

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

January 29, 2008

The Rhode Island Ethics Commission held its 3rd meeting of 2008 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, January 29, 2008, 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 Ross Cheit Richard E. Kirby Also present were Kathleen Managhan, Commission Legal Counsel; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross, Peter J. Mancini and Steven Branch. At approximately 9:02 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on January 15, 2008. 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 January 15, 2008. 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 Joseph M. Fernandez, Solicitor for the City of Providence. Staff Attorney Gramitt presented the Commission Staff recommendation. The

petitioner was present. Staff Attorney Gramitt clarified that the enumeration of the petitioner's powers and duties is not taken verbatim from the Charter and should be amended to include "among other things." *Commissioner Segovis arrived at 9:08 a.m. The petitioner indicated that he would consult with Legal Staff if he has further questions. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Binder, it was unanimously VOTED: To issue an advisory opinion, attached hereto, to Joseph M. Fernandez, Solicitor for the City of Providence. ABSTENTION: James C. Segovis. The next advisory opinion was that of Dawn P. Thurman, an Assessment Clerk for the Town of Middletown Tax Assessor's Office. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present. Staff Attorney Leyden advised that the request had been continued so the petitioner could be present to answer Commissioner Weavill's questions. The petitioner was present. In response to Commissioner Weavill, the petitioner informed that only the records in her boss's office are confidential. She represented that she is presently updating assessment records and any information she enters into the computer is available to the public, but the information is not guaranteed until the Assessor certifies the tax roll. She clarified that she does not perform real estate assessments. Commissioner Weavill inquired into her contact with people coming to her office regarding real estate, such as for a market analysis. She noted that an appraiser would perform a market analysis and added that she would not know if a person coming to her office were a real estate

agent or a taxpayer. In response to Commissioner Weavill, the petitioner stated that she most likely would be working solo on the weekends from her home computer. Commissioner Weavill expressed concern that she would have information available to her in her office that would be of assistance in getting listings. The petitioner explained that the process begins in the Planning Office and then goes to the Town Clerk. She indicated that the Assessor's Office is not an office of record and its records are working papers. She advised that she sought an opinion because as a paralegal by trade she wanted to cover all bases. She also informed that she recently took several appraiser classes at her boss's request, in the event that she would take over for him in the future. She clarified that she would not take a second job in real estate sales if she ever were to become the Assessor. Commissioner Segovis inquired whether others in real estate sales and appraising might perceive her as having an unfair advantage, to which she replied that she did not believe so. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Murray, it was VOTED: To issue an advisory opinion, attached hereto, to Dawn P. Thurman, an Assessment Clerk for the Town of Middletown Tax Assessor's Office. AYES: Richard E. Kirby, James V. Murray, Ross Cheit, Barbara R. Binder and James Lynch, Sr. NOES: George E. Weavill, Jr. and James C. Segovis. The next advisory opinion was that of Chief Thomas D. Gordon, Chief of Police for the Town of Warren. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Chair Lynch, Staff

Attorney DeVault stated that she did not have a letter from the Town Manager stating what he is willing to do. Commissioner Binder commented that the past precedents to which the draft cites are somewhat different, as those involved, in one instance, a seasonal position and, in another, pre-existing employment. She questioned whether anyone in the Fire Department could handle discipline matters involving his son-in-law. The petitioner replied that any discipline is referred to the Town Manager's Office given that dispatchers are not IBPO members. He noted that there was an attachment to the conditional offer of employment that the Town Manager would handle discipline. Chair Lynch stated that the Commission does not have that information and the petitioner indicated that he could provide it. In response to Commissioner Cheit, the petitioner informed that normally all applications are forwarded to him, but here they went to the Town Manager. In response to Commissioner Cheit, Staff Attorney DeVault stated that there were other finalists from Warren. Commissioner Weavill noted that the oral exam was conducted by the petitioner's subordinates and he asked how much of the total score was based upon the oral exam. Staff Attorney DeVault stated that the information provided lists the applicants' rankings but not the weight of each portion of the exam. In response to Commissioner Weavill, the petitioner advised that the position is not a stepping stone to get onto the Police or Fire Department. He clarified that a dispatcher would be able to bid into a position in the DPW union. He further indicated that he had been a dispatcher twenty-seven years ago and there is one other member of

