

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

June 4, 2013

The Rhode Island Ethics Commission held its 7th meeting of 2013 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, June 4, 2013, 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:

Ross Cheit, Chair Frederick K. Butler

Deborah M. Cerullo SSND, Vice Chair Mark B. Heffner*

John D. Lynch, Jr., Secretary Robert A. Salk

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, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross and Gary V. Petrarca.

At 9:03 a.m. the Chair opened the meeting. The first order of business was the approval of minutes of the Open Session held on

May 21, 2013. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To approve minutes of the Open Session held on May 21, 2013.

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:

Anthony Ciacciarelli, an Inspector within the Department of Interceptor Maintenance at the Narragansett Bay Commission, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from conducting Pipeline Assessment training sessions in his private capacity.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Patrick McGuire, Esq. was present on behalf of the Narragansett Bay Commission (“NBC”). Attorney McGuire inquired whether the Petitioner can train contractors who may work for NBC in the future and are located outside of the NBC service area. Chair Cheit stated that this advisory opinion does not address that.

*** Commissioner Heffner arrived at 9:11 a.m.**

Commissioner Cerullo asked the Petitioner if NBC would pay for any ongoing costs for him to maintain his certification. The Petitioner stated that it was a one time fee that NBC paid so he could train other NBC personnel. He stated that he needs to be recertified every two (2) years. In response to Commissioner Salk, the Petitioner stated that he did not know if he was the only certified trainer in Rhode Island but he knew of others located in Massachusetts and Maine. He stated that his training and certification were from NASSCO, a national trade organization for the sewer industry. Upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Anthony Ciacciarelli, an Inspector within the Department of Interceptor Maintenance at the Narragansett Bay Commission.

The final advisory opinion was that of:

William Sequino, Jr., the East Greenwich Town Manager, requesting an advisory opinion regarding what restrictions the Code of Ethics imposes upon his management of the East Greenwich Fire Department, which employs a member of his family as a firefighter.

Chair Cheit stated that William Sequino's advisory opinion request

was withdrawn after the agenda was posted.

The next order of business was a public hearing regarding adoption of Regulation 36-14-1001.1 – Limitations Period on Filing of Complaint. The hearing was stenographically recorded and a transcript of the proceeding is available at the Commission Offices. Senior Staff Attorney D’Arezzo summarized proposed regulation Options A, B, & C, which were noticed for the hearing today. She stated that the Commission received four (4) written comments: the first from a private citizen in favor of no limitations period; the second from another private citizen in favor of a period less than ten (10) years; the third from John Marion on behalf of Common Cause of RI; and the fourth from Steve Brown, on behalf of the ACLU of RI.

The Commission opened up the floor to public comment, noting that three (3) people signed up to speak. John Marion, on behalf of Common Cause of RI, expressed support for Option A, but with a shorter limitation of six (6) years. Steve Brown, on behalf of the ACLU of RI, expressed support for Option A, but with an even shorter limitation of three (3) years. Margaret Kane, on behalf of Operation Clean Government, expressed support for not having a statute of limitations on ethics violations. There was no other public comment.

Discussion ensued. Commissioner Butler stated that he favored adopting Option A but with a shorter six (6) year limitations period.

He stated that six (6) years was more consistent with our record retention requirements for financial disclosure statements and was longer than the oldest case the Commission had considered. He added that the shorter time period also accounted for issues with investigating, prosecuting and defending older cases.

Commissioner Lynch agreed with Commissioner Butler that ten (10) years was too long. He stated that he thought a limitations period between four (4) to six (6) years would be appropriate. Commissioner Salk also stated that ten (10) years was too long and that he would be comfortable with a six (6) year limitations period. He expressed concern over not including a discovery provision in the regulation. Chair Cheit replied that the discovery provision is wrought with issues of interpretation and application.

In response to Chair Cheit, Senior Staff Attorney D'Arezzo stated that most complaints are filed within months of the alleged conduct occurring. She stated that the Commission very infrequently receives complaints regarding conduct that occurred more than one (1) year prior. She said that the oldest case that she can recall is the Irons case, which involved conduct that occurred more than four (4) years before the complaint was filed. Chair Cheit noted that another category of complaints are those that are filed shortly after a story appears in the local media.

Commissioner Cerullo stated that she was in favor of adopting Option

A, as written, with the ten (10) year limitations period. She stated that the longer limitations period makes up for the lack of a discovery provision, which she agreed was difficult to apply.

Commissioner Butler noted that although the Commission bears the burden of proof in complaints and could have difficulty proving old cases; the filing of a complaint is public and brings that person before the Commission to respond to the allegations. He said that the damage to a reputation can be done whether or not there was a finding of a violation.

