

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

March 8, 2011

The Rhode Island Ethics Commission held its 4th meeting of 2011 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 8, 2011, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Barbara Binder, Chair Deborah M. Cerullo, SSND

Ross E. Cheit, Vice Chair Edward A. Magro

J. William W. Harsch, Secretary Mark B. Heffner*

James V. Murray John D. Lynch, Jr.

Frederick K. Butler

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Amy C. Stewart; and Commission Investigators Peter J. Mancini and Gary V. Petrarca.**

At 9: 00 a.m. the Chair opened the meeting. The first order of business was a motion to approve the minutes of the Open Session held on February 8, 2011. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To approve minutes of the Open Session held on February 8, 2011.

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 Andrea M. Iannazzi, Esq., a Staff Attorney in the Office of the Court Appointed Special Advocate at the Rhode Island Family Court. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner informed that she sought an opinion at the request of Chief Judge Bedrosian. In response to Commissioner Cheit, the Petitioner stated that she would prefer not to disclose whose campaign it is due to confidentiality issues. Commissioner Cheit questioned how the Commission could give its seal of approval without a factual representation by the Petitioner. The Petitioner indicated that she would approach candidates at the federal and state level, excluding the governor.

***Commissioner Heffner arrived at 9:05 a.m.**

Commissioner Cheit asked if the Petitioner had more than one campaign in mind, given that her request letter referred to “campaign/s.” The Petitioner replied that it would likely be one campaign. She stated that she wanted to receive an opinion prior to approaching a specific candidate. Commissioner Harsch inquired as to precedent for issuing an opinion where the specific facts are not yet ripe. Legal Counsel Alves advised that the Commission should base its opinion on solid facts. Senior Staff Attorney D’Arezzo informed that for at least the past ten years the Commission has only issued opinions where it is satisfied that all relevant facts have been fleshed out. Commissioner Lynch stated that he does not see how there would be a conflict with her work as a CASA attorney. Chair Binder inquired about working for a state senate candidate with budgetary control over CASA. The Petitioner clarified that she would seek work with a federal senatorial or congressional candidate, or a state constitutional officer, with the exception of the governor. Commissioner Lynch stated that he would not have a problem with that.

Chair Binder asked what would happen if the candidate were an attorney who does work with CASA cases. Commissioner Lynch indicated that it would be a conflict with the individual case. Commissioner Cheit stated that while that might be the case, the Commission does not have the facts. The Petitioner stated that she

has individuals in mind, not just one individual. She suggested that she return to the Commission after she approaches an individual. Commissioner Cheit stated that he views the information as being vital to the Commission's decision. Chair Binder noted the Commission's precedent of not issuing opinions on hypothetical facts. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was

VOTED: To adopt the draft advisory opinion.

AYES: John D. Lynch, Jr.

NOES: Deborah M. Cerullo SSND, J. William W. Harsch, Frederick K. Butler, Mark B. Heffner, James V. Murray, Edward A. Magro, Ross Cheit and Barbara R. Binder.

No advisory opinion issued due to a lack of five affirmative votes.

The next advisory opinion was that of Gina M. Raimondo, the General Treasurer of the State of Rhode Island. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present along with Joseph Sherkarchi, Esq. Commissioner Cerullo inquired as to the nature of the Petitioner's relationship with the trustee and whether the trust defines "independent trustee." The Petitioner advised that the trustee, Kenneth Andsager, is a CPA who has done accounting work for her in the past. She informed that she

selected him because she trusts him and he is familiar with such illiquid private partnerships. Commissioner Cerullo asked for clarification of the situations in which the Petitioner could speak with the trustee, as set forth in paragraph 7(b). The Petitioner gave the example of a distribution being made in the form of a stock and the trustee asking her if she would like to hold the stock or liquidate it to cash. She noted that the decision would impact the taxes she would pay. In response to Commissioner Cheit, the Petitioner stated that the trustee has no influence over those decisions and that the document is a standard blind trust.

In response to Commissioner Heffner, the Petitioner stated that she currently employs the trustee as her accountant for tax preparation. Commissioner Heffner referenced paragraph 16 and inquired as to the independent nature of the trustee. Attorney Sherkarchi stated that the trustee is independent in that he has no financial interest in Point Judith Capital. Commissioner Heffner noted that “independent” is not a defined term within the trust. In response to Commissioner Heffner, the Petitioner confirmed that there is no standard for cause to remove the trustee. She also indicated that the funds are part of the State Investment Commission’s (SIC) alternative investment class. She stated that the state’s decision to invest in Point Judith was made in 2007 and at this time the state has invested 65-70% of the original \$5,000,000 and only answers capital calls. The Petitioner stated it would be highly unlikely for something to come up before the SIC but if it does she would remove herself.

