzi") was the elected District Attorney for Nye County, a public officer as defined in NRS 281A.160.
9. Detective Joseph McGill ("Detective McGill"), was a volunteer detective for the Nye County Sheriff's Office.
10. Terry Rubald ("Rubald") was the Deputy Executive Director of the State of Nevada Department of Taxation, a public employee as defined in NRS 281A.150.
11. Joni Eastley ("Eastley") was the Assistant County Manager for Nye County, a public employee as defined in NRS 281A.150.
12. In late January 2014, Stringer, Matson's subordinate, informed Matson that she was going to file her candidacy for Nye County Assessor against Matson, and did so upon the filing date.
13. Upon Stringer's candidacy for Assessor, tensions increased between Matson and Stringer.
14. In March or April of 2014, Stringer admitted that, without authorization, she placed a "hidden camera" or "nanny camera" in her office to view Matson's activities.

⁴ It is noted that Matson was permitted to provide oral argument even though she failed to file an opposition or to present testimony, affidavits, or any other evidence in defense to the Motion for Summary Judgment.

15. Stringer's reason for the need to view Matson's activities in Stringer's office was that she was fearful that Matson would attempt to sabotage her employment and/or campaign.
16. Matson discovered the camera in mid-August 2014.
17. Matson removed the camera and its "SD card" to review the images on the camera.
18. On or about August 28, 2014, Matson reported the nanny camera to the Nye County Sheriff's Office; however, she did not report the matter to the Human Resources Department for Nye County.
19. Detective McGill investigated the case and Detective McGill was McGill's husband.
20. McGill worked as a part-time assistant for Orrick in the mapping section of the Assessor's Office.
21. Matson knew Detective McGill was Tammy McGill's husband.
22. Upon completion of the investigation, DA Kunzi reviewed the evidence and determined the office would not pursue a criminal violation and, therefore, the case would not proceed to a criminal complaint.
23. On September 8, 2014, at approximately 10:30 a.m., Detective McGill met Matson at the Assessor's Office in Pahrump, Nevada, and informed Matson that this case would not proceed to a criminal complaint.
24. As Detective McGill was leaving the Assessor's office, Matson called Stringer into her office and gave Stringer paperwork notifying her of Matson's "Intent to Terminate" Stringer.
25. Approximately an hour later, Matson sent Human Resource Manager Shamrell an email requesting assistance regarding the proper procedure to terminate McGill, and Shamrell responded with a sample termination letter. Matson then terminated McGill.
26. McGill's employment record at Nye County did not contain written reprimands or other paperwork evidencing unsatisfactory work behavior and, in the opinion of her immediate supervisor Orrick, McGill was a good worker.
27. Shamrell was not informed that Matson was going to serve Stringer with an *Intent to Terminate* notice and terminate McGill.
28. At the October 21, 2014 Nye County Commission meeting, Matson asked for another temporary employee position to assist Orrick in the Assessor's office and, specifically, wanted someone with GIS mapping software skills. This request was denied by the Commission and the Commission recommended that Matson rehire McGill, which recommendation was not followed by Matson.
29. Orrick states that McGill could have been trained to use GIS software.

30. Shamrell stated that it would be nearly impossible to hire someone part-time with GIS mapping software skills for the same pay as McGill.
31. The assessment program is the foundation of the property tax system in Nevada. Each county has an elected or appointed assessor who administers the program at the local level. The assessor has the responsibility to discover, list, and value both real and taxable personal property.
32. Real property is physically reappraised by area pursuant to regulations and given certain cycles.
33. An out-of-cycle physical property reappraisal is only permitted if there is good cause and the State of Nevada Department of Taxation approves of the reappraisal. (NAC 361.144).
34. Matson ordered Appraiser Baker to reappraise the property of all elected officials, judges and certain staff residing in Northern Nye County (Tonopah area) and, in particular, Eastley and Shamrell.
35. Executive Director Rubald of the State of Nevada Department of Taxation informed Dudenski that Matson's direction to reappraise the physical property of certain individuals was not in compliance with the standard practices of the Assessor's Office and the NAC.
36. There are documented tensions between Matson and various Nye County officials such as former Nye County Commissioner Joni Eastley and HR Manager Shamrell, who were part of the group of public officials/employees to be reappraised by Baker. Such animosity stems from the fact that Shamrell and Eastley signed the recall petition of Matson in 2010 and Eastley drafted the Resolution against Matson that was read at the County Commission meeting regarding the same. *Also see In re Matson, Comm'n Opinion No. 11-67C (2014).*

III. STATEMENT OF ISSUES AND RELEVANT STATUTES

A. ISSUES

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. NRS 281A.020(1).

