



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. **14-59C**

_____ Public Officer. /

STIPULATED AGREEMENT

1. **PURPOSE:** This Stipulated Agreement resolves Third-Party Request for Opinion (“RFO”) No. 14-59C before the Nevada Commission on Ethics (“Commission”) concerning Gerald Antinoro (“Antinoro”), Sheriff, Storey County, State of Nevada, and serves as the final opinion in this matter (“Sheriff’s Office”).

2. **JURISDICTION:** At all material times, Antinoro served as a Sheriff of Storey County. As such, Antinoro is an elected public officer, as defined in NRS 281A.160. The Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A provides 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 July 30, 2014, the Commission received this RFO from Shawn Mahan, alleging that Antinoro violated the provisions of NRS 281A.020(1) and 281A.400(1), (2), (7) and (9) by: (1) using governmental time and resources in his capacity as Sheriff to further his own campaign interests; and (2) using his position as Sheriff to harass and intimidate his subordinate employees who are also running for Sheriff.¹

¹The RFO also alleged violations of NRS 281A.400(8) and 281A.500. Pursuant to NAC 281A.405, the Commission Counsel and Executive Director rejected jurisdiction regarding these allegations because NRS 281A.400(8) applies only to state legislators, and no evidence was provided to support the allegations of NRS 281A.500 as required by NAC 281A.400.

- b. As required by NAC 281A.410, the Commission gave Antinoro notice of this RFO by mail. Pursuant to NRS 281A.440(3), Antinoro was provided an opportunity to respond to the allegations.
- c. On August 18, 2014, Antinoro submitted his response to the RFO.
- d. A panel was held February 18, 2015 pursuant to NRS 281A.440, finding that credible evidence establishes just and sufficient cause for the Commission to render an opinion regarding the allegations implicating NRS 281A.400(2) and (9), and 281A.020(1).
- e. Antinoro challenged the findings of the panel by filing a motion to dismiss which was denied by the Commission. The Commission requested that additional facts be presented at a hearing on the allegations.
- f. In lieu of a hearing, Antinoro now enters into this Stipulated Agreement acknowledging his duty as a public officer to commit himself to protect the public trust and conform his conduct to NRS Chapter 281A.

4. **STIPULATED FACTS**: At all material times, the following Stipulated Facts are relevant to this matter:

Parties

- a. Antinoro is the elected Sheriff of Storey County, a public officer as defined in NRS 281A.160.
- b. Antinoro won re-election as Sheriff of Storey County in 2014.
- c. Shawn Mahan, Requester, was a Deputy Sheriff for Storey County who was also running for the office of Sheriff in 2014 and was an employee of Sheriff Antinoro.
- d. The Storey County Sheriff's Office is a local agency, as defined in NRS 281A.119, and part of a political subdivision, as defined in NRS 281A.145.
- e. John Michael Mendoza was a Deputy Sheriff in Storey County, a public employee as defined in NRS 281A.150. He was the Senior Outreach Coordinator for the Sheriff's Office, and Officer of We Care.
- f. Melanie Keener was the Acting Undersheriff in Storey County, a public employee as defined in NRS 281A.150.

- g. Jeff Bowers was a Sergeant in Storey County, a public employee as defined in NRS 281A.150.
- h. We Care, a volunteer organization for senior outreach, was an organization managed out of the Storey County Sheriff's Office and founded by the Sheriff's Office.
- i. Marilee Miller was a We Care volunteer.
- j. Infinity Hospice Care is a private organization which provided services relating to senior health issues.

Infinity Hospice Event

- k. Heather McCutcheon was a representative of Infinity Hospice Care.
- l. McCutcheon contacted Mahan and asked if he would act as a liaison for her in Storey County since she was new to Infinity Health Care and the County.
- m. Mahan accepted the invitation and flyers were produced by Infinity Hospice with Mahan's name on the flyer.
- n. The Infinity event was intended as both a campaign event for Shawn Mahan and an informational event for Infinity Hospice.
- o. The Infinity Flyers had a picture of Mahan in civilian dress with a caption stating "Commitment to Community."
- p. The Infinity Flyer stated that Infinity Hospice Care and Shawn Mahan present Senior Services in Storey County.
- q. The flyers did not reference Mahan's status as a deputy sheriff nor did the flyer clarify that Infinity was not affiliated in any way with the Storey County Sheriff's Office.
- r. The outreach event was scheduled to take place on July 22, 2014. Mahan requested time off of work as a Deputy in advance of the event, and such time off was granted.
- s. Sheriff Antinoro directed Sgt. Bowers, Mahan's immediate supervisor, to inform Mahan that his participation in the Infinity Event was in violation of Sheriff's Office policy and that he was prohibited from continuing to engage in such activities. Sgt. Bowers then issued a Cease and Desist Order forbidding Mahan to attend the event.

t. The Cease and Desist Order, dated July 15, 2014, stated:

Deputy Mahan.

