

**MINUTES OF THE PUBLIC MEETING OF THE
RHODE ISLAND ETHICS COMMISSION
REGULATION WORKSHOP**

April 17, 2007

The Rhode Island Ethics Commission held a Regulation Workshop following a regularly scheduled full Ethics Commission meeting on April 17, 2007 at the Rhode Island Ethics Commission hearing room located on the eighth floor of 40 Fountain Street, Providence, RI., pursuant to notices published at the Commission Headquarters and at the State House Library.

The following members were present:

James Lynch, Sr., Chair Richard E. Kirby

Barbara Binder, Vice Chair Ross Cheit

George E. Weavill, Jr., Secretary

Also present were Kathleen Managhan, Commission Legal Counsel, Commission Staff Attorneys Jason Gramitt, Katherine D'Arezzo and Dianne Leyden, and Commission Investigators Peter Mancini and Michael Douglas.

Chair Lynch called the workshop to order.

Upon the motion of Commissioner Cheit and seconded by Commissioner Binder, with Commissioners Lynch and Weavill abstaining, the Commission voted unanimously to approve the Minutes of the Regulation Workshop held on March 20, 2007.

With the agreement of the Commission, Chair Lynch stated that he would permit public comment following the Commission's discussion of each particular issue.

The Commission first took up a discussion of the class exception contained in R.I. Gen. Laws § 36-14-7(b). Chair Lynch opened the discussion by suggesting that perhaps the class exception should be completely eliminated. The Commission discussed the fact that 7(b) was a statute, not a regulation. The Commission also discussed whether legislators might be elected, in part, based on their areas of expertise and employment, and whether certain conflicts might be inherent in a part-time legislature. There was a suggestion that the Commission might come up with different class standards for application to state officials versus a municipal officials.

Christine Lopes spoke on behalf of Common Cause Rhode Island. She asked that the Commission consider designating a particular entire day for discussion of regulations, rather than having the workshops occur whenever the regular meetings end. She stated that Common Cause supported the elimination of the class exception, but had drafted a recommendation short of outright elimination. She

distributed copies of the draft to the Commission.

Frank DiGregorio, State Governing Board Member of Common Cause Rhode Island, addressed the Commission. He supports Common Cause's recommendations as being realistic and practical, and considers the class exception to be the most significant regulation that the Commission is currently considering.

State Representative Douglas Gablinske addressed the Commission. He clarified that the issue he is concerned with is not really the class exception, but concerns the fact that union business agents make up a large portion of the Rhode Island Senate. He thinks that recusal is the proper course, rather than switching to a full-time legislature. He brought a stack of legislation introduced this session by union business agents, and he read art. III, sec. 7 of the Rhode Island Constitution to the Commission.

The Commission discussed the issues raised by Representative Gablinske, and particularly discussed the difficulty in regulating appearances of impropriety. The Commission again discussed the possibility of bifurcating a class exception to apply different standards at the state and local levels. There was also a suggestion to differentiate between public officials who are employees of an interested party versus public officials who are members of an interested party. The Commission expressed a willingness to consider multiple proposals.

The Commission moved on to discuss confidentiality of complaint matters. Commissioner Kirby stated that all complaints should follow a standard procedure with respect to Initial Determination. Staff Attorney D'Arezzo replied that standard procedure has been followed at all times during the tenure of the current Director. The Commission discussed whether the complainant should be present in executive session. Thought was given to whether the Commission could retire into a kind of "super executive session" for deliberations, excluding the complainant, respondent and staff. Staff Attorney Gramitt was tasked with writing a draft regulation that would (1) eliminate the distribution of an advance settlement draft to the complainant; (2) permit the complainant to address the commission; and (3) permit the Commission to go into private, executive session deliberations.

Christine Lopes addressed the Commission. She suggested that the Complainant be permitted to respond to the respondent's Answer. She also stated that the Complainant should remain present for the probable cause hearing, but agreed that the Commission could go into a private deliberation. Finally, she recommended that the Commission issue a written decision and order for all cases that are dismissed, explaining the basis for the dismissal.

Judith Reilly addressed the Commission. She asked that the Commission consider holding meetings in the evening. She

reiterated her displeasure with the handling of a complaint she once filed, focusing in particular on the lack of communication from the commission staff regarding initial determination and probable cause. She stated that the complaint form should be available for download on the website, and that staff should be limited to broadly answering questions from potential complainants. There was discussion between Ms. Reilly and the Commission concerning her experience with the pre-complaint process.

Frank DiGregorio asked the Commission to considering allowing a complainant to respond to the Respondent's Answer. He stated that he did not have that opportunity in a case he once filed, and he believes that he could have offered information that was germane to the Commission's decision-making. He also asked that the Commission issue some form of written basis for each dismissal of a complaint. He noted that he did not have any issues with the Commission staff relative to the handling of his complaint, and that he found them to be helpful.

Staff Attorney Gramitt noted for the record that he and the Commission staff strongly disagreed with Ms. Reilly's characterization of her interaction with the staff. He discussed the respective roles of the prosecutor, respondent and Commission in the adversarial process, and noted that a prosecutor has a moral, ethical and legal duty to not proceed with a complaint if he or she believes there is no probable cause to support the allegations.

Commissioner Cheit expressed concern with a complaint being prosecuted by the same attorney that met with the complainant in a pre-complaint interview. Investigator Mancini responded that in most cases potential complainants meet with the investigators and not the attorneys. He also reiterated that a potential complainant is never denied a complaint form.

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

VOTED: To adjourn the workshop.

Whereupon the workshop adjourned at 12:25 p.m.

Respectfully submitted,

**Jason Gramitt
Staff Attorney**