Matson's failure to avoid conflicts between her private interests in campaigning for reelection and the interests of the public she serves, including the use of her position to intimidate or harass her subordinates in an employment or personnel context while in the midst of a campaign, constitutes a willful violation of NRS 281A.020 and NRS 281A.400(1) and (2). These violations of the Ethics Law arise out of the same course of conduct and are determined to constitute a single willful violation for purposes of imposition of a civil penalty.

In addition, Matson's inappropriate use of a subordinate and other government resources to conduct reappraisals of real properties owned by Eastley and Shamrell under circumstances demonstrating the reappraisals were not properly conducted in

accordance with applicable law and were directed for Matson's private interests constitutes violations of NRS 281A.020 and NRS 281A.400(7) and (9). These violations of the Ethics Law arise out of the same course of conduct and are determined to constitute a second single willful violation for the purposes of imposition of a civil penalty.

In consideration of the mitigating factors set forth in NRS 281A.475 and in accordance with the provisions of NRS 281A.480(1), Matson shall pay a civil penalty in the amount of \$2,500.00 for her first willful violation of the Ethics Law and an additional civil penalty in the amount of \$2,500.00 for her second willful violation of the Ethics Law. The total civil penalty assessed is therefore \$5,000.00.

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 Seek Opportunities or Secure Unwarranted Privileges

NRS 281A.400(1) provides:

A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

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 to the interests of that person.

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. Improper influence of a Subordinate

NRS 281A.400(9) provides:

A public officer or employee shall not attempt to benefit the public officer's or employee's personal or financial interest through the influence of a subordinate.

5. Standards for Determining Willful Violation

NRS 281A.475 provides (As Amended by Assembly Bill 60, 2015 Legislative Session):

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.

6. 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 ~~or~~ ^{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.}

7. Civil Penalties for Willful Violations

NRS 281A.480 provides *(As Amended by Assembly Bill 60, 2015 Legislative Session)*:

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. First Willful Violation – Conduct Associated with Stringer and McGill

1. Willful Violations of NRS 281A.020; NRS 281A.400(1) and (2)

The Ethics Law prohibits a superior public officer from using his or her position to discipline and/or terminate a subordinate in order to gain an economic opportunity or unwarranted advantage in a political campaign or retaliate against an employee for personal motivations. The Ethics Law is designed, in part, to prevent any abuse of authority in an election setting, and Matson's *Intent to Terminate* Stringer to benefit her private campaign for re-election and termination of McGill as retaliation in the surrounding circumstances crossed the ethical line. Although the Commission does not opine on matters strictly involving employment laws and personnel issues within the public sector, Matson's conduct implicates the very underpinnings of the Ethics Law within the context of employment and personnel issues. (See *In re Matson*, Comm'n Opinion No. 11-67C (2014)). In granting the Motion for Summary Judgment, the Commission concluded that Matson's conduct in relation to Stringer,⁵ her subordinate and opponent during her campaign for re-election, and Matson's termination of another subordinate, McGill, in the surrounding circumstances relating to the campaign and retaliatory motives, violated NRS 281A.020,⁶ and NRS 281A.400(1) and (2).

Although several statutes or violations are implicated by the conduct, the Commission has more consistently determined that multiple violations of the Ethics Law arising out of the same course of conduct constitutes a single violation, and the Commission will weigh the significance of the conduct in its determination of willfulness and the amount of any sanction. See *In re Murphy*, Comm'n Opinion Nos. 15-02C, 15-07C and 15-08C (2015) and *In re Lemich*, Comm'n Opinion No. 14-79C (2016). In this instance, Matson engaged in a series of activities motivated by her bid for re-election and personal retaliation. These activities, while independently significant, originated out of the same circumstances and resulted in the same overall mishandling of employment circumstances to benefit her personal interests. Consequently, the nature of the conduct associated with employment retaliation against subordinates Springer and McGill supports one willful violation.

