



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the Request for
Advisory Opinion by GEORGE M. KEELE,
Commissioner, Commission on Ethics,
State of Nevada.**

Advisory Opinion No. 07-08A

Public Officer.

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OPINION

This matter came before a quorum¹ of the Nevada Commission on Ethics (Commission) for a hearing on July 19, 2007, on the request for an advisory opinion by Nevada Commission on Ethics Commissioner George M. Keele (Keele), pursuant to NRS 281A.440.1.² Keele appeared in person, provided sworn testimony and was represented by James Wilson, Esq. Pursuant to NRS 281A.440.5 requests for advisory opinion are confidential unless the requester waives confidentiality. Keele waived confidentiality of this matter.

Keele sought guidance from the Commission on the propriety of his past conduct as a public officer as it relates to the late filing of agency representation disclosure statements (representation disclosure), pursuant to NRS 281A.410.3.

After fully considering the request for advisory opinion and analyzing all of the facts and circumstances and testimony presented, the Commission deliberated and orally advised Keele of its decision in the matter. The Commission now renders this written Opinion from its decision.

¹ The quorum consisted of then Chairman Kosinski and Commissioners Capurro, Cashman, Flangas and Hutchison.
² Formerly NRS 281.511 of the Ethics in Government law. The Ethics in Government law has been recodified and is now Chapter 281A of NRS. This opinion cites to the recodified statutes.

FINDINGS OF FACT

1. At all times relevant to the hearing of this matter, Keele served as Commissioner for the Nevada Commission on Ethics.
2. In his private capacity, Keele is a lawyer in private practice.
3. In his private capacity, in the course of representing his clients, Keele may interact with various State agencies.
4. In early 2007, during a Commission meeting, the Commission discussed NRS 281A.410 and the term “executive branch”. At a subsequent meeting, the Commission discussed sponsoring an amendment to NRS 281A.410. It was after these discussions that Keele realized for the first time that he was subject to the representation disclosure requirement under the statute.
5. Keele audited his files to determine what clients, if any, he had represented or counseled before State executive branch agencies during his tenure with the Commission. Some of the work Keele does is ministerial and does not constitute “counseling” or “representing” clients before State executive branch agencies.
6. On February 9, 2007, Keele submitted to the Commission representation disclosures for years 2003, 2004, 2005 and 2006.
7. At the hearing of this matter, Keele stated that the Commission had not fulfilled its obligation of educating public officers on the representation reporting requirement under NRS 281A.410. Additionally, he stated that the Commission staff had not properly advised its own members about the reporting requirement.

CONCLUSIONS OF LAW

1. At all times relevant to the hearing of this matter, Keele was a public officer as defined by NRS 281A.160.

2. The Commission has jurisdiction to render an advisory opinion in this matter pursuant to NRS 281A.440.1 and NRS 281A.460.
3. Not later than January 10³ of each year in question, Keele was required to file with the Commission a representation disclosure. NRS 281A.410.3 requires disclosure of any counseling or representations of private persons for compensation before State agencies of the executive branch during the previous year.
4. Ministerial acts such as preparing and filing documents with an agency, for example, incorporation documents with the Secretary of State, do not constitute “representation or counseling” for NRS 281A.410 purposes.
5. Keele’s late filing of representation disclosures for the years 2003, 2004, 2005 and 2006 would constitute a violation of NRS 281A.410.3.

DISCUSSION

Keele sought guidance from the Commission on the propriety of his past conduct as a public officer as it relates to the late filing of representation disclosures, pursuant to NRS 281A.410.3.

NRS 281A.410 states in relevant part:

2. A member of the legislative branch, or a member of the executive branch or public employee whose public service requires less than half of his time, may represent or counsel a private person before an agency in which he does not serve...

3. Not later than January 15⁴ of each year, any Legislator or other public officer who has, within the preceding year, represented or counseled a private person for compensation before a state agency of the Executive Branch shall disclose for each such representation or counseling during the previous calendar year:

- (a) The name of the client;
- (b) The nature of the representation; and
- (c) The name of the state agency.

³ At all times relevant to the hearing of this matter, the deadline for filing was January 10. NRS 281A.410.3 was amended during the 2007 Legislative session. The deadline for filing agency representation disclosure statements is now January 15.

⁴ See footnote 3 above.

The disclosure must be made in writing and filed with the Commission, on a form prescribed by the Commission.

The facts presented in this request for opinion illustrate that Keele was not aware that he was required to file annual representation disclosures, pursuant to NRS 281A.410.3. It was only after the Commission, on two separate occasions, discussed the statute in detail that Keele realized he was subject to the filing requirement. The Commission acknowledges that before the hearing of this matter took place, it had no training or procedures in place focused on advising public officers on the requirements of NRS 281A.410.3. Although, the Commission sympathizes with Keele in that he finds himself in this quandary, the Commission points out that the filing requirement is provided in statute, specifically the Ethics in Government Law, and that Keele like all public officers, must familiarize himself and comply with this law.

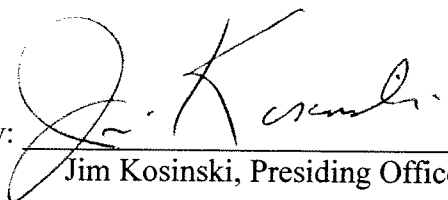
CONCLUSION

Based on the foregoing, the Commission unanimously concluded that Keele's late filed representation disclosures would constitute a violation of NRS 281A.410.3. The Commission commends Keele for bringing the matter before the Commission. The Commission and its staff will implement procedures and training specifically focused on the requirements in NRS 281A.410.3 in order to provide guidance to public officers.

NOTE: this matter is a first-party advisory opinion request. For purposes of a first-party advisory opinion requested pursuant to NRS 281A.440.1 and NRS 281A.460, all facts in the matter are provided by the public officer requesting the advisory opinion. Facts and circumstances that differ from those provided and used by the Commission in this advisory opinion may result in an opinion contrary to this opinion.

DATED: 4/24/08.

NEVADA COMMISSION ON ETHICS

By: 
Jim Kosinski, Presiding Officer