the Department who is a former dispatcher. In response to Commissioner Weavill, the petitioner stated that shift assignments are pursuant to the steelworkers' contract, where a rotating list is used for available overtime. He indicated that police officers do not have input regarding such overtime. Commissioner Cheit inquired if the officers conducting the oral exam knew that his son-in-law was an applicant. The petitioner advised that he did not make it known to them. Commissioner Cheit asked why administration of the oral exam did not get placed outside of the Department, as the written portion had been. The petitioner noted that the Department looks for specific traits in applicants and wants to have input. In response to Commissioner Cheit, he stated that it might have been a mistake not to place the oral exam outside of the Department. Commissioner Segovis suggested that it would be best to have the Town Manager submit a letter setting forth the process. Commissioner Binder suggested that the methodology for dealing with disciplinary matters may be incorrect as stated on page three of the draft. The petitioner represented that he was talking about formal discipline matters when he indicated such matters would be referred to the Town Manager. Commissioner Binder commented that it should be clarified. In response to Commissioner Weavill, the petitioner indicated that no IBPO rights attach to dispatchers, who are civil employees. Commissioner Kirby inquired whether, when interviewing candidates for police officers, there are points afforded for being a member of a different union. The petitioner stated that there are not. Upon motion made by Commissioner Segovis and duly seconded by

Commissioner Binder, it was unanimously VOTED: To defer issuance of an advisory opinion until the Commission receives the following: 1) a letter from the Town Manager outlining the steps taken to remove the Chief from the situation; 2) clarification regarding the referral of disciplinary matters as set forth in page three of the draft; and 3) clarification regarding the oral exam and the weight afforded to it.

The next advisory opinion was that of Denise Matisewski, a former Senior Medical Care Specialist for the Department of Human Services. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. She advised that the Jugan residence is a non-profit run by a religious order and that most of its patients are indigents who are already Medicaid eligible. Commissioner Weavill inquired whether the petitioner would be able to resist contacting her former agency if she disagreed with the results of a report, for example. The petitioner stated that she understands that she cannot reach out to DHS staff. In response to Commissioner Cheit, she explained that she had given DHS her two weeks notice already when she received a telephone call from Jugan's social worker. She represented that she informed the social worker that she would be leaving shortly, to which the social worker replied that she was leaving Jugan and asked her to consider the position. The petitioner advised that Jugan contacted her in January. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Cheit, it was unanimously VOTED: To issue an advisory opinion, attached hereto, to Denise Matisewski, a former Senior Medical Care Specialist for the Department of Human

Services. The next advisory opinion was that of Patricia Sylvester, a member of the Tiverton Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously VOTED: To issue an advisory opinion, attached hereto, to Patricia Sylvester, a member of the Tiverton Planning Board. The next advisory opinion was that of Peter Corr, a member of the Tiverton Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. Staff Attorney DeVault noted that the matter had been continued from the prior meeting and the safe harbor letter had been withdrawn. She advised of further information received from the petitioner. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Weavill, it was unanimously VOTED: To issue an advisory opinion, attached hereto, to Peter Corr, a member of the Tiverton Planning Board. The next advisory opinion was that of Peter F. Kilmartin, a legislator serving in the Rhode Island House of Representatives. Staff Attorney Gramitt presented the Commission Staff recommendation. He advised that he received correspondence from the petitioner indicating that he would be unable to attend. Chair Lynch questioned if there even was a need for the opinion, given the facts. Commissioner Weavill noted that he would recuse given that Mr. Horan has performed legal work for him, which is likely to continue. Upon motion made by Commissioner Binder and duly seconded by Commissioner Cheit, it was unanimously VOTED: To

issue an advisory opinion, attached hereto, to Peter F. Kilmartin, a legislator serving in the Rhode Island House of Representatives. RECUSAL: George E. Weavill, Jr. The next order of business was Discussion of Receipt of Motion to Reconsider Finding of Probable Cause in the matter of In re: Joseph S. Larisa, Jr., Complaint No. 2007-6. Commissioner Binder recused and left the meeting. Senior Staff Attorney D'Arezzo advised that she forwarded correspondence to the Respondent notifying him that the matter would be discussed, along with a copy of her Objection and the agenda. She noted that the Respondent is not present and has not contacted the Commission Office. Chair Lynch asked Legal Counsel Managhan for input. Legal Counsel Managhan advised that there is no provision in the Code for reconsideration of a Finding of Probable Cause. She stated that she would advise them to consider it if the Respondent were to argue that he were somehow prejudiced at the Probable Cause Hearing. She indicated that he is still able to make his arguments at adjudication. In response to Commissioner Murray, Legal Counsel Managhan stated that the Respondent may file any pre-adjudication motion he chooses. She confirmed that he could file a pre-trial motion to dismiss if the Commission does not act on his current submission. Commissioner Kirby commented that a motion to dismiss would generally be filed regarding prior procedural errors or constitutional issues. Commissioner Cheit expressed that this is a motion for a do-over. Commissioner Segovis stated that the Respondent has other legal remedies available to him later on. Upon motion made by Commissioner Segovis and duly seconded by

