



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Gerald Antinoro**, Sheriff,  
Storey County, State of Nevada,

Ethics Complaints  
Case No. 18-031C  
Case No. 18-052C

\_\_\_\_\_  
Subject. /

### CONSOLIDATED STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Ethics Complaint Case Numbers 18-031C and 18-052C (“Complaints”) before the Nevada Commission on Ethics (“Commission”) concerning Gerald Antinoro (“Antinoro”), the Sheriff of Storey County in the State of Nevada.

2. **JURISDICTION:** At all material times, Antinoro was a public officer as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A gives the Commission jurisdiction over elected and appointed public officers and public employees whose conduct is alleged to have violated the provisions of NRS Chapter 281A. See NRS 281A.280. Accordingly, the Commission has jurisdiction over Antinoro in this matter.

3. **PROCEDURAL HISTORY BEFORE COMMISSION**

- a. On or about May 30, 2018, the Commission received Complaint No. 18-031C from Kris Thompson, through his legal counsel, Rick Hsu, Esq. (“Hsu”) of Maupin Cox LeGoy, alleging that Antinoro violated NRS 281A.400(2) and (7) when he wore the Storey County Sheriff’s Office uniform and/or badge in photos that appeared on campaign billboards and on Antinoro’s website and Facebook page during his campaign for re-election.
- b. On or about July 30, 2018, the Commission received Complaint No. 18-052C submitted by Hsu on behalf of Mike Cullen (“Cullen”), alleging that Antinoro violated NRS 281A.400(1), (2) and (7) and NRS 281A.520 when he wore the Storey County Sheriff’s Office uniform and/or badge during three debates with Cullen and on a campaign float during the Memorial Day parade in Virginia City.

- Complaint No. 18-052C also alleges that Antinoro violated the Ethics Law when he used his position as Sheriff to benefit his campaign for re-election and solicit sponsorship funds during a live radio show entitled “Sheriff Jerry and Friends.”
- c. The Commission issued an *Order on Jurisdiction and Investigation* for each Complaint and directed the Executive Director to investigate the Complaints. Additionally, the Executive Director issued *Notices of Complaint and Investigation* and Antinoro was provided an opportunity to submit written responses.
  - d. On September 26, 2018 and December 17, 2018, the Commission received a written response from Antinoro for Complaint Nos. 18-031C and 18-052C, respectively, through his attorney, Katherine F. Parks, Esq. of Thorndal Armstrong Delk Balkenbush & Eisinger.
  - e. On February 13, 2019, the Executive Director presented a recommendation in Complaint No. 18-031C relating to just and sufficient cause to a three-member review panel pursuant to NRS 281A.720.
  - f. In a Panel Determination for Complaint No. 18-031C issued on February 27, 2019, the Panel unanimously found and concluded that:
    - 1) Credible evidence supported just and sufficient cause for the Commission to render an opinion regarding the alleged violations of NRS 281A.400(2) and (7); and
    - 2) The Complaint should be referred to the Commission for further proceedings.
  - g. Antinoro has waived his rights to a panel determination in Complaint No. 18-052C and acknowledges that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.400(1), (2) and (7) and NRS 281A.520.
  - h. In lieu of an adjudicatory hearing before the Commission on these matters, Antinoro now enters into this Consolidated Stipulated Agreement.