The Petitioner explained that there is a one hundred page contract that governs the terms of this passive investment. She indicated that perhaps a ministerial decision, such as to extend the life of the fund, would go before the SIC, but that decision would not be made by her staff. In response to Commissioner Heffner, the Petitioner represented that it is a ten year contract. She further informed that there are nine members on the SIC. Chair Binder noted that the Treasurer is one person who can remove herself when need be.

****Staff Attorney Leyden arrived at 9:28 a.m.**

Commissioner Butler observed that the definition of “independent trustee” is set forth on page 6 of the trust. Commissioner Heffner expressed that he would like to see the trust more tailored to individual circumstances. In response to Commissioner Cerullo, the Petitioner stated that trust was created strictly for these Point Judith assets. Commissioner Cerullo expressed concern that the words in paragraph 7(b) could be read expansively to allow discussion between the Petitioner and the trustee. Attorney Sherkarchi advised that the intent was to create flexibility so that the accountant could provide the Petitioner with tax advice as to how best to hold the asset. The Petitioner represented that her capital was invested alongside of the state’s capital and she no longer has anything to do with how it is invested. She stated that if there is a return on that capital it is placed into the trust. Once in the trust, she stated that

she may, for her own tax planning purposes, decide to hold it, liquidate it or give it to her children. She emphasized that she has relinquished control.

Commissioner Cheit observed that the critical point is that the conversations with her accountant could not lead to any decisions involving how the funds are invested. Commissioner Cerullo reiterated that the phrase in paragraph 7(b) seems to provide an exception. Commissioner Butler indicated that he is comfortable with the language and would not try to narrow it. He stated that once the money is in the trust it is separate from Point Judith and the whole decision making process. Commissioner Heffner inquired if the trust's language would allow one of the Petitioner's partners to be the trustee. The Petitioner stated that she would not have anyone as trustee who has an interest in Point Judith. Chair Binder suggested that the language be added to the opinion. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, as amended and attached hereto, to Gina M. Raimondo, the General Treasurer of the State of Rhode Island.

The next advisory opinion was that of Paul Gonsalves, a Senior Planner at the Rhode Island Department of Administration Division of Planning. Staff Attorney Stewart presented the Commission Staff

recommendation. The Petitioner was present. The Petitioner represented that he has had part-time employment and business ventures to supplement his income, particularly given that he has been on prior lay off lists. He advised that he will not be pursuing the electricity sales opportunity and that he is limiting his request to the real estate venture. In response to Commissioner Cerullo, the Petitioner confirmed that he did not seek an opinion regarding past part-time jobs because the positions were much less formal. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, as amended, to Paul Gonsalves, a Senior Planner at the Rhode Island Department of Administration Division of Planning.

The next advisory opinion was that of Christopher W. Stanley, a member of the Warren Town Council. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. The Petitioner stated that he sought the opinion out of abundance of caution and to provide guidance. He represented that approximately 800 people have served as volunteer firefighters and the total population of Warren is about 11,000. Commissioner Heffner expressed concern regarding the reliance on the opinion beyond its application to the Petitioner. Legal Counsel Alves advised that the opinion relates only to the Petitioner's situation and only provides the Petitioner with safe harbor. The Petitioner stated his understanding

that it only protects him. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Christopher W. Stanley, a member of the Warren Town Council.

The next advisory opinion was that of John T. Gannon, the Director of Administration for the City of Pawtucket. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Chair Binder commented that the situation is troubling to her and inquired how the new position came about. The Petitioner replied that the Mayor reorganized his office and changed the title of a long existing position, which is being eliminated, and gave it additional duties and responsibilities. He stated that the new position would have supervisory authority over three secretaries within City Hall. In response to Chair Binder, the Petitioner stated that the position has not been advertised but he is sure that it will be. In response to Commissioner Murray, the Petitioner informed that the Director of Administration works in the Mayor's office and is equivalent to a Chief of Staff position. Commissioner Cerullo noted that the Petitioner would have oversight responsibility over the positions supervised by the new position.

