MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION

September 11, 2007

The Rhode Island Ethics Commission held its 15th meeting of 2007 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, September 11, 2007, 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 R. 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 Gramitt, Dianne L. Leyden and Esme DeVault; Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch; and Commission Administrative Staff Tracy Teixeira.

At approximately 9:08 a.m., the Chair opened the meeting. The first

order of business was a motion to approve minutes of the Open Session held on August 21, 2007. In response to Commissioner Cheit, Commission Staff confirmed that the Commission paid for a transcript of the Montalbano hearing. Senior Staff Attorney D'Arezzo clarified that the minutes relating to the hearing were general given that the transcript is available for review. In response to Commissioner Weavill, she explained that the minutes mirror the transcript as to motions made and voted upon. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously

VOTED: To approve the minutes of the Open Session held on August 21, 2007.

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 Marsha E. Crecelius, the Senior Appraiser for the State of Rhode Island Department of Administration, Office of Municipal Affairs. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Weavill, the petitioner stated that she presently is working in Bristol but could possibly work in other communities. She explained that she performs the leg work and collects data and does not meet with any aggrieved property owners.

The petitioner provided further explanation regarding how revaluations are performed to be consistent with other communities where they have not been undertaken. She stated that she adjusts the bulk numbers for one community against another. In response to inquiry from Commissioner Cheit regarding the certification process, the petitioner read from the statutory provision. She further informed that she does not believe anyone has ever not been certified. In response to Commissioner Weavill, she estimated that there are five such companies in the state. Upon motion made by Commissioner Murray and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Marsha E. Crecelius, the Senior Appraiser for the State of Rhode Island Department of Administration, Office of Municipal Affairs.

The next advisory opinion was that of Todd M. Amaral, a Correctional Officer-Captain for the Department of Corrections. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. Commissioner Cheit disclosed that he teaches a class at the petitioner's facility, but he has never met him. In response to Staff Attorney DeVault, the petitioner stated that the facts she presented were accurate. The petitioner inquired whether he is prohibited from having someone in his law office represent someone in his chain of command. Commissioner Kirby opined that

he would run afoul of the Code of Ethics given that the petitioner has a participatory interest in the law partnership. Commissioner Kirby noted that the DOC has interaction with the Parole Board and questioned if the petitioner would represent female inmates before the Board. The petitioner replied that he would not.

Commissioner Kirby inquired regarding the petitioner's supervision of officers doing details at the female facility and indicated a potential problem could arise if he started representing female inmates and word gets out for them to hire him because he supervises the line officers who interact daily with the inmates. The petitioner stated that he understood the perception of the situation and assured that he does not intend to actively seek female inmate clients. He noted a prior situation in which he found out his client faced possible incarceration and withdrew his representation.

Commissioner Binder asked if he would feel comfortable representing a woman already incarcerated but not if she were on trial. The petitioner replied that in either case he would not represent any inmates. Commissioner Cheit asked for clarification of what the petitioner just said. The petitioner indicated that it would be nice to have the right to represent them but not to do it. Commissioner Cheit questioned why there is a need to address the representation of inmates in an advisory opinion if the petitioner is representing that he is not going to represent inmates, unless there is a possibility that he might. The petitioner responded that there is a possibility that he

would do it.

In response to Commissioner Cheit, the petitioner stated that he might represent an inmate if a friend or associate of his has a daughter who is a violator and asks him to represent her before the district court. Commissioner Cheit questioned what would happen if a female inmate in a family court matter had a husband who is a male inmate. The petitioner stated that he could not represent her. Commissioner Binder expressed that the representation of female inmates component of the opinion makes her uneasy and cautioned regarding the slippery slope. The petitioner noted that he framed his request as a general question. He indicated the he does not actively solicit female inmates, but inquired whether he could provide representation if a friend or associate came to him. Commissioner Cheit questioned whether that would be a much narrower question.

In response to Commissioner Kirby, the petitioner stated he would have to withdraw and provide disclosure to his employer under the DOC Code if a private male client of his were arrested for the first time. Chair Lynch observed that information passes quickly through the DOC and expressed his concerns regarding the female inmate representation portion of his request. He cautioned that the petitioner would be exposing himself to a difficult situation and, although the Code may allow it, he would need to be extremely cautious. Commissioner Murray expressed his discomfort with the broad nature of the request and stated he would be more comfortable

with the petitioner returning if a specific situation were to arise. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cheit to adopt the Commission Staff recommendation, there was discussion.

Commissioner Kirby noted that there are genuine concerns present given the petitioner's area of the law and the intersection of the Code of Ethics, Code of Professional Responsibility and the DOC Code. Commissioner Cheit distinguished the two issues and stated that he would be more comfortable with the first issue if the opinion included his representation that he would not represent clients before the Parole Board. He suggested not addressing the second issue and let him return if a specific situation were to arise. Commissioner Binder voiced her support. Commissioner Weavill concurred with Commissioner Murray and also stated that he would rather encourage the petitioner to cease and desist on the whole issue. He added that the petitioner could come back to address a specific situation.