**4. STIPULATED FACTS:** At all material times, the following facts were relevant to this matter:<sup>1</sup>

- a. Antinoro is the elected Sheriff of Storey County, a public officer as defined by NRS 281A.160. He has served as Sheriff since 2011 and is serving his third term in office after winning elections in 2010, 2014 and 2018.
- b. On or about July 27, 2016, Antinoro attended a meeting of the Nevada Sheriffs' and Chiefs' Association ("Association") in Ely, Nevada, at which time Thomas Beko, Esq. provided a presentation to the Association concerning the outcome of *In re Pitts*, Comm'n Op. No. 14-71C (2016) ("*Pitts*") and the effect of *Pitts* on the right of elected incumbent sheriffs to campaign in uniform. The approved Stipulated Agreement in *Pitts* dismissed allegations that the elected Elko County Sheriff violated the Ethics Law when he appeared in full uniform at various campaign events during his campaign for re-election.
- c. At the time this Complaint was submitted, Antinoro was campaigning as an incumbent for re-election as the Storey County Sheriff.
- d. The homepage of Antinoro's campaign website, [www.antinoroforsheriff.com](http://www.antinoroforsheriff.com), displayed a photo of Antinoro wearing his Storey County Sheriff's uniform and badge.
- e. Signs for Antinoro's re-election campaign displayed photos of Antinoro wearing his Storey County Sheriff's uniform and badge.
- f. Antinoro's Facebook page contained posts for "meet and greet" campaign events. A post dated April 9, 2018 displayed a photo of Antinoro's Storey County Sheriff's badge and a post dated May 24, 2018 displayed a photo of Antinoro wearing his Storey County Sheriff's badge.
- g. On May 24, 2018, May 29, 2018 and June 5, 2018, Antinoro attended debates leading to the primary election while wearing his Storey County Sheriff's badge, gun and holster.

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<sup>1</sup> Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.755. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.

- h. On May 28, 2018, Antinoro wore his “soft uniform,” consisting of a Storey County Sheriff’s Office polo shirt and jeans, and also wore his badge, gun and holster.
- i. During his 2018 campaign for re-election, Antinoro hosted four live radio shows on KCKQ 1180 AM, produced by America Matters Media. The shows aired on May 22, May 29, June 5 and June 12 between 9:00 am and 10:00 am. During the show, entitled “Sheriff Jerry and Friends,” Antinoro identified himself as the Storey County Sheriff and discussed sheriff’s office issues and the upcoming primary election with guests and friends. Using his campaign funds, Antinoro purchased the airtime for the four shows during a silent auction at a fundraiser event. The silent auction item was donated by Eddie Floyd (“Floyd”) of America Media Matters.
- j. During the May 29, 2018 radio show, Antinoro gave a “shoutout” to Canvas Café, a Virginia City business, for its sponsorship of the radio show. On April 7, 2018, Canvas Café provided a \$250 in-kind contribution to Antinoro’s campaign for re-election.
- k. During the June 5, 2018 radio show, a live debate was moderated between Cullen and Antinoro and Cullen observed that Antinoro wore his badge, belt, holster and gun in the studio during the debate.
- l. During the June 12, 2018 radio show, which aired the morning of primary election day, Antinoro discussed the election and focused attention on his candidacy.
- m. Advertisements for the Virginia City Kettle Corn Depot have been aired during Antinoro’s radio show. The owner of this business worked on Antinoro’s campaign.
- n. Following the primary election, Floyd asked Antinoro to continue broadcasting “Sheriff Jerry and Friends,” which he continues to do on a weekly basis. Antinoro does not get paid for doing the broadcasts and does not utilize any government funds, time or equipment.

- o. Antinoro did not use public funds or receive a uniform or other allowance/reimbursement to pay for his Sheriff's uniform and other items associated with the uniform, including his badge and duty weapon.

5. **TERMS / CONCLUSIONS OF LAW:** Based on the foregoing, Antinoro and the Commission agree as follows:

