

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

**March 23, 2010**

**The Rhode Island Ethics Commission held its 6th meeting of 2010 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, March 23, 2010, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair Frederick K. Butler**

**Ross Cheit, Vice Chair\* Deborah M. Cerullo SSND**

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

**James V. Murray**

**Also present were Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt and Esme DeVault; and Commission Investigator Gary V. Petrarca.**

**At 9:06 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on March 9, 2010. Upon motion made by Commissioner Harsch and**

**duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To approve minutes of the Open Session held on March 9, 2010.**

**ABSTENTION: James V. Murray.**

**Chair Binder asked for a motion to amend the Open Session agenda to include a Legislative Update for informational purposes. Upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To amend the Open Session agenda to include a Legislative Update for informational purposes.**

**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 Bradford G. Marthens, a member of the Block Island Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was not present.**

**\*Commissioner Cheit arrived at 9:15 a.m.**

**In response to Chair Binder, Staff Attorney DeVault stated that she had spoken with the Petitioner and advised him of the Staff recommendation that recusal is required. In response to Commissioner Harsch, Staff Attorney DeVault stated that the Planning Board is acting in an advisory capacity, but it is reasonably foreseeable that there would be a direct financial impact on the Petitioner's business and that of his competitor if the matter goes forward. Commissioner Cheit inquired whether it is known what the people from Ballard's think. Staff Attorney DeVault replied that she is not at liberty to say.**

**Upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo to adopt the draft opinion, there was discussion. In response to Commissioner Cheit, Staff Attorney DeVault informed that although the Petitioner did not agree with the draft opinion, he still wanted it. In further response, she indicated that the Petitioner did not want to come and argue as to the recommendation. Upon the original motion, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Bradford G. Marthens, a member of the Block Island Planning Board.**

**The next advisory opinion was that of Nancy L. Freeman, a Senior Environmental Scientist with the Rhode Island Department of Environmental Management. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was not present.**

**Staff Attorney DeVault advised that the Petitioner's spouse has also submitted a similar request. In response to Commissioner Cheit, she informed that she has spoken with the Petitioner and her spouse since they received the draft opinions and they understand the need to remove themselves from actions at the DEM and CRMC, respectively. In response to Commissioner Harsch, she indicated that relationships with non-profits would fall within the definition of "business associate" under the Code. She noted that the Commission has issued numerous opinions stating that persons in a position of leadership in a non-profit, allowing them to affect the organization's financial objectives, are business associates of the entity. Commissioner Cheit noted that Brown University is one example.**

**Commissioner Cerullo questioned what information the Commission has regarding the nature of the Petitioner's department and how realistic is it that she would be able to recuse. Staff Attorney DeVault replied that she does not have specific information regarding the number of employees within the department. However, she stated that the Petitioner was clear that she wants no involvement with these matters at the DEM. Staff Attorney DeVault expressed her understanding that the Petitioner would immediately hand such matters up to a supervisor. Commissioner Cerullo noted that her last question goes to the appearance of impropriety issue, but she is satisfied with the response. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray, it was**

**unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Nancy L. Freeman, a Senior Environmental Scientist with the Rhode Island Department of Environmental Management.**

**The next advisory opinion was that of David S. Reis, a Supervising Environmental Scientist with the Rhode Island Coastal Resources Management Council. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was not present. Staff Attorney DeVault informed that the Petitioner has additional facts not presented by his spouse's request, specifically that he also serves on the Land Trust Site Advisory Committee. She stated that she informed the Petitioner that the Staff recommendation would be that he could not review his subordinates' work, but he indicated that it would be no problem. She stated that the Petitioner represented that he will completely remove himself and a supervisor would take over reviewing his subordinates' work.**

**In response to Commissioner Harsch, Staff Attorney DeVault stated that she does not know if the Crandall property is within the CRMC's jurisdiction. Commissioner Butler inquired what benefit the opinions would be to the Petitioner and his spouse if they are aware that they are receiving a negative response. Staff Attorney DeVault advised that it allows them to advise the Land Trust with a clear understanding of what they can and cannot do, which she does not**

believe is perceived as a negative. Commissioner Cerullo inquired whether there is any information regarding the Petitioner's relationship with the subordinates who would be reviewing the Land Trust matters. Staff Attorney DeVault stated that the Petitioner did not represent that he would cease supervising the subordinates in other realms, but just on the Land Trust matters.