Commissioner Cheit inquired as to what the Petitioner and Mayor had concluded regarding general appearance of impropriety issues. The Petitioner replied that if his stepdaughter were hired he could not be

involved in her day to day operations. He further replied that he does not believe there is an appearance issue if he is not involved in these issues because she would be working for the Mayor. In response to Commissioner Harsch, the Petitioner informed that the Mayor selects the position without consulting him. He also confirmed that there would be other candidates. In response to Commissioner Cerullo, the Petitioner stated that the City Council must pass an ordinance to change the job description. He represented that until the ordinance is passed the person who held the previous position performs her old duties in a temporary capacity. The Petitioner represented that the position is still being created and he suspects that the Mayor wants his stepdaughter to be a candidate for the position.

Commissioner Cheit commented that it seems strange that the Mayor has already drafted a policy for a job that has not been listed and does not yet exist. The Petitioner stated that his stepdaughter did not seek out the Mayor for an unlisted job. He stated that it is not guaranteed that she will get the job. He noted that the person currently filling the temporary position is also interested in it. In response to Commissioner Heffner, the Petitioner advised that he supervises every department in City Hall. He confirmed that the new position would report to the Mayor instead of him. Commissioner Heffner inquired how the Petitioner would be able to supervise the people the new position supervises. Commissioner Cheit noted that the other secretaries could have an issue with their supervisor. The Petitioner replied that they would have to deal with the Mayor.

Commissioner Cheit expressed concern about having an alternate chain of command involving not just the Petitioner's stepdaughter but the people she would supervise as well. In response to Commissioner Heffner, the Petitioner stated that if he had an issue with a secretary subordinate to his stepdaughter he would inform the Mayor and let him deal with it. Chair Binder expressed her discomfort with what does not seem to be an open process and the appearance issues. Commissioner Murray stated that he is uncomfortable with the alternate chain of command. He noted that this is a small group of people and the Petitioner is the Mayor's Chief of Staff. Commissioner Harsch voiced his concern about the appearance of pre-selection. Commissioner Heffner observed that this is not even a defined position yet. Commissioner Butler also urged the Petitioner to be cautious with respect to remaining independent from the process of creating and defining the position. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Murray, it was unanimously

VOTED: To adopt the draft advisory opinion.

AYES: None.

NOES: Deborah M. Cerullo SSND, J. William W. Harsch, Frederick K. Butler, Mark B. Heffner, James V. Murray, Edward A. Magro, John D. Lynch, Jr., Ross Cheit and Barbara R. Binder.

No opinion issued due to a lack of five affirmative votes.

The next advisory opinion was that of Charles J. Fogarty, the Director of the Department of Labor and Training. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Commissioner Cerullo commented that the request letter seems to set up two alternate chains of command, whereas the draft opinion sets it up with the Department of Administration being more appellate in nature. Staff Attorney Gramitt indicated that he wanted to propose something that is feasible because one would not expect the DOA to handle matters at the DLT on a day to day basis. Commissioner Cerullo expressed concern regarding the fact that someone who supervises the Petitioner's relative would answer directly to the Petitioner. She stated her preference to avoid that situation if at all possible.

The Petitioner stated that he does not want to misrepresent that the DOA is eager to take on this role. He noted his discussions with Kathleen Lanphear, Deputy Personnel Director assigned to DLT. He indicated that while she is not looking to take this on she will if required. Commissioner Cheit stated his appreciation of the factors explicated to distinguish this case. He indicated that when called for the Commission allows for reasonable accommodations. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Murray to approve the draft opinion, Commissioner

Cerullo requested additional discussion about the Petitioner's subordinate having authority over his family member. Commissioner Butler stated that he is not uncomfortable with it in this situation. He indicated that it would be better not to have decisions going outside of the DLT. The Petitioner stated that the Deputy Director is in classified service and has statutory service status. Upon the original motion, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Charles J. Fogarty, the Director of the Department of Labor and Training.

The next advisory opinion was that of Cynthia A. Joyce, a member of the Foster-Glocester Regional School Committee. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Cynthia A. Joyce, a member of the Foster-Glocester Regional School Committee.

The next advisory opinion was that of Patrick Kelley, member of the Newport School Committee. Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was not present. Chair Binder stated her belief that this is a closer relationship than that of one's first cousin's spouse, which is covered under the Code.

Commissioner Lynch questioned how this relationship would not fall within definition of sister-in-law. Commissioner Cheit stated that he would consider the relationship to be that of a sister-in-law. Commissioner Cerullo indicated that she is looking at it from a household point of view, where this individual's spouse and children would be the Petitioner's family members under the Code.