- a. Each of the stipulated facts enumerated in Section 4 of this Consolidated Stipulated Agreement is agreed to by the parties.
- b. Antinoro holds public office, which constitutes a public trust to be held for the sole benefit of the people of the State of Nevada (in particular, the people of Storey County). Public officers have a duty to avoid conflicts of interest between public duties and private interests. NRS 281A.020.
- c. Antinoro had a significant personal and financial interest in maintaining his elected (paid) position as the Sheriff of Storey County during his campaign for re-election.
- d. Incumbent public officers are not entitled to the advantage of public resources during a campaign for re-election. See *In re Matson*, Comm'n Op. No. 11-67C (2014).
- e. An elected public officer must not use the public officer's position in government to secure unwarranted campaign advantages for himself (NRS 281A.400(2)). A preference or advantage is unwarranted, in part, if the public officer's conduct was contrary to any applicable law, code or policy. An elected public officer also must not use government time or resources to benefit his significant personal or financial interests. NRS 281A.400(7). Limited use of government resources is permitted only if the use is authorized by policy, does not interfere with the public officer's performance of public duties, has a nominal cost and does not create an appearance of impropriety. NRS 281A.400(7)(a).
- f. On February 23, 2012, the United States Office of Special Counsel ("OSC") issued an advisory opinion concluding that an elected sheriff may wear his uniform while campaigning for himself or for another candidate without

- violating the federal *Hatch Act* (5 U.S.C. §§ 1501-1508), which governs the political activity of certain state and local government employees.<sup>2</sup>
- g. The *Hatch Act* and the OSC's advisory opinions apply only to partisan political activities and do not prevent the State or local government employers/agencies from creating ethics laws or internal political activities policies that are more stringent than the *Hatch Act*. Furthermore, neither the *Hatch Act* nor the OSC's opinions preempt a state's ability to enforce its ethics laws requiring its elected public officers to avoid conflicts of interest when they engage in political activities.
  - h. A sheriff's office uniform and badge, which signify the power and prestige of the office, are considered governmental property or equipment under NRS 281A.400(7).<sup>3</sup> Accordingly, in *In re Kirkland*, Comm'n Opinion No. 98-41 (1998), the Commission found that a sheriff's limited use of his uniform, badge and "other physical accouterments" in the course of endorsing another person's candidacy violates NRS 281A.400(7) because it creates an appearance of impropriety. More recently, the Commission concluded that an undersheriff violates NRS 281A.400(7) when he uses the "physical accouterments of his office" to bolster his own campaign for sheriff by displaying himself in full dress uniform and using his badge in campaign photos. *In re Kuzanek*, Comm'n Op. No. 14-61C (2014) ("A public officer and/or employee cannot engage in any activity that involves the use of . . . state or political subdivision badge or uniform to give that person an advantage, and it creates the appearance of impropriety.")
  - i. An elected sheriff's use of his official uniform, badge and "other physical accouterments" of the public office in the course of supporting his own campaign for re-election also creates an appearance of impropriety and violates NRS 281A.400(7).

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<sup>2</sup> The OSC is a federal investigative and prosecutorial agency that promotes compliance by providing advisory opinions on, and enforcing, the federal *Hatch Act*.

<sup>3</sup> The fact that Antinoro purchased his own uniform and/or badge does not alter the government nature of the property.

- j. The allegations pertaining to NRS 281A.400(1), (2) and (7) and NRS 281A.400.520 associated with Antinoro's conduct related to the "Sheriff Jerry and Friends" radio show lack sufficient evidence to support a violation by a preponderance of the evidence and are therefore dismissed through this Consolidated Stipulated Agreement. Antinoro's participation in a radio show paid for with his campaign funds was not contrary to the faithful discharge of this public duties (NRS 281A.400(1)) and did not result in an unwarranted advantage (NRS 281A.400(2)). Furthermore, Antinoro did not use any government funds, property or time, in violation of NRS 281A.400(7) or NRS 281A.520, when he participated in the radio shows.
- k. Antinoro's use of his official uniform and badge during campaign debates and in photos used for his campaign for re-election implicates the provisions of NRS 281A.400(7). However, the preponderance of evidence does not support a violation of NRS 281A.400(2) or (7) related to Antinoro's use of his uniform and badge, and the Commission dismisses these allegations through this Stipulated Agreement, based upon a consideration of the following factors:
- (1) Antinoro relied in good faith upon the Stipulated Agreement approved by the Commission in *Pitts*, as represented to him and other elected incumbent sheriffs at the July 27, 2016 meeting of the Nevada Sheriffs' and Chiefs' Association;<sup>4</sup>
  - (2) Although the February 29, 2012 OSC advisory opinion is not binding on state and local governments that create laws or policies regulating the political activity of their public employees and public officers, the opinion created a legal uncertainty for Antinoro and other elected sheriffs;
  - (3) Antinoro has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process; and