Pursuant to our telephone conversation this afternoon I am providing this e-mail with serves as a direct order to cease and desist any planned event regarding Infinity Hospice Care. The reason for this action is, but is not limited to, the following reasons:

1) You are both on and off duty, a representative of the Storey County Sheriff's Office. I will refer you to existing policy if you are confused as to expected behavior. All conduct that directly or indirectly affects the Storey County Sheriff's Office falls under the purview of existing Policy & Procedure.

2) The Storey County Sheriff's Office already has in place a senior awareness program. Any and all activity which involves the seniors or any other demographic group in this county where you, as a representative of the Sheriff's office, present yourself as a member of this office, whether explicit or implied, is directly governed by the Sheriff or his designee. The Sheriff has given no authorization to present yourself in this event nor has he sanctioned this event

3) You have presented no assurance that Infinity Hospice Care is an appropriate entity to conduct business in this county. Further, you are expressly prohibited by policy to advocate for any for-profit business within this county. The fact that you announce only your name on the flyer announcing this event does not diminish the fact that you are in fact an employee of the Sheriff's office. Even were you allowed to seek such advocacy of a for-profit business from the Sheriff, you have presented no evidence that this company is competitive or offers superior service to county residents versus other, competing hospice care businesses. This is an egregious violation of your oath of office and ethical codes of conduct.

4) SCSO Policy & Procedure 340.3.4 (ab) states: "you are prohibited from ... Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Office or which is contrary to good order, efficiency or morale " Your event only serves to confuse citizens of Storey County as to which program to trust (Infinity Hospice versus the existing Senior Program). As such, this event breaks down the order you are expected to maintain.

Lastly, the Sheriff, as your employer, has a duty to present to our citizens consistent and cohesive service. Your planned event is directly contrary to his intent due, among other things, a conflict with an existing sanctioned program. As your Sheriff, he has the right, and has exercised that right, to demand you seek his approval before any such event can be planned.

Participation in this program by you will result in severe disciplinary action being taken against you. I encourage you to seek approval from the Sheriff before any such event is planned in the future.

Sergeant Jeff Bowers
Storey County Sheriff's Office
(775) 847-1146

- u. Mahan did not attend event; however, he sat in the parking lot and greeted attendees at the event, and he gave an interview to the local press.
- v. On August 19, 2014, Sheriff Antinoro placed Deputy Mahan on administrative leave for issues arising from the alleged harassment of the Infinity Hospice event and alleged abuse of sick time.

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

- a. For purposes of this settlement only, each of the stipulated facts enumerated in section 4 of this Stipulated Agreement are agreed to by the parties.² For purposes of Conclusions of Law, the Commission accepts each of the stipulated facts as true and correct.
- b. Antinoro holds a 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 between public and private interests. NRS 281A.020(1).
- c. A public officer must not use his position as Sheriff of Storey County to secure unwarranted privileges, preferences or advantages for himself. See NRS 281A.400(2).
- d. A public officer must not attempt to influence a subordinate to benefit his personal or financial interests. NRS 281A.400(9).
- e. Whether an action is unwarranted, pursuant to NRS 281A.400(2) can turn upon whether the action was legal, or in this instance, constitutional. (See *In re Kirkland*, Comm'n Opinion 98-41 (1998)).
- f. The Cease and Desist Order was drafted to prevent Mahan from attending the Infinity Hospice event in violation of the Sheriff's Office policy; however, the language in the Order was vague and in the panel's opinion raises First Amendment concerns.
- g. Based upon the investigation, any infringement upon Mahan's First Amendment rights was inadvertent and has some support in relevant case law.