Pursuant to NRS 281A.170, a willful violation is based upon conduct that 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

⁵ The Commission reviewed the Record to determine whether Matson's conduct was or was not in violation of the Ethics Law. In doing so, it is noted that the reporting of an alleged crime did not serve as the fulcrum of the Opinion—criminal behavior conduct may be reported to law enforcement, who have proper qualifications to determine the existence of crime. Here, DA Kunzi determined that the County would not prosecute the allegations; which is within his authority to determine. The Commission does not opine whether or not the alleged behavior was or was not criminal in nature as such a determination is not the focus of this Opinion and the Commission accepts DA Kunzi's determination as a fact. Accordingly, based upon the Record, the Commission did not make a factual determination or find persuasive Matson's contention that Springer's alleged conduct constituted a violation of the law or permitted or excused Matson's own pattern of conduct in violation of the Ethics Law.

⁶ NRS 281A.020 establishes the public policy of the State of Nevada and, in with respect to this Opinion, it is utilized to interpret and apply in coordination with other provisions Ethics Law to the circumstances rather than as a stand-alone violation.

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).

For an act to be intentional, NRS 281A.105 requires that Matson 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, Matson deliberately and intentionally engaged in personnel matters which affected her private interests associated with her campaign and were motivated by retaliation. Her conduct was not accidental or inadvertent. *Id.*

Although the law does not require proof that the intentional behavior was engaged in bad faith or with malicious motive to be deemed willful, the facts in this matter demonstrate that Matson’s conduct was intended with malicious and retaliatory motives. Further, Matson had already been sanctioned by this Commission for similar conduct. See *In re Matson*, Comm’n Opinion No. 11-67C (2014). In this instance, Matson had a significant negative history with Springer, her subordinate and opponent in the election, and created an employment atmosphere ripe with retaliation and reprisal, all in the course of a contested election.

The Ethics Law also requires that Matson had knowledge of her actions. Again, Matson initiated and had knowledge that she was making adverse employment decisions regarding her subordinates during the course and scope of her private campaign and based upon retaliation and improper motives. See NRS 281A.115(definition of “knowingly”). It is properly noted that the provisions of NRS Chapter 281A do not require Matson to have actual knowledge that her 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.”).

Matson knew of her conflict of interest with regard to Stringer and McGill in relation to her pending bid for re-election and her private motivations for retaliation. She had been reminded of the appropriate separation in these endeavors by the Commission as well as the Human Resources Department of Nye County. These circumstances establish that Matson intentionally and knowingly acted in contravention of her conflict of interest.

2. NRS 281A.475 Mitigating Factors and Civil Penalty

The Commission is required to consider the seven mitigating factors set forth in NRS 281A.475 in conducting an analysis of willfulness and determination of civil penalty. 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
7. Other Matters as Justice Requires

Of the stated factors in NRS 281A.475, the seriousness and gravity associated with the conduct is demonstrated because Matson's conduct has components of being both malicious and retaliatory. Matson has a prior history of two willful violations and had already been sanctioned by this Commission for comparable conduct. In *In re Matson*, Comm'n Opinion No. 11-67C (2014), Matson's conduct was similar in nature, in that, it was done in bad faith, associated with her private interest in a recall, and in furtherance of those private interests. The continuance of similar behavior in violation of the Ethics Law is deemed to have been in disregard of the Commission's prior Opinion in these circumstances and provides significant support for the Commission's finding of willfulness and imposition of a civil penalty in this matter. *Id.*

With regard to Matson's non-responsiveness, delay and noncompliance with orders issued by the Commission, she asserts that this was, in part, caused by Nye County's alleged failure to accept Matson's tender of defense to represent her in these proceedings under the provisions of NRS Chapter 41. Although the Commission is not opining on whether or not there is a legal duty on the part of the official attorney for Nye County to provide a legal defense to this Third-Party RFO under the provisions of NRS Chapter 41, if such a duty did exist, Matson has statutory remedies for a failure of an official attorney to provide the defense. See NRS 41.0347. Further, the provisions of NRS Chapter 41 do not speak to staying or halting administrative proceedings while the official attorney determines whether or not to provide a defense to a civil action or in any way serve to excuse non-responsiveness, noncompliance, or delay in administrative proceedings, especially at the level exhibited with respect to this RFO.

In addition, NRS 41.0342 provides that the arrangements and circumstances of defense are not admissible into evidence in civil action matters, except in connection with an application to withdraw as attorney of record, which has not been requested. Moreover, Matson has been provided many reasonable opportunities to present defenses, including rescheduling of hearings, continuances, and the ability to submit overdue oppositions to the Dispositive Motions. Consequently, the Commission does not find this contention to be supported by the facts or have legal merit.