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<sup>4</sup> Although Antinoro's reliance upon the Nevada Sheriffs' and Chiefs' Association's presentation may mitigate his circumstances, such reliance does not comply with the "safe harbor" provisions of NRS 281A.790(5).

(4) The use of uniforms and badges in campaign materials and during campaign events has been employed by candidates for other law enforcement offices in Nevada.

- i. Antinoro and the Commission agree that the Commission's Executive Director will send a letter to the Nevada Sheriffs' and Chiefs' Association that provides information and guidance about the Commission's position that the use of uniforms, badges and other physical accouterments of office by elected sheriffs during their campaigns for re-election creates an appearance of impropriety and violates NRS 281A.400(7).
- m. This Consolidated Stipulated Agreement depends on and applies only to the specific facts, circumstances and law related to the Ethics Complaints now before the Commission. Any facts or circumstances that may come to light after its entry that are in addition to or differ from those contained herein may create a different resolution of these matters.
- n. This Agreement is intended to apply to and resolve only these Ethics Complaints and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding Antinoro. If the Commission rejects this Stipulated Agreement, none of the provisions herein shall be considered by the Commission or be admissible as evidence in a hearing on the merits in this matter.

**6. WAIVER**

- a. Antinoro knowingly and voluntarily waives his right to a hearing before the full Commission on the allegations in Ethics Complaint Case Nos. 18-031C and 18-052C and all rights he may be accorded with regard to these matters pursuant to the Ethics Law (NRS Chapter 281A), the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B) and any other applicable provisions of law.
- b. Antinoro knowingly and voluntarily waives his right to any judicial review of these matters as provided in NRS Chapter 281A, NRS Chapter 233B or any other applicable provisions of law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this Consolidated Stipulated Agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this Agreement during the regular meeting of the Commission on August 21, 2019.<sup>5</sup>

DATED this 27<sup>th</sup> day of AUGUST, 2019.

  
Gerald Antinoro

FOR GERALD ANTINORO,  
Subject

DATED this 27<sup>th</sup> day of August, 2019.

  
Katherine F. Parks, Esq.  
Counsel for Subject

The above Stipulated Agreement is approved by:

FOR YVONNE M. NEVAREZ-GOODSON, ESQ.  
Executive Director, Commission on Ethics

DATED this 26<sup>th</sup> day of August, 2019.

  
Jud A. Prutzman, Esq.  
Associate Counsel

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<sup>5</sup> Subject waived any right to receive written notice pursuant to NRS 241.033 of the time and place of the Commission's meeting to consider his character, alleged misconduct, professional competence, or physical or mental health.

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 27<sup>th</sup> day of August, 2019.

/s/ Tracy L. Chase

Tracy L. Chase, Esq.  
Commission Counsel

The above Stipulated Agreement is accepted by the majority of the Commission.<sup>6</sup>

DATED: August 27, 2019.

By: /s/ Keith A. Weaver

Keith A. Weaver, Esq.  
Vice-Chair

By: /s/ Kim Wallin

Kim Wallin  
Commissioner

By: /s/ Barbara Gruenewald

Barbara Gruenewald, Esq.  
Commissioner

By: /s/ Amanda Yen

Amanda Yen, Esq.  
Commissioner

By: /s/ Philip K. O'Neill

Philip K. O'Neill  
Commissioner

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<sup>6</sup> Chair Lau and Commissioners Duffrin and Lowry participated in the Review Panel hearing for Complaint No. 18-031C and are therefore precluded from participating in this Consolidated Stipulated Agreement pursuant to NRS 281A.220(4).