Commissioner Cerullo inquired as to the amount of work on which the Petitioner would have to recuse. Staff Attorney DeVault replied that, while she does not have specific information, she does not believe it would be a large amount. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Murray to adopt the draft opinion, there was discussion. Commissioner Cerullo expressed her discomfort and stated her preference to obtain information regarding supervision of the subordinates and the amount of work involved. Chair Binder concurred that it would be good to determine the amount of work on which recusal would be required. Commissioner Cerullo stated that if it would involve a substantial amount of work that the Petitioner would be precluded from doing in his state job, she believes there would be a conflict. Commissioner Cheit agreed.

Commissioner Cerullo voiced her concern that if the Petitioner's subordinate were to make a recommendation as to the Land Trust with which he does not agree, even if the matter were handed up the chain of command, the Petitioner would still be exercising

supervision over that subordinate. She expressed that the Commission does not have enough facts. Commissioner Cheit suggested that they find out about the volume of applications anticipated. Chair Binder further suggested that they obtain information as to how many persons are employed within the department. Commissioner Cerullo stated that she would like to know about the nature of his supervision of subordinates, even outside of Land Trust matters. Commissioner Cheit inquired if the matters could be reviewed by someone superior to the Petitioner or who does not report to him. Chair Binder noted that the Commission has received information regarding alternate chains of command in nepotism matters.

Chair Binder inquired whether the original motion would be withdrawn. Commissioner Harsch stated that he is prepared to withdraw it if the Chair wishes, but he indicated that he does not share in the discomfort. He noted that the Staff is asked to use its best judgment in ascertaining the information required for issuance of advisory opinions. He stated that the Staff asks as many of those questions as it deems appropriate to prepare the draft opinion. Commissioner Harsch stated that the Commission asks many questions of the Petitioners coming before it. He indicated that the Commission is being very scrupulous at the lower levels of government, but not so at the higher levels, like the legislature. He expressed that the Commission is inadvertently developing a double standard by being inconsistently in-depth in its questioning.

**Commissioner Cheit objected to Commissioner Harsch's characterization of the Commission's level of scrutiny. He stated that the Commission is not going after the legislature because the Court told it that it could not. He indicated that the higher levels of government, such as the Attorney General and the General Treasurer, have been treated the same as other Petitioners. Commissioner Harsch disagreed. Commissioner Butler noted that advisory opinions are limited to the Petitioner's representations. In response to Commissioner Lynch, Staff Attorney DeVault confirmed that advisory opinions are not investigatory proceedings. She explained that the Staff does contact Petitioners to ask clarifying questions to assist in preparing the draft opinion. Commissioner Cerullo stated that she does not believe the Commission has enough information. Chair Binder suggested that the matter be tabled for two weeks and the Petitioner strongly advised to appear to answer any questions. Commissioner Harsch agreed.**

**The next order of business was a Legislative Update. Staff Attorney Gramitt informed that he spoke before the Senate Rules Committee on March 11th regarding Senate Bills 2461 and 2462, which would allow for the Senate's self-regulation of conflicts of interest. He stated that he explained the impact of the Irons decision but did not give testimony in support or opposition thereto. He reported that Operation Clean Government and Common Cause vigorously opposed the bills, which have been held for further study. In**

response to Commissioner Cheit, Staff Attorney Gramitt indicated that Senator Ciccone, who sponsored the legislation, testified in its support. He stated that the sponsor's main point was that he did not like the idea of investigators and prosecutors being in the same office and suggested that it should be more like the State Police conducting an investigation and then handing it off to the Attorney General.