Commissioner Lynch stated that it seems strange that the children from the relationship would be covered but not both of the parents. Staff Attorney Gramitt recalled the 2007 discussions regarding the definition of family under the nepotism regulation and indicated that the Commission may adjust its interpretation. He cautioned that the new interpretation would also then apply to cousins, aunts and uncles-in-law because the same degree of familial separation exists in those relationships as well. He stated that if brother-in-law includes one's spouse's brother's spouse then one's spouse's cousin's spouse is a cousin-in-law. Chair Binder expressed support for changing the definition through an advisory opinion. Commissioner Magro noted that prior opinions are not binding but suggested looking at Regulation 5004 in the future to ensure that there is no conflict.

Staff Attorney Gramitt advised that in A.O. 2007-49 the Commission found that a wife's cousin's spouse was not a cousin-in-law under the Code. Commissioner Lynch indicated that cousin-in-law seems to be a made up term whereas sister-in-law is pretty well defined. Staff

Attorney Gramitt stated that it is a question of how many marriages out the Commission wishes to extend the family relationship. Commissioner Cerullo noted that with the relationship cited in 2007 opinion you are talking about a person who is not related by blood to either the person subject to the Code or their spouse. She reiterated her concern regarding all members of the same household being deemed one's family.

Commissioner Cheit observed that some individuals have close relationships with second cousins. Commissioner Magro stated that the Commission cannot legislate closeness and noted that some people barely know their first cousins. Chair Binder stated that the Petitioner had been present for the last meeting and suggested giving him an opportunity to return. Commissioner Harsch inquired if it is reasonable under the Code to consider a husband and wife as an economic unit. Staff Attorney Gramitt indicated that it would require an amendment to Regulation 5004. Upon motion made and duly seconded, it was unanimously

VOTED: To table the advisory opinion to allow the Petitioner to be present.

The next advisory opinion was that of Elizabeth Kinnane, a member of the Tiverton Planning Board. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Harsch and duly seconded by

Commissioner Magro, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Elizabeth Kinnane, a member of the Tiverton Planning Board.

The next advisory opinion was that of Brett Pelletier, a member of the Tiverton Town Council. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Brett Pelletier, a member of the Tiverton Town Council.

The next advisory opinion was that of Douglas C. Jeffrey, Chief of Staff for the Town of Johnston. Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Douglas C. Jeffrey, Chief of Staff for the Town of Johnston.

The next order of business was discussion of the Attendance Policy. Chair Binder informed that she sent the members a letter proposing a new policy. She indicated that the Commission frequently finds that

it can just muster a quorum of five. She suggested that when there will only be five members present the Commission should just continue it to the next meeting unless there are time sensitive matters. Commissioner Lynch recalled just two occasions where only four members showed up but many meetings held with only five members. He suggested that the Commission continue to meet with five members but allow for discretionary calls if need be. Chair Binder stated that it would be at the Chair's discretion. In response to Commissioner Cheit, Senior Staff Attorney D'Arezzo stated that while the Staff would like to have more than five members participating in advisory opinions the crucial area is in complaints. She expressed concern about canceling meetings given that probable cause hearings and motions are under statutory deadlines.

Commissioner Cheit expressed concern that it might be unfair to the petitioner when there are only five members present and the petitioner might want it continued to the next meeting. Commissioner Heffner suggested that the Chair and Vice Chair would have discretion to make the decision. Commissioner Cerullo stated that it would be useful for everyone to know by the end of the day on Monday who is coming so that we all have a better evaluation of the impact of our failure to come. Chair Binder asked the Staff to let everyone know how many members will be attending by the end of the day on Monday. She indicated that it will be the Chair's call as to whether to proceed.

At 11:05 a.m. upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, 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 February 8, 2011.

**b.) In re: John Winfield, Jr.
Complaint No. 2010-6**

**c.) In re: Bradford G. Marthens,
Complaint No. 2010-7**

d.) Motion to return to Open Session.

The Commission returned to Open Session at 11:45 a.m., at which time Commissioner Cheit left the meeting.

The next order of business was a motion to seal minutes of the Executive Session held on March 8, 2011. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously

VOTED: To seal the minutes of the Executive Session held on March

8, 2011.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) unanimously approved minutes of the Executive Session held on February 8, 2011; 2) unanimously approved a second extension of time in In re: John Winfield, Jr., Complaint No. 2010-6; and 3) unanimously voted that probable cause does not exist in In re: Bradford G. Marthens, Complaint No. 2010-7

Chair Binder announced that the balance of the agenda would be continued to the next meeting.

At 11:46 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

J. William W.

Harsch

Secretary