² Stipulated Facts do not constitute part of the "Investigative File" as that term is defined by NRS 281A.440(17), as amended by Assembly Bill 60, 78th Session of the Nevada State Legislature, effective May 27, 2015. All statutory and common law protections afforded to the Investigative File shall remain and are not affected by this Stipulated Agreement.


- h. As the Cease and Desist Order could be interpreted to infringe upon Mahan's First Amendment rights, and impede Mahan's ability to campaign for office, Antinoro obtained an unwarranted benefit from the Order violating NRS 281A.400(2), (9) and NRS 281A.020.
- i. Antinoro agrees to clarify the Storey County Sheriff's Office policies pertaining to sheriff deputies and their associations with outside entities and is willing to provide the Commission with a courtesy copy of the new policies after completion.
- j. It is arguable that the actions of Antinoro might rise to a violation of Mahan's First Amendment rights, or at least an appearance of impropriety, implicating NRS 281A.400(2), NRS 281A.400(9) and NRS 281A.020, which is contested by the subject.
- k. However, even if the actions did rise to a violation of Mahan's First Amendment rights implicating NRS 281A.400(2), NRS 281A.400(9) and NRS 281A.020, based upon the consideration and application of the statutory criteria set forth in NRS 281A.475, the Commission concludes that such violation in this case would not be deemed a "willful violation" pursuant to NRS 281A.170 and the imposition of a civil penalty pursuant to NRS 281A.480 would not be appropriate for reasons that follow:
 - 1) Antinoro has not previously been the subject of any violation of the Ethics Law.
 - 2) Antinoro has not received any personal financial gain as the result of his conduct in this matter.
 - 3) Antinoro has been diligent to cooperate with and to participate in the Commission's investigation and analysis, as well as the resolution process.
- l. This Stipulated Agreement depends on and applies only to the stipulated facts, circumstances and law related to this RFO 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 this matter.

m. This Stipulated Agreement is intended to apply to and resolve only this specific proceeding before the Commission and is not intended to be applicable to or create any admission of liability for any other proceeding, including administrative, civil, or criminal regarding the Subject.

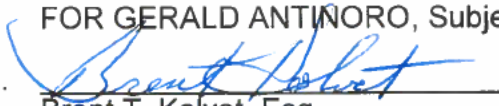
6. **WAIVER:**

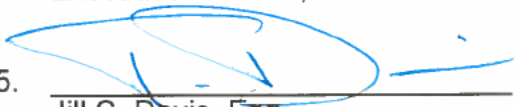
- a. Antinoro knowingly and voluntarily waives a full hearing before the Commission on the allegations in this RFO (No. 14-59C) and of any and all rights he may be accorded pursuant to NRS Chapter 281A, the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedure Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. Antinoro knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS Chapter 281A, NRS Chapter 233B or any other provision of Nevada law.

7. **ACCEPTANCE:** We, the undersigned parties, have read this 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 Stipulated Agreement during the regular meeting of Commission on July 15, 2015.

DATED this 24th day of JULY, 2015. 
Gerald Antinoro

The above Stipulated Agreement is approved by:

DATED this 5 day of August, 2015. 
FOR GERALD ANTINORO, Subject
Brent T. Kolvet, Esq.
Counsel for Subject

DATED this 10 day of August, 2015. 
FOR YVONNE M. NEVAREZ-GOODSON
Executive Director, Commission on Ethics
Jill C. Davis, Esq.
Associate Counsel

Approved as to form by:

FOR NEVADA COMMISSION ON ETHICS

DATED this 10th day of August, 2015. Tracy L. Chase
Tracy L. Chase, Esq.
Commission Counsel

The above Stipulated Agreement is accepted by the Commission.³

DATED July 15 2015.

By: /s/ Paul H. Lamboley
Paul H. Lamboley
Chairman

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

By: /s/ John C. Carpenter
John C. Carpenter
Commissioner

By: /s/ Magdalena Groover
Magdalena Groover
Commissioner

By: /s/ Timothy Cory
Timothy Cory
Commissioner

By: /s/ Keith A. Weaver
Keith A. Weaver
Commissioner

³ Vice-Chairman Gale and Commissioner Lau served on the Investigatory Panel for this RFO and are precluded from participating in further proceedings, including consideration of the Proposed Stipulated Agreement ("proposed stipulation"), pursuant to NRS 281A.220. All other Commissioners are eligible to participate in the consideration of this matter