
Kathleen Kane's Porngate team: \$2M, 5 lawyers and no Pa. law licenses

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Gallery: Pa. Attorney General Kathleen Kane news conference, Dec. 1, 2015



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'PHILADELPHIA -- Kathleen Kane has a lot in common with Doug Gansler, the private attorney tapped Tuesday to lead her 'Porngate' inquiry.

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Both have experience as attorneys general, as Gansler recently left the post in Maryland. Both are Democrats who, at one point, aspired to higher office.

Neither has a Pennsylvania law license, since Kane's has been suspended since October and Gansler has worked primarily in Maryland and Washington, D.C.

Gansler, who was named special deputy attorney general by Kane, began his remarks at the Philadelphia's National Constitution Center by decrying Kane's suspension "without a hearing and with a couple justices implicated in this set of events." He also refuted a number of legal experts who've **questioned Kane's ability to appoint special prosecutors.**

On those issues aside, Gansler said he and his team of colleagues from the D.C.-based law firm Buckley Sandler would operate independently of the embattled attorney general.

"We have no baggage," he said. "We have no preconceived notions other than we want to do our job and do it well."

In addition to reviewing emails from the Attorney General's Office servers for pornographic and otherwise offensive material, Gansler said, the five-person team will also look for evidence of secret grand jury material being transmitted. He did not rule out seeking emails from other agencies and departments.

To date, he said, the office has collected about 10,000 emails. Of those, about 4,000 have been released to the public.



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When asked whether the as-yet-unseen emails would ever be released to the public, Gansler noted that a recent court decision found them not to be public records. That left their release to the discretion of the Attorney General and, subsequently, Gansler himself.

"I believe in transparency in government," he said. "We will look at all of the emails and then make an assessment."

But Gansler said the emails will not be released in a "piecemeal fashion."

So far, a number of them have been leaked to various media outlets, released officially by Kane's office or included in public court documents.

Kane granted Gansler the power to review evidence; work with grand juries and other investigations; participate in court proceedings and civil and criminal litigation; make decisions about appeals; make applications for warrants, subpoenas and other court orders; and initiate prosecution.

While he cautioned that he can't predict the course of the investigation, Gansler said that possible charges could include obstruction of justice, grand jury intimidation, misuse of grand jury and the transmission of pornographic material, including child pornography.

When asked about what laws could be broken by the exchange of pornography, Gansler said he believed it was a misdemeanor.

"I have not yet put facts with law yet in the Commonwealth of Pennsylvania," he said.

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None of his team members have a license to practice law in the state, Gansler said, adding, "and that's the point." At one point during the press conference, he said he has not had any contact with Kane.

"I think our experience stands for itself," he said, in response to questions about his ability to practice law in Pennsylvania.

Kane, in a statement after a slideshow of samples taken from the emails, said Gansler's distance from the state's criminal justice system will ensure the review's independence.

"We can feel confident he does not have a stake in the outcome," she said.

According to the document appointing Gansler, Kane has agreed to pay Gansler the same amount as the attorney general, in addition to any expenses. Kane's current annual salary is nearly \$159,000.

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Gansler said he has been appointed by Kane and Kane's office will sign a contract for services with Buckley Sandler. That contract will likely be signed by Kane or her chief of staff, Jonathan Duecker.

The details of the contract Kane has prepared with Buckley Sandler were not available Tuesday, but a spokesman for the office said the funds will be coming from the Attorney General's Office.

When asked about the total cost of the investigation, Gansler said he expects it to be less than \$2 million.

"Our expectation is to get it done as quickly and expeditiously as possible," he said.

Gansler's employment will terminate after he notifies the attorney general that the investigation and prosecution of all of the matters he and his team was charged with has been completed. Every six months, Gansler will be expected to issue a public report of the investigation's status.

Kane's **authority to continue on as attorney general** and to appoint special prosecutors while her law license is suspended remains contentious among legal experts.

Tuesday's press conference raised yet another question: What authority do special prosecutors have without a Pennsylvania law license?

Bruce Ledewitz, a Duquesne University law professor, said members of the federal bar can practice in federal courts anywhere if they're appointed as a special prosecutor. Kane's special prosecutors, however, would not have that power.

"She can't give somebody authority to practice law in Pennsylvania," he said. "I don't see how she can."

Kane can, however, make hiring and firing decisions as part of her administrative responsibilities, Ledewitz said. Creating new positions for the special prosecutors, even if they are outside contractors, is less clearly within Kane's rights as a suspended attorney.

Without a Pennsylvania law license, Ledewitz said the investigators would probably have to go to other Attorney General's Office staffers to help with legal filings. But they wouldn't have the authority to force other staffers to cooperate.

"This whole thing is beyond bizarre," he said.

George Parry, a Philadelphia attorney and former prosecutor, said individuals can perform investigative work without a law license but would be restricted when it came to legal actions. There is, however, a possibility for out-of-state attorneys to be admitted to the state bar on a pro-hac vice basis for a particular investigation.

"I don't believe it would be an insurmountable stumbling block but it could be," he said. "Whatever comes out of any such investigation, there will be many challenges to the result and to the procedures that were followed."



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As for the team's purported subpoena powers, Parry said those are usually restricted to prosecutors supervising a grand jury investigation or are pursued once charges have been filed. Search warrants, meanwhile, typically require probable cause that a crime is being committed, which he said isn't apparent based on what is known of the case.

Based on his experience, Parry said he's unaware of any circumstances in which out-of-state attorneys were appointed as special assistant attorneys general.

"I suppose we'll find out when the court gets through with this," he said.

The larger question, Parry said, is why the special investigation into offensive emails was called for.

"It's not a crime," he said. "It may be tasteless, it may be sexist or any number of things, but it's not a crime."

In addition to the question of unlicensed attorneys, Parry said the investigators will likely encounter resistance from any other departments they try to seek emails from. The Department of Human Services, for example, could fairly claim that their emails could contain sensitive information about child welfare cases.

"You're going to get into a privilege battle that could last for years," he said. "It just seems to me like a lot of noise and nonsense with no real purpose."

RELATED: What's in 400 pages of 'porngate' emails?

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