

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**October 7, 2008**

**The Rhode Island Ethics Commission held its 18th 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, October 7, 2008, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair James V. Murray  
Ross Cheit, Vice Chair Frederick K. Butler  
J. William W. Harsch, Secretary Deborah M. Cerullo SSND  
Richard E. Kirby\***

**Also present were William J. Conley, Jr., 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; and Commission Investigators Peter J. Mancini and Steven Branch.**

**At 9:00 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held**

on September 23, 2008. Commissioner Murray noted that he, and not Commissioner Cheit, had disclosed a prior attorney-client relationship with petitioner Paul D. Ragosta, Esq. Upon a motion made and duly seconded, it was unanimously

**VOTED:** To approve the minutes of the Open Session held on September 23, 2008, as corrected.

**ABSTENTION:** Frederick K. Butler.

The next order of business was that of 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 Scott N. Marshall, DVM, the Rhode Island State Veterinarian. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was not present. In response to Commissioner Harsch, Staff Attorney DeVault stated that she specifically clarified with the petitioner that he would receive no salary as an adjunct and he stated that it would be an unpaid position. In further response, Staff Attorney DeVault stated that she did not ask the petitioner why he was interested in serving as an adjunct at URI. Commissioner Cheit commented that it would probably be mutually beneficial to URI and the petitioner for him to serve as an adjunct.

**Upon motion made and duly seconded, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Scott N. Marshall, DVM, the Rhode Island State Veterinarian.**

**The next advisory opinion was that of John R. Connors, a Town of Burrillville police officer. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was not present. Upon motion made and duly seconded, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to John R. Connors, a Town of Burrillville police officer.**

**At approximately 9:15 a.m., upon motion made and duly seconded, 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 minute of Executive Session held on September 23, 2008.**

**b.) In re: Susan D. Menard,  
Complaint No. 2008-1**

**c.) In re: Brian Remy,**

**Complaint No. 2008-7**

**d.) In re: Dwight Farrar,  
Complaint No. 2008-6**

**e.) In re: Frank Hyde,  
Complaint No. 2008-5**

**f.) Motion to return to Open Session.**

**The Commission reconvened in Open Session at 12:30 p.m. Commissioner Kirby was present, having arrived during the Executive Session.\* The next order of business was a motion to seal the minutes of the Executive Session held on October 7, 2008. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on October 7, 2008.**

**Commissioner Cheit reported that in Executive Session the Commission approved minutes of the Executive Session held on September 23, 2008 and it unanimously voted in the matter of Complaint No. 2008-1, In re: Susan D. Menard, that there exists probable cause that the Respondent violated R.I. Gen. Laws § 36-14-5(a), (d) and (h). Commission Chair Binder reported that the**

**Commission unanimously voted to authorize full investigations in the following matters: In re: Brian Remy, Complaint No. 2008-7; In re: Dwight Farrar, Complaint No. 2008-6; and In re: Frank Hyde, Complaint No. 2008-5.**

**\*Commissioner Kirby left the meeting at 12:33 p.m.**

**The next order of business was an Overview/Discussion of Standards for Recusal.**

**Legal Counsel Conley presented the Commission with a memorandum, prepared at the Chairperson's request, which summarizes the standards for recusal under the Code of Ethics. He noted that the memorandum also provides a summary of other such standards, as found in 28 U.S.C. 455, the ABA Model Code for Judicial Conduct, and the Rhode Island Code of Judicial Conduct. He stated that the Code and judicial standards would both apply, given that the Commission sits in a quasi-judicial capacity. In response to Commissioner Cheit, Legal Counsel Conley informed that a motion to recuse an individual Commissioner would be directed to the individual member, not the body. He added that there are no rules or procedures addressing a majority vote to require a member to recuse.**

**Commissioner Cheit inquired what would happen if such a motion were made and the individual did not recuse. Legal Counsel Conley suggested that the person making the motion could request a stay of**

proceedings while they sought judicial review of the recusal request. He indicated that, traditionally, there has been a significant reluctance on the part of the courts to interfere with administrative proceedings. In further response to Commissioner Cheit, Legal Counsel Conley advised that a party in interest in a case could ask the Commission for a declaratory judgment regarding its own rules. Commissioner Cheit expressed his concern that perhaps sometimes people recuse too quickly. He noted that it could be to a Respondent's benefit if people recuse when they need not. Chair Binder inquired about application of the Rule of Necessity.

Senior Staff Attorney D'Arezzo advised that the Commission received an advisory opinion from the Department of Attorney General several years ago regarding its own application of the Rule of Necessity in a complaint against John Harwood. She recalled that the Commission was left without a quorum to handle the matter and the opinion indicated that the names of those members who stated their intent to recuse would be drawn from a hat by the Acting Director. Those members whose names were drawn would then participate. She noted that the rule applies when recusals are based upon true conflicts. In response to Commissioners Cheit and Harsch, she clarified her meaning that "true" conflicts would be those where the Code prohibits participation. In response to Commissioner Harsch, Senior Staff Attorney D'Arezzo stated that only the Commission itself could make a determination as to whether a conflict under the Code requires recusal. She indicated that she could not recall the specific

language of the opinion but would provide a copy to any member who wished to review it.

The next order of business was the Director's Report. Executive Director Willever reported that there are twenty-one complaints pending, including eight conflict and thirteen non-filing complaints. He advised that the Staff recently filed non-filing complaints and Chief Investigator Cross will present the annual Operation Compliance update at the next meeting, time permitting. Director Willever informed that there are five advisory opinions pending and two formal APRA requests have been granted since the last meeting. He advised that the Staff continues to be busy with budget and personnel matters and the education program is ongoing.

The next order of business was New Business. Chair Binder advised that the 7(b) class exception has not been placed on the agenda for discussion. She noted that it will not appear on the agenda until someone has something they wish to do or discuss, so as to avoid having the public come in when no action is being contemplated. Commissioner Cheit provided an update from last meeting's adjudication of In re: Joseph S. Larisa, Jr. He stated that Legal Counsel Staci Kolb is circulating a draft Decision & Order for the membership's review.

At approximately 1:10 p.m., upon motion made and duly seconded, it was unanimously

**VOTED: To adjourn.**

**Respectfully submitted,**

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**J. William W. Harsch**

**Secretary**