In reviewing the remaining factors for purposes of determining an appropriate civil penalty, the Commission took under consideration all contentions presented in the Record to render this Opinion, including that Matson no longer holds public office and her personal family medical situation. Based thereon, the Commission determines that the conduct associated with employment retaliation against subordinates Springer and McGill arises from a similar course of conduct supporting one willful violation and imposes a civil penalty of \$2,500.00 against Matson.

3. Second Willful Violation – Conduct Associated with Reappraisals

a. Willful Violations of NRS 281A.020; NRS 281A.400(7) and (9)

By granting the Motion for Summary Judgment, the Commission determined that Matson violated NRS 281A.020 and 281A.400(7) and (9) with regard to her conduct associated with ordering a subordinate to conduct reappraisals of Eastley and Shamrell,

under circumstances demonstrating that reappraisals were not properly conducted in accordance with applicable law and were directed for Matson's own personal interest.

Matson's personal interest included her personal animus against both Eastley and Shamrell. Matson, out of revenge and retaliation for actions that occurred in *In re Matson*, Comm'n Opinion No. 11-67C (2014), ordered her subordinate to reappraise the properties of Eastley and Shamrell. This conduct evidences a misuse of a government employee and resources for a personal vendetta or private interest in violation of the Ethics Law.

b. NRS 281A.475 Mitigating Factors and Civil Penalty

The Commission determines it is appropriate to combine the multiple violations arising from Matson's course of conduct associated with the reappraisals into a single willful violation for purposes of determination of a civil penalty. The mitigating factors and related analysis as presented above, likewise apply to support issuance of this second willful violation and associated civil penalty. Based upon the Record, the Commission determines that the conduct associated with reappraisals supports one willful violation and imposes a civil penalty of \$2,500.00 against Matson.

V. CONCLUSIONS OF LAW

1. At all times relevant to this matter, Matson was a "public officer," as defined by NRS 281A.160 and 281A.180. The Commission has jurisdiction over former public officers pursuant to NRS 281A.280.
2. Pursuant to NRS 281A.440(1) and NRS 281A.460, the Commission has jurisdiction to render an opinion in this matter.
3. Matson, as a public officer, had a duty under the Ethics Law and its interpretive opinions to ensure that her official actions during a campaign could not be improperly influenced by her private interests in the campaign, including, without limitation, private interests associated with the campaign which are motivated by personal animus, vendetta or retaliation.
4. Summary Judgment was appropriately granted as a matter of law given the undisputed or uncontested facts of this RFO, the applicable provisions of the Ethics Law, and the interpretive opinions of the Ethics Law issued by the Commission, including, without limitation, *In re Matson*, Comm'n Opinion No. 11-67C (2014).
5. Pursuant to NRS 281A.105, 281A.115, 281A.170, 281A.475 and other provisions of the Ethics Law, Matson willfully violated the provisions of NRS 281A.020 and NRS 281A.400(1), (2), (7) and (9) by failing to properly separate her private interests, including those associated with her campaign for Assessor, from her public duties.
6. Pursuant to NRS 281A.475, 281A.480 and prior precedential opinions of the Commission, the Commission has authority to and is combining into two willful violations, for purposes of determination of the appropriate civil penalties, the multiple violations of the Ethics Law associated with each of the two courses of conduct identified as: (1) conduct associated with Stringer and McGill and (2) conduct associated with the reappraisals.

7. In accordance with the authority of the Commission under NRS 281A.475 and NRS 281A.480, civil penalties are imposed and Matson must pay a civil penalty in the amount of \$2,500.00 for the first willful violation related to conduct associated with Stringer and McGill and a separate penalty of \$2,500.00 for the willful violation for conduct associated with the reappraisals. Matson's total civil penalty imposed for the two willful violations is therefore \$5,000.00. Authorization is provided for the Executive Director and Subject Matson to enter into a payment schedule not to exceed one year after the date 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 19th day of May, 2016.

NEVADA COMMISSION ON ETHICS

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

By: /s/ James M. Shaw
James M. Shaw
Commissioner

By: /s/ Barbara Gruenewald
Barbara Gruenewald, Esq.
Commissioner

By: /s/ Dan H. Stewart
Dan H. Stewart
Commissioner

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").