Chair Cheit stated that he spoke with Commissioner Murray, who initially advocated for adopting a statute of limitations, and reported that Commissioner Murray would be comfortable with a limitations period between three (3) and five (5) years.

Chair Cheit agreed with Commissioner Cerullo's concerns as to discovery, but he stated that a longer limitations period comes at a price to the respondent. He added that the Commission never had a case older than five (5) years. He stated that he would be comfortable with a limitations period between five (5) and seven (7) years, which he believes is fair to the respondent and does not foreclose the possibility that alleged violations will be discovered.

Commissioner Heffner supported adopting a statute of limitations. He also expressed concerns about the discovery of alleged violations

but agreed that such provisions are difficult to apply. He stated that he favor Option A with a limitations period of five (5) to six (6) years, which is consistent with past cases and is not excessive.

Commissioner Salk moved to adopt Option A of Regulation 36-14-1001.1, amended in the following way: “Any Complaint shall be filed with the Ethics Commission no later than ten (10) six (6) years from the date of the alleged violation of the Rhode Island Code of Ethics.” He also moved that the Ethics Commission find: that there was no alternative approach to the regulation which would be as effective and less burdensome to affected private persons; that no other state regulation which is overlapped or duplicated by this proposed regulation has been identified; and that Regulation 36-14-1001.1, as amended, be adopted. Upon motion made by Commissioner Salk and duly seconded by Commissioner Butler, it was

VOTED: To adopt Regulation 36-14-1001.1, as amended.

AYES: John D. Lynch, Jr.; Robert A. Salk; Frederick K. Butler; Mark B. Heffner; Ross Cheit.

NOES: Deborah M. Cerullo.

The next order of business was the Director’s Report. Executive Director Willever reported that there were four (4) complaints, no advisory opinions and one (1) litigation matter pending. He also stated that three (3) APRA requests were granted since the last

meeting.

The next order of business was a Report on Financial Disclosure. Steven T. Cross, Chief of Investigations, began by providing background on Operation Compliance. He informed that 2012 was the first filing season in which required filers could file their financial statements online. He stated that the initial goal of having 25% of required filers file online was greatly exceeded with 61% of filers in 2012 filing their statement online. He reported that as of the filing deadline for the 2011 financial disclosure statement, April 27, 2012, the Commission had an initial compliance rate of 65%. He informed that after the mailing of reminder letters in June our compliance rate increased to 88%, by July 1, 2012.

Investigator Cross described other efforts made by Commission staff to increase financial disclosure compliance. He stated that Deputy Chief Investigator Peter Mancini contacts all the city and town solicitors each year after the reminder letters have been mailed and provides them with the names of all public officials and employees in their city or town who have failed to file. He further informed that Administrative Officer Michelle Berg works with the Governor's office to increase compliance for persons serving on state boards and commissions. He stated that Staff Attorney Gramitt, in his capacity as Education Coordinator, regularly provides information about the financial disclosure requirement to public officials and employees during education sessions. He stated that compliance rates have

been holding steady over the last several years in the 90% plus range.

He reported that the following groups had 100% compliance: judges; general office holders; state senators and representatives; and the Commissioners of the Ethics Commission.

Investigator Cross reported that on October 3, 2012, twenty (20) non-filing complaints were filed for failure to file the 2011 financial disclosure statement: three (3) against town council members; five (5) against school committee members; six (6) against zoning board members; and six (6) against planning board members. All complaints have been resolved and a total of \$7,250 in fines was collected. He stated that the Commission's current policy is to file complaints against the highest state and local officials who failed to file. He informed that, in the future, complaints may be filed against public officials who have repeatedly failed to file for multiple years regardless of the position that they hold.

At 10:08 a.m., upon motion made by Commissioner Heffner and duly seconded by Commissioner Butler, it was unanimously

VOTED: To go into Executive Session, to wit:

a.) Motion to approve minutes of Executive Session held on May 21, 2013, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).

b.) In re: Kimberley Gaffett, Complaint No. 2013-3, pursuant to R.I.

Gen. Laws § 42- 46-5(a)(2) and (4).

The Commission reconvened in Open Session at approximately 10:21 a.m. The next order of business was a motion to seal the minutes of the June 4, 2013, Executive Session. Upon motion made by Commissioner Lynch and duly seconded by Commissioner Cerullo, it was unanimously

VOTED: To seal the minutes of the June 4, 2013, Executive Session.

Chair Cheit reported that the Commission took the following actions in Executive Session:

1. Unanimously voted to approve the minutes of the Executive Session held on May 21, 2013.

2. Unanimously voted to approve an Informal Resolution & Settlement in In re: Kimberley Gaffett, Complaint No. 2013-3.

The next order of business was New Business. There being none, at 10:23 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

John D. Lynch, Jr.
Secretary