Upon the original motion, it was

VOTED: To issue an advisory opinion, attached hereto, to Todd M. Amaral, a Correctional Officer-Captain for the Department of Corrections.

AYES: None.

NOES: James Lynch, Sr., James V. Murray, Ross Cheit, Barbara R. Binder, Richard E. Kirby and George E. Weavill, Jr.

The motion was defeated.

***Commissioner Butler arrived at 9:55 a.m.**

Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was

VOTED: To approve only the portion of the draft advisory opinion addressing the representation of employees, with the additional provision that such representation may not involve the Parole Board.

AYES: Richard E. Kirby, Ross Cheit and Barbara R. Binder.

NOES: George E. Weavill, Jr., James V. Murray and James Lynch, Sr.

ABSTENTION: Frederick K. Butler.

The motion failed due to a lack of five affirmative votes.

Chair Lynch explained that since no advisory opinion would issue the petitioner is not afforded any protection. He invited the petitioner

to return to the Commission when he has a more specific situation.

At approximately 10:02 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws §§ 42-46-5(a)(2) and 5(a)(4), to wit:

a.) Motion to approve minutes of Executive Session held on August 21, 2007.

b.) In re: Joseph A. Montalbano,
Complaint Nos. 2006-4 & 2006-11

c.) In re: Steven Campo,
Complaint No. 2007-5

d.) In re: James Seveney,
Complaint No. 2007-8

The Commission reconvened in Open Session at approximately 11:05 a.m. with Commissioner Segovis present. The next order of business was a motion to seal the minutes of the Executive Session held on September 11, 2007. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Murray, it was**

unanimously

VOTED: To seal the minutes of the Executive Session held on September 11, 2007.

Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on August 21, 2007; 2) approved an Informal Resolution & Settlement in the matter of In re: Joseph A. Montalbano, Complaint Nos. 2006-4 & 2006-11; 3) dismissed In re: Steven Campo, Complaint No. 2007-5 for failure to allege sufficient facts to support a knowing and willful violation of the Code of Ethics; and 4) dismissed In re: James Seveney, Complaint No. 2007-8, for failure to allege sufficient facts to support a knowing and willful violation of the Code of Ethics.

The next advisory opinion was that of Harold Krasner, a member of the City of Cranston Building Appeals Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. In response to Commissioner Weavill, Staff Attorney DeVault indicated that she spoke with the petitioner yesterday and the situation still exists. Commissioner Weavill stated that he has concerns and would like to hear from the petitioner. Staff Attorney DeVault informed that the petitioner advised her that he would not be in attendance and thought it was a straightforward issue. Commissioner Segovis suggested tabling the matter and asking him to be present to answer questions. Chair Lynch and Commissioner

Kirby agreed. Upon motion made by Commission Segovis and duly seconded by Commissioner Weavill to table the request, there was discussion.

Commissioner Binder inquired as to the status of the safe harbor letter. Chair Lynch and Commissioner Kirby suggested that it stand. Commissioner Segovis amended the original motion to table the matter for one month so that the petitioner may appear and if he does not the safe harbor will be withdrawn, and it was seconded by Commissioner Weavill. There was further discussion. Staff Attorney DeVault noted that the petitioner affirmatively represented that he would recuse if a matter came before him for which he had reviewed the plans. Commissioner Segovis stated that the representation should be in the opinion. Commissioner Weavill voiced his concern that the same builder for whom he reviewed plans could be appearing on other matters. Upon the motion, it was unanimously

VOTED: To table the matter for one month so that the petitioner may appear before the Commission, and if he does not the safe harbor will be withdrawn.

The next advisory opinion was that of Ronald Iannetta, a member of the City of North Providence School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. Commissioner Cheit noted the expedited response but inquired if the matter were moot. Staff Attorney DeVault stated that she tried to

contact the petitioner and he is not present. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Ronald Iannetta, a member of the City of North Providence School Committee.

The next advisory opinion was that of Mary E. Bray, a member of the Pawtucket City Council and the Rhode Island Public Utilities Commission. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was not present. Commissioner Weavill recused given that he will be appearing before the City Council soon. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Mary E. Bray, a member of the Pawtucket City Council and the Rhode Island Public Utilities Commission.

RECUSAL: George E. Weavill, Jr.

The next order of business was the Director's Report. Executive Director Willever reported that there are twenty-four complaints and fifteen advisory opinion requests pending. The complaints include seventeen non-filing complaints initiated by Staff on September 5th.

He advised that the Commission received one APRA request since the last meeting and provided the requested records. Director Willever introduced Steven Branch, the newly hired Investigator I, who was welcomed by the Commission. Director Willever also introduced former investigator Michael S. Douglas, to whom Chair Lynch presented a plaque in recognition of his outstanding service to the Commission.

The next order of business was New Business. Commissioner Cheit stated his preference that upon reconvening in Open Session the Commission report the actual votes taken in Executive Session.

At approximately 11:35 a.m., upon motion made by Commissioner Kirby and Commissioner Weavill, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

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George E. Weavill, Jr.

Secretary