

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

November 28, 2006

The Rhode Island Ethics Commission held its 21st meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, November 28, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair James V. Murray

Barbara Binder, Vice Chair James C. Segovis

George E. Weavill, Jr., Secretary Frederick K. Butler

Richard E. Kirby Ross Cheit

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason M. Gramitt and Dianne Leyden; and Commission Investigators Steven T. Cross and Michael Douglas.

At approximately 9:10 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session

held on November 14, 2006. Commissioner Segovis noted that he also left the meeting prior to its end. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To approve the minutes of the Open Session held on November 14, 2006, as corrected.

ABSTENTION: James V. Murray.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Leonard Lopes, the Chief of Staff and Legislative Director in the Office of the Rhode Island Attorney General. Senior Staff Attorney D'Arezzo presented the Commission Staff recommendation. The petitioner was present and clarified that he left the Providence School Board in December 2004. He disclosed that he previously was appointed to an advisory committee in the City of Pawtucket, but never received notice of or attended any meetings. He asked if there were any issues he should be aware of given his continuing social relationship with the Attorney General.

Senior Staff Attorney D'Arezzo explained that the Code prohibits the petitioner's appearance before the AG's Office, but does not bar any

social relationships, provided that he is not lobbying on behalf of his clients. She stated that the petitioner should be mindful not to disclose any confidential information acquired in his public position, but would not be prohibited from providing clarification of his prior work to his former office if asked or needed. In response to Commissioner Cheit's concerns regarding legislation that may impact the AG's Office, the petitioner stated that if he were to represent a pharmaceutical company the AG may have opined on whether or not foreign drugs could be purchased. Commissioner Cheit voiced his concern that there is a potential for appearances of impropriety but he did not believe it violates the Code.

Senior Staff Attorney D'Arezzo advised the petitioner to seek additional guidance from Commission Staff, and possibly a further opinion, as additional facts arise. Commissioner Butler suggested that the petitioner be mindful of potential issues stemming from his personal relationship with the AG. Upon motion made by Commissioner Murray and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Leonard Lopes, the Chief of Staff and Legislative Director in the Office of the Rhode Island Attorney General.

The next advisory opinion was that of James S. D'Ambra, a candidate for appointment to the Lincoln Juvenile Hearing Board. Staff

Attorney Leyden presented the Commission Staff recommendation. The petitioner was present. Commissioner Murray disclosed that he serves on a civic board with the petitioner's spouse, but believes he can objectively participate. Commissioner Segovis noted that he is acquainted with the petitioner from his spouse's family court service, but believes he can fairly participate. The petitioner advised that there has never been an appeal to the family court and if there were, the town prosecutor and police prosecutor would present the case de novo. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to James S. D'Ambra, a candidate for appointment to the Lincoln Juvenile Hearing Board.

At approximately 9:34 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:

a.) Motion to approve minutes of Executive Session held on November 14, 2006.

b.) In re: Joseph A. Montalbano,

Complaint No. 2006-4

**c.) In re: Joseph A. Montalbano,
Complaint No. 2006-11**

**d.) In re: Forrester C. Safford,
Complaint No. 2006-8**

***At approximately 10:13 a.m. the Commission reconvened in Open Session without the presence of Commissioner Butler. Chair Lynch reported that in Executive Session the Commission took the following actions: 1) voted to approve the minutes of the Executive Session held on November 28, 2006; 2) voted to extend time for investigation of In re: Joseph A. Montalbano, Complaint No. 2006-4 for 60 days; 3) voted to initially determine that In re: Joseph A. Montalbano, Complaint No. 2006-11, alleges sufficient facts to support a knowing and willful violation of the Code of Ethics; and 4) voted to dismiss In re: Forrester C. Safford, Complaint No. 2006-8, without prejudice, at initial determination.**

Upon motion made by Commissioner Kirby and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To seal the minutes of the Executive Session held on November 28, 2006.

The next order of business was discussion of proposed regulatory actions regarding Nepotism and Revolving Door. Staff Attorney Gramitt summarized the draft nepotism proposal, Regulation 5005.1, which was previously reviewed by the Commission. Senior Staff Attorney D'Arezzo outlined the revolving door draft proposal, to be renumbered as Regulation 5017, which broadly defines "employment" for purposes of R.I. Gen. Laws §§ 36-15-5(n) and 5(o). In response to Commissioner Binder, Senior Staff Attorney D'Arezzo clarified that the statutory provisions allow the Commission to grant exceptions, which would address the situation of the State wishing to hire former Legal Counsel to the Governor within the one year period. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Binder, it was unanimously

VOTED: To notice Draft Regulations 5005.1 and 5017 for public hearing.

Senior Staff Attorney D'Arezzo next discussed two potential amendments to Regulation 5007, Alternatives #1 and #2, which would mirror the definition of "employment" proposed in Draft Regulation 5017. She also noted that the Commission could choose to repeal Regulation 5007 or take no action. Chair Lynch and Commissioners Binder and Segovis expressed support for Alternative #2. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To notice Alternative #2 for public hearing as a proposed Amendment to Regulation 5007.

Senior Staff Attorney D'Arezzo advised that she prepared Draft Regulation A in response to Commissioner Weavill's suggestion at the last meeting. She stated that it would provide a period of no more than 90 days during which a senior staffer may be hired as a consultant to his or her former agency, notwithstanding the prohibitions in section 5(0)(1), to assist in the transition of his or her former duties. Commissioner Cheit questioned whether a 90 day period would be needed, or if a thirty day period would suffice. Commissioner Kirby noted that it does not preclude a person from seeking an advisory opinion as to a longer period. In response to Commissioner Segovis, Commissioner Binder stated that in her state experience a 90 day period would be fine, but 120 would be excessive. Commissioner Weavill agreed that any other periods could be dealt with on a case by case basis through advisory opinions. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To notice Draft Regulation A for public hearing.

The next order of business was approval of the Tentative Meeting Schedule for 2007. Senior Staff Attorney stated that the Commission has the ability to make changes as the need arises. In response to Commissioner Weavill, she informed that January 23rd had been

discussed as a potential date for an adjudication at the last meeting; however, the Prosecution is in contact with Respondent's counsel and will inform the Commission when there is a date certain. Commissioner Weavill suggested that the January 9th meeting be dedicated to the public hearing. Chair Lynch agreed.

The next order of business was the Director's Report. Executive Director Willever reported that there are eight advisory opinions and 7 complaints pending.

The next order of business was New Business. There being none, at approximately 10:34 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary