

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

**October 20, 2009**

**The Rhode Island Ethics Commission held its 15th meeting of 2009 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 20, 2009, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair Edward A. Magro**

**Ross Cheit, Vice Chair Mark B. Heffner\***

**J. William W. Harsch, Secretary John D. Lynch, Jr.\*\***

**James V. Murray**

**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 Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

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

**October 6, 2009. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To approve minutes of the Open Session held on October 6, 2009.**

**ABSTENTIONS: J. William W. Harsch and Barbara R. Binder.**

**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 Donato Andre D'Andrea, Esq., the Portsmouth Town Solicitor. \*Commissioner Heffner arrived at 9:02 a.m.**

**Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney DeVault noted a correction to the draft opinion, which stated that the proposal would impact approximately 4,000 lots, which represented a third of the total lots in the municipality. She informed that the Petitioner subsequently has advised that, based upon information obtained from the Town Planner, there are approximately 7,000 total lots on Aquidneck Island, and a few hundred more on Prudence Island. Thus, the 4,000 potentially impacted lots represent approximately 56 to 57% of the total number of lots in the municipality.**

**\*\*Commissioner Lynch arrived at 9:07 a.m.**

**The Petitioner stated that he is not before the Commission as an advocate and takes no position as to how it should rule on this matter. Upon motion made by Commissioner Murray and duly seconded by Commissioner Heffner, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Donato Andre D'Andrea, Esq., the Portsmouth Town Solicitor.**

**The next advisory opinion was that of Judge Steven J. Hart, the Probate Judge of the Town of Coventry Probate Court. Commissioners Heffner and Lynch recused and left the meeting at 9:12 a.m.\***

**Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Gramitt noted that the matter was continued from the last meeting so that the Petitioner could answer questions. In response to Commissioner Murray, the Petitioner indicated that he has about twelve estates pending before the Probate Court. He stated that he intends to turn the other matters, which are not substantially completed, over to other attorneys to handle. In further response, he stated his belief that successor counsel could present attorney fees applications to the Probate Court on his behalf. In response to Chair Binder, he stated his belief that his appearance before the Probate Court, if**

allowed, would be before a municipal court judge acting in such capacity. He further replied that he does not believe that the municipal court judge appears before the Probate Court in his private capacity. Upon motion made by Commissioner Harsch and duly seconded by Chair Binder to approve the draft recommendation, there was discussion.

Commissioner Murray voiced his discomfort with the application for fees, particularly where someone else could present it for the Petitioner. The Petitioner noted that this matter was before the Probate Court prior to his appointment and no one has filed an objection. He noted that, as an alternative, he could probably close the estate by affidavit by having all the beneficiaries, of which there are about eight, come to his office and sign a release. He stated that he did not want to burden the estate with additional attorney fees. In response to Commissioner Harsch, he estimated the estate to be worth about \$220,000. In response to Commissioner Cheit, the Petitioner stated that it could cost more to proceed with the alternative because some beneficiaries reside out of state and would have to come in to his office to sign the release. He noted that he could use out of state notaries but he prefers to have them sign in person.

In further response to Commissioner Cheit, the Petitioner informed that he would have expected any objection to be raised when the matter was filed in July, but he acknowledged that the beneficiaries

could still object at the hearing. In response to Commissioner Cheit, Legal Counsel Conley advised that objections are normally brought prior to hearing. Chair Binder stated that it would be important to include in the opinion that the municipal court judge would be sitting on this matter. Staff Attorney Gramitt noted that the draft opinion relies upon the charter provision which states that the Solicitor shall sit in the Probate Court Judge's absence. The Petitioner informed that that would not be happening, given that Edwards & Angell serves as the Solicitor and there would be substantial costs involved. Chair Binder expressed that she would be more comfortable with having the opinion specify that the municipal court judge will sit. Staff Attorney Gramitt stated that the draft can be amended to state that the Petitioner represents that he will recuse and the matter will be handled by a municipal court judge who does not practice before the Probate Court.

In response to Commissioner Murray, Legal Counsel Conley advised that Rhode Island probate courts honor releases signed and notarized out of state. In response to Commissioner Magro, the Petitioner indicated that the additional fees involved in proceeding with the alternative would relate to eight individuals meeting with him at his office, perhaps at a total cost of \$1,000. In response to Commissioner Murray, the Petitioner stated the he does not know Mr. Capaldi, the municipal court judge, to have practiced before the Probate Court. However, he stated that his law firm and his law partner, former Probate Court Judge Boulanger, do so. Staff Attorney

**Gramitt advised that former Judge Boulanger recently received an advisory opinion regarding his ability to appear before the Probate Court within one year of his leaving that position.**