Commissioner Cheit, it was unanimously VOTED: To decline to entertain Respondent's Motion to Reconsider Finding of Probable Cause. In response to Commissioner Cheit, Senior Staff Attorney D'Arezzo advised that the Investigative Report, Order and Finding of Probable Cause, Respondent's Motion for Reconsideration and her Objection thereto are all public. * Commissioner Binder returned to the meeting. At 10:24 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit: a.) Motion to approve minutes of Executive Session held on January 15, 2008. b.) Status Update: William V. Irons v. Rhode Island Ethics Commission, Superior Court C.A. No. 07-6666c.) Motion to return to Open Session. The Commission reconvened in Open Session at approximately 10:39 a.m. The next order of business was a motion to seal minutes of the Executive Session held on January 29, 2008. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Murray, it was unanimously VOTED: To seal the minutes of the Executive Session held on January 29, 2008. * Commissioner Kirby left the meeting at 10:39 a.m. Chair Lynch reported that the Commission approved the minutes of the Executive Session held on January 15, 2008 and received a status update from Staff regarding William V. Irons v. Rhode Island Ethics Commission. The next order of business was a Discussion of the Commission Regulatory Agenda for 2008. Staff Attorney Gramitt advised that his memoranda sets forth proposals previously considered by the

Commission and may be of assistance in prioritizing which matters it wishes to address and their priorities. Commissioner Segovis suggested that several of the items already had been considered and should be noticed for hearing. Commissioner Cheit commented that items 1, 3, 4 and 5 are self-contained and should go forward. He noted that the informal disposition proposal implicates the role of the Complainant, which he hopes will be a workshop topic. He stated that the class exception clearly needs a workshop, but it should be addressed after considering the role of the Complainant. Commissioners Lynch, Segovis and Murray expressed agreement. In response to Commissioner Segovis, Staff Attorney Gramitt advised that the Staff will begin the process of advertising the public hearing as soon as possible and will post the proposals on the website. Chair Lynch expressed his concerns regarding the class exception and voiced support for its elimination. Commissioner Weavill stated that he would like to see the class exception tackled while he is still on the Commission. Chair Lynch instructed the Staff to post the four agreed upon items and indicated that the others will be workshop items as time permits. Staff Attorney Gramitt clarified that the Commission is going forward with public notice regarding items 1, 3, 4 and 5, and that items 2 and 6 would be the subject of future workshops. Commissioner Weavill questioned whether they were comfortable with the proposals as drafted. Staff Attorney Gramitt indicated that the Staff will go through the proposals again and asked the members to contact him if they have any comments. Commissioner Segovis suggested that there needs to be a workshop

on item 1 before it is noticed for hearing. Commissioner Cheit noted that the Commission had received written feedback on the subject in the context of a recent case. There was discussion on whether the proposal should be made retroactive to address that case. Senior Staff Attorney D'Arezzo indicated that if the Commission were to adopt such regulation, she would anticipate filing a related motion in that matter. Commissioner Cheit suggested noticing items 3, 4 and 5 as drafted and making item 1 the top workshop priority. Commissioner Segovis agreed. Commissioner Weavill urged the members to workshop item 1 at the next meeting and then notice items 1, 3, 4 and 5 for public hearing. Commissioners Binder and Cheit concurred and noted that it would be a cost saving measure to handle them all at once. In response to a question posed from the audience by John M. Roney, Esq., Staff Attorney Gramitt stated that his memorandum to the Commission is public. The next order of business was the Director's Report. Senior Staff Attorney D'Arezzo informed that there are six advisory opinions and eight complaints pending. She advised that four of the complaints are conflict matters and noted that the Investigative Staff recently initiated four non-filing complaints against municipal Zoning Board officials. She reported that one formal APRA request has been granted since the last meeting. Senior Staff Attorney D'Arezzo stated that a copy of the Commission's media policy has been provided to the members. She indicated that the policy only addresses media coverage of adjudications and may need to be updated. The next order of business was New Business. There being none, at 11:00 a.m., upon

**motion made by Commissioner Weavill and duly seconded by
Commissioner Binder, it was unanimously VOTED: To
adjourn.**

Respectfully submitted,

_____ **George E. Weavill, Jr. Secretary**