

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**July 23, 2013**

**The Rhode Island Ethics Commission held its 8th 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, July 23, 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    John M. LaCross**

**Deborah M. Cerullo SSND, Vice Chair    Edward A. Magro\*\***

**Frederick K. Butler\*    James V. Murray**

**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, Peter J. Mancini and Gary V. Petrarca.**

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

**June 4, 2013. Upon motion made by Commissioner Magro and duly seconded by Commissioner LaCross, it was**

**VOTED: To approve minutes of the Open Session held on June 4, 2013.**

**AYES: Deborah M. Cerullo; Ross Cheit.**

**ABSTENTIONS: John M. LaCross; James V. Murray; Edward A. Magro.**

**At 9:01 a.m., upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

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

**b.) In re: Maria Vallee, Complaint No. 2010-9, pursuant to R.I. Gen. Laws § 42- 46-5(a)(2) and (4).**

**\* Commissioner Butler arrived at 9:02 a.m.**

**The Commission reconvened in Open Session at approximately 10:00 a.m. Chair Cheit reported that the Commission took the following**

**actions in Executive Session:**

- 1. Unanimously voted to approve an Informal Resolution & Settlement in In re: Maria Vallee, Complaint No. 2010-9.**
- 2. Voted to approve the minutes of the Executive Session held on June 4, 2013.**

**[Reporter's Note – the vote was as follows:**

**AYES: Frederick K. Butler; Deborah M. Cerullo; Ross Cheit.**

**ABSTENTIONS: John M. LaCross; Edward A. Magro; James V. Murray.]**

**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:**

**Kathy Stadelbauer Schmidt, a member of the Board of Fire Commissioners for the Ashaway Fire District, requesting an advisory opinion regarding whether she is prohibited from serving on the Fire District's Charter Revision Committee.**

**Staff Attorney Stewart presented the Commission Staff**

**recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner stated that she is volunteering because it is very difficult to find seven (7) people who are willing to serve. Upon motion made by Commissioner Murray and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Kathy Stadelbauer Schmidt, a member of the Board of Fire Commissioners for the Ashaway Fire District.**

**The next advisory opinion was that of:**

**Bryan K. Barros, MSW, LCSW, a Department of Corrections (“DOC”) Probation Officer, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from providing counseling services in his private capacity at Bridgemark Addiction Recovery Services.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Commissioner Cerullo asked the Petitioner if he had an obligation in his position as a probation officer to report any information to the DOC that he learns while he is off duty. She was concerned that it is likely that some of the patients he counsels as a social worker may be on probation and the code of conduct for social workers would prevent him from revealing any incriminating information that he learned during the course of therapy. The Petitioner stated that he did not believe that**

there was an obligation to report information about probationers who were not assigned to him if he learned something while off duty. He stated that his supervisor did not indicate any discomfort with him working at Bridgemark but advised him to seek an advisory opinion first. He added that it would be difficult for him to limit his patients at Bridgemark to those who are not on probation or parole.

Chair Cheit questioned whether it was likely that the Petitioner would be transferred to the Kent County Probation Office. The Petitioner replied that he would have to bid to be moved to another county, which he has no plans to do. Upon motion made by Commissioner LaCross and duly seconded by Commissioner Butler, Commissioner Cerullo requested more discussion. Commissioner Cerullo was concerned that the draft as written could allow his confidentiality obligations as a social worker to interfere with his duty as a probation officer to report known violations to the DOC.

Chair Cheit directed staff to contact the DOC to clarify whether there is a duty for probation officers to disclose information learned while off duty to the DOC. He stated that the Commission has issued similar advisory opinions in the past and it should determine whether a probation officer's private employment as a counselor raises a direct conflict.

Commissioner Cerullo suggested amending the draft to limit its application if such a direct conflict exists. She proposed adding the

**following language: assuming that there is no job requirement to disclose information that the Petitioner learns while off duty. Upon motion made by Commissioner Cerullo and duly seconded by Chair Cheit, it was unanimously**

**VOTED: To issue an advisory opinion, as amended and attached hereto, to Bryan K. Barros, MSW, LCSW, a Department of Corrections (“DOC”) Probation Officer.**

**\*\* Commissioner Magro left the meeting at 10:55 a.m.**

**The final advisory opinion was that of:**

**Bruce A. Wolpert, Esq., a member of the State Labor Relations Board, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Labor Relations Board matters in which his former business associate appears.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Chair Cheit, the Petitioner stated that he accidentally learned that his former client frequently appeared before the Labor Relations Board between the time he was nominated by the Governor and confirmed by the Senate. He added that he was not previously aware of what his client was doing professionally. Upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, it was**

**unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Bruce A. Wolpert, Esq., a member of the State Labor Relations Board.**

**The next order of business was Review of Exemptions pursuant to the R.I. Public/Private Partnership Act, R.I. Gen. Laws § 16-59-26 for James O. Prochaska, Ph.D. and Colleen Redding, Ph.D. Ted Myatt, Director of Research Compliance at the University of Rhode Island (“URI”) and Louis J. Saccoccio, General Counsel for URI were present.**

**Staff Attorney Gramitt explained that the Ethics Commission was not required to take any action other than reviewing the materials. He stated that if the Commission found anything troubling with the exception, it could require the Board of Education to reconsider the matter at a public meeting. Chair Cheit asked for comments or questions from the Commission. There being none, he stated that the Commission would rely on Staff Attorney Gramitt’s presentation and pass on the exemption.**

**The next order of business was a hearing on the Prosecution’s Motion to Dismiss in the matter of In re: Frank Sylvester, Complaint No. 2011-2. The Respondent, Frank Sylvester, was present along with his attorney Daniel V. McKinnon, Esq. Commission Prosecutor DiLibero noted that the hearing was stenographically recorded at the**

request of the Respondent and a copy of the transcript would be provided to the Commission.

Commission Prosecutor DiLibero presented the motion to the Commission. Chair Cheit stated that the staff's determination in the matter seemed appropriate. Commissioner Cerullo stated that she had confidence in the staff and their professionalism and would not second guess the Prosecutor's recommendation to dismiss. Commissioner Murray commended Prosecutor DiLibero and the staff for their candor in making the difficult recommendation to dismiss. Commissioner Butler agreed. Upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was

**VOTED:** To approve the Prosecution's Motion to Dismiss in the matter of

**In re: Frank Sylvester, Complaint No. 2011-2.**

**AYES:** James V. Murray; Deborah M. Cerullo; Frederick K. Butler; Ross Cheit.

**ABSTENTIONS:** John M. LaCross.

The next order of business was a hearing on the Respondent's Motion for Sanctions relating to the matter of In re: Pamela Fontaine, Complaint No. 2012-2. Attorney Arthur M. Read, II, Esq. was present

on behalf of the Respondent Pamela Fontaine. The Complainant, Gordon Rogers was also present. The hearing was stenographically recorded and a transcript is available at the Commission offices.

Commission Prosecutor D'Arezzo introduced the motion. She stated that Mr. Rogers filed a complaint on December 17, 2012, against Pamela Fontaine, and the complaint was initially determined on January 8, 2013. She stated that, after a full investigation, she presented the Commission with a Motion to Dismiss on May 21, 2013, which the Commission granted. Thereafter, she informed that Attorney Read filed this Motion for Sanctions against Mr. Rogers on May 23, 2013, alleging that Mr. Rogers had filed a frivolous complaint.

Commission Prosecutor D'Arezzo stated that the only parties to this motion were Ms. Fontaine and Mr. Rogers and, therefore, she no longer had an advocacy role. She advised that today's hearing was to consider whether the Commission would conduct a further hearing to determine if the complaint was frivolous and whether to impose a penalty. Both Attorney Read and Mr. Rogers made statements to the Commission. At 11:49 a.m., upon motion made and duly seconded, it was

**VOTED:** To go into Executive Session, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), for deliberations on the Respondent's Motion for Sanctions.

**[Reporter's note – Only Commission members and legal counsel were present for deliberations.]**

**The Commission reconvened in open session at 12:06 p.m. Commissioner Cerullo stated that, in looking at all the facts, she did not find it to be unreasonable to conclude that a lay person could make such a mistake of fact. Upon motion by Commissioner Cerullo and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To deny the Respondent's Motion for Sanctions relating to the matter of In re: Pamela Fontaine, Complaint No. 2012-2.**

**The next order of business was a motion to seal the minutes of the July 23, 2013, Executive Session. Upon motion made by Commissioner Murray and duly seconded by Commissioner LaCross, it was unanimously**

**VOTED: To seal the minutes of the July 23, 2013, Executive Session.**

**The next order of business was the Director's Report. Executive Director Willever reported that there was one (1) complaint pending and noted that the staff would soon be filing non-filing complaints. He also stated that twelve (12) APRA requests were granted since the last meeting, eleven (11) of which were completed in one (1) business day.**

**The next order of business was a staff update regarding Commission meeting agendas and compliance with the Open Meetings Act. Chair Cheit continued this matter to the next meeting.**

**The next order of business was New Business. There being none, at 12:12 p.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**John D. Lynch, Jr.**  
**Secretary**