**Chair Binder inquired if the Commission would be more comfortable if the Petitioner were to have the releases signed and close the estate by affidavit. Commissioners Murray and Magro answered in the affirmative. Chair Binder stated that she would be more comfortable with that alternative as well. The Petitioner indicated that it would be fine with him. Staff Attorney Gramitt noted that the Petitioner still needs a hardship exception opinion, but the draft must be rewritten to reflect the filing of an affidavit of complete of administration as well as the safe harbor afforded. Chair Binder stated that the matter need not be brought back to the Commission and directed the Staff to draft language approving the hardship exception with the inclusion of the new fact pattern relating to the filing of an affidavit of complete administration. Commissioner Harsch amended his original motion, which was seconded by Chair Binder. Upon the motion, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Judge Steven J. Hart, the Probate Judge of the Town of Coventry Probate Court.**

**The next advisory opinion was that of Judge Steven J. Hart, the Probate Judge of the Town of Coventry Probate Court. Staff Attorney**

**Gramitt presented the Commission Staff recommendation. The Petitioner was present. The Petitioner represented that the appeals period on a prior objection has expired and the estate is ready for disbursement. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cheit, it was unanimously,**

**VOTED: To issue an advisory opinion, attached hereto, to Judge Steven J. Hart, the Probate Judge of the Town of Coventry Probate Court.**

**\*Commissioners Heffner and Lynch returned to the meeting at 9:29 a.m.**

**At 9:30 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, 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 October 6, 2009.**

**b.) In re: Kim Petti,  
Complaint No. NF2009-6**

**c.) In re: Robert H. Wimer,**

**Complaint No. NF2009-14**

**d.) In re: Christopher Willi,  
Complaint No. 2009-4**

**e.) Report on Preliminary Investigation No. 2009-1  
pursuant to Commission Regulation 36-14-12001.**

**f.) Notification of initiation of Preliminary Investigation  
No. 2009-2 pursuant to Commission Regulation 36-14-12001.**

**g.) Collection Action Update:  
In re: Louis Aponte,  
Complaint No. NF2005-3**

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

**The Commission returned to Open Session at 9:58 a.m. The next order of business was a motion to seal minutes of the Executive Session held on October 20, 2009. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on October 20, 2009.**

**Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved the minutes of the Executive Session held on October 6, 2009; 2) found that probable cause exists to support Complaint No. NF2009-6, In re: Kim Petti; 3) received an update that Complaint No. NF2009-14, In re: Robert H. Wimer, settled for \$500; 4) received an update on Preliminary Investigation No. 2009-1; 5) received notice of initiation of Preliminary Investigation No. 2009-2; and 6) approved settlement negotiations in the matter of In re: Louis Aponte, Complaint No. NF2005-3.**

**The next order of business was review and consideration of proposed General Commission Advisory Opinion (GCA) No. 2009-3: Participation in Union Actions by Public Officials who are Union Members. Staff Attorney DeVault noted that at its last meeting the Commission decided to address the issue through adoption of a GCA, rather than by rulemaking. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cheit, it was**

**VOTED: To adopt (1st vote) proposed GCA No. 2009-3: Participation in Union Actions by Public Officials who are Union Members.**

**AYES: J. William W. Harsch, Mark B. Heffner, James V. Murray, Edward A. Magro, Ross Cheit and Barbara R. Binder.**

**NOES: John D. Lynch, Jr.**

**Staff Attorney DeVault informed that the Commission would now seek public comment on the proposal and requested clarification regarding which additional individuals and entities would receive notice. Chair Binder stated that notice should be provided to all school committees, as well as individuals who received prior advisory opinions. In response to Commissioner Magro, Chair Binder stated that it makes sense to provide the additional notice for both the public comment period and after the Commission adopts the proposal. Staff Attorney DeVault noted that the thirty-one individuals to whom opinions had issued since 1995 would receive notice.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are seven complaints, four advisory opinions and two preliminary investigations pending. He stated that there have been no formal APRA requests since the last meeting.**

**The next order of business was New Business proposed for future Commission agendas. Commissioner Cheit noted that, while the Commission reports out the votes taken in Executive Session upon returning to Open Session, it does not report how each member voted on the issues. He indicated that he has raised the issue previously and would like the Commission to consider it again, with input from Staff regarding the requirements of the Open Meetings Act. Senior Staff Attorney D'Arezzo informed that the Commission may choose to**

**disclose individual votes taken in Executive Session at its discretion; however, she stated that the Executive Session minutes for individual matters disclose how each member voted on the issue. She noted that those individual minutes are available to the public upon approval. Commissioner Cheit expressed his concern regarding the need to report those individual votes.**

**At 10:07 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**J. William W. Harsch**  
**Secretary**