Staff Attorney Gramitt informed that House Bill 7090 is scheduled for hearing today before the House Judiciary Committee. The bill, sponsored by Representative McNamara, places restrictions on the ability of employees in the Executive branch to leave their current position and take a position with any state or quasi-public agency until a new governor is elected. He stated his belief that the bill as drafted is overly broad and would prohibit transfers and advancements. Chair Binder indicated that the Commission would not want to enforce such legislation and suggested that Staff Attorney Gramitt could testify as to its effects. Staff Attorney Gramitt indicated that he could state the Commission's concerns regarding over-breadth and unintended consequences. In response to Commissioner Harsch, Staff Attorney Gramitt stated that he has not spoken with the sponsor, but he may have the opportunity tonight. Commissioner Harsch expressed that it sounds like the bill is intended to be directed at the Executive Office, the Governor's inner circle.

Staff Attorney Gramitt informed that Speaker Fox's resolution, for a

**constitutional amendment to provide that the Commission has jurisdiction over the legislature, notwithstanding the Speech in Debate Clause, will be before the House Judiciary Committee this evening. He suggested that he attend the hearing and testify that the Commission is not arguing for an expansion of its jurisdiction, but that it believes it was the intent of the voters in 1986 for it to have that jurisdiction. He stated that he would testify that the Commission supports putting it on the ballot for the People to decide. Chair Binder agreed.**

**At 9:45 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(1) and (4), to wit:**

**a.) Motion to approve minutes of Executive Session held on March 9, 2010.**

**b.) Informal Resolution & Settlement:**

**In re: Christopher Willi,**

**Complaint No. 2009-4**

**c.) Legal Counsel Applicant Interviews.**

**d.) Discussion re: Legal Counsel Applicant Interviews.**

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

**Prior to convening in Executive Session Chair Binder announced that any persons to be discussed in Executive Session have been notified of their right to have the discussion take place at an Open meeting.**

**At 10:15 a.m., the Commission returned to Open Session. Chair Binder announced that the Commission would be convening in Executive Session again. She reported that the Commission took the following actions: 1) approved minutes of the Executive Session held on March 9, 2010 by unanimous vote; 2) approved an Informal Resolution & Settlement in the matter of In re: Christopher Willi, Complaint No. 2009-4, by unanimous vote; and 3) conducted some of its Legal Counsel Interviews.**

**The next order of business was discussion regarding withdrawal of the Commission Initial Determination Policy. Senior Staff Attorney D'Arezzo advised that the Policy, which was originally adopted in 1993 and amended in 2008, is inconsistent with regulatory amendments which were adopted at the March 9th public hearing. She noted that the amended regulations take effect on March 29th. She informed that two votes would be required to withdraw a Commission Policy or GCA. Upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To withdraw (1st vote) the Commission Initial Determination Policy.**

**The next order of business was the Director's Report. Executive Director Willever advised that there are ten complaints and eight advisory opinions pending. He reported that there is one appeal pending and one formal APRA request has been granted since the last meeting.**

**The next order of business was New Business proposed for future Commission agendas. Chair Binder noted that the Commission has a copy of the Executive Director's job description, and it will wait until new Legal Counsel is in place before reviewing it. Commissioner Cheit requested that a copy of the Commission's regulatory list be made available to the public.**

**At 10:18 a.m., the Commission took a short recess.**

**At 10: 30 a.m., upon motion made by Commissioner Harsch and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To return to Executive Session.**

**\*Commissioner Cerullo recused and left the meeting prior to the Commission reconvening in Executive Session.**

**At 10:55 a.m., the Commission reconvened in Open Session and Commissioner Cerullo returned to the meeting. Chair Binder reported that the Commission concluded its Legal Counsel interviews and had discussion thereon.**

**The next order of business was a motion to seal minutes of the Executive Session held on March 23, 2010. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on March 23, 2010.**

**The next order of business was discussion of and potential decision regarding the Search for Legal Counsel. Upon motion made by Commissioner Murray and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To extend an offer for the contractual position of Legal Counsel to Edmund L. Alves, Jr., Esq.**

**RECUSAL: Deborah M. Cerullo SSND.**

**At 10:56 a.m., upon motion made by Commissioner Cheit and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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