

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

May 19, 2015

The Rhode Island Ethics Commission held its 7th meeting of 2015 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, May 19, 2015, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair Frederick K. Butler

John D. Lynch, Jr., Vice Chair* Timothy Murphy

Robert A. Salk, Secretary* James V. Murray**

M. Therese Antone Marisa A. Quinn******

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Education Coordinator/Staff Attorney; Staff Attorneys Teresa Giusti and Amy C. Stewart; and Commission Investigators Steven Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:12 a.m., the Chair opened the meeting. The first order of business was:

Approval of minutes of the Open Session held on April 28, 2015.

Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was unanimously

VOTED: To approve minutes of the Open Session held on April 28, 2015.

The next order of business was:

Legislative Update

Staff Attorney Gramitt discussed H 6178 entitled The Rhode Island Lobbying Reform Act. He advised that H 6178 will continue to require annual lobbying reports to be filed with the Ethics Commission. He stated that he was asked by Secretary of State Nellie M. Gorbea to serve on a Lobbying Advisory Task Force to help guide her office in a complete overhaul of Rhode Island's lobbying laws.

*** Commissioner Lynch arrived at 9:17 a.m.**

**** Commissioner Antone arrived at 9:18 a.m.**

Staff Attorney Gramitt next discussed the Senate's bills related to restoring the Commission's jurisdiction over the General Assembly, S 0056 (sponsored by Senator Edward J. O'Neill) and S 0173 (sponsored by Senator James C. Sheehan). He advised that he participated in discussions regarding finding some middle ground between these two bills with Senator Sheehan, Senator O'Neill, Senator William J. Connelly, Jr., John Marion of Common Cause of Rhode Island, and Phil West. He presented a chart to the Commission that included the new language which was submitted as a new bill yesterday.

***** Commissioner Salk arrived at 9:20 a.m.**

Given the arrival of three more Commissioners, Chair Cheit asked Staff Attorney Gramitt to continue the remainder of the Legislative Update at a later point in the meeting after the advisory opinions are considered. The next order of business was:

Advisory Opinions

The advisory opinions were based on draft advisory opinions prepared by 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:

William L. Bernstein, Esq., the former Assistant Solicitor for the Town of Burrillville, who is also an attorney in private practice, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from representing clients before the Burrillville Zoning Board and the Burrillville Planning Board within one year following the end of his tenure with the Town of Burrillville.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Quinn and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to William L. Bernstein, Esq., the former Assistant Solicitor for the Town of Burrillville.

The second advisory opinion was that of:

Frank Caprio, Esq., the Chief Municipal Court Judge for the City of Providence, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from allowing his brother to videotape Municipal Court proceedings for commercial purposes and for which his brother will receive compensation.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Legal Counsel Alves

recused from participating in this matter. In response to Commissioner Murphy, the Petitioner stated that his long-standing policy of allowing anyone to videotape Municipal Court proceedings is not in writing. He stated that, in addition to his brother, other national and local television shows have filmed these proceedings, as well as other private individuals. In response to Chair Cheit, the Petitioner stated that the policy is not a written rule, because videotaping in the courtroom is left to the discretion of the presiding judge and there are two other judges on the Providence Municipal Court.

In response to Chair Cheit, Staff Attorney Stewart clarified that the Petitioner's brother was compensated when "Caught in Providence" previously aired on ABC6. Chair Cheit stated that, by allowing his brother to videotape court proceedings, the Petitioner is using his office to benefit his brother because, once his brother has a contract for a television show, it diminishes the value of another person trying to get a contract for a similar show.

In response to Commissioner Lynch, Staff Attorney Stewart stated that she reviewed the media policy contained in Article VII of the Rhode Island Supreme Court Rules. She stated that those rules are limited to the state courts and do not apply to municipal courts. In response to Commissioner Quinn, the Petitioner stated that he could not think of any circumstances in which he would deny an individual the ability to videotape court proceedings.

Commissioner Murphy stated that he would be more comfortable with this if the videotaping policy were posted at the Municipal Court or published on its website. Discussion ensued about the fact that it is within each judge's discretion to allow persons to videotape court proceedings.

Discussion ensued about another person's ability to profit from videotaping Municipal Court proceedings. Commissioner Antone stated that the Petitioner's brother does not have an exclusive right to film because the Petitioner allows anyone to film in his courtroom. Discussion continued. The Petitioner stated that Parking Wars, a national television program, and other television programs have been present in the courtroom and simultaneously videotaped the proceedings along with the Petitioner's brother.

Commissioner Murphy moved to amend the draft opinion to require that the Petitioner's videotaping policy be published in the courtroom or on the Municipal Court's website in order to provide notice of the policy to the public. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Butler, it was

VOTED: To issue an advisory opinion, as amended and attached hereto, to Frank Caprio, Esq., the Chief Municipal Court Judge for the City of Providence.

AYES: Frederick K. Butler; James V. Murray; Timothy Murphy; Marisa A. Quinn;

John D. Lynch, Jr.; M. Therese Antone; Robert A. Salk.

NOES: Ross Cheit.

The third advisory opinion was that of:

Michele H. Kazarian, Esq., the Probate Judge for the City of East Providence, a municipal appointed position, who also works part time as an attorney for the Rhode Island General Assembly, a state employee position, requesting an advisory opinion regarding whether the Code of Ethics prohibits: (1) her political activity for various state and local candidates; and (2) her participation in matters before the East Providence Probate Court in which a current or former employee or member of the General Assembly is the attorney of record.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Stewart advised that the Commission had previously considered this advisory opinion request on April 14, 2015, at which time the Commission directed staff to amend the draft. She stated that an amended draft was before the Commission today. The Petitioner stated that she had submitted a similar question to the Advisory Committee on the Code of Judicial Conduct and received a response that is similar to this draft advisory opinion.

In response to Commissioner Quinn, Staff Attorney Stewart stated that the Code of Ethics does not require the Petitioner to recuse if members of the Joint Committee on Legislative Services (“JCLS”), who directly employ the Petitioner, appear before the Petitioner in the Probate Court. She stated that whether the Petitioner should recuse if members of the JCLS appear before her in the Probate Court is a question of whether she can be impartial. She explained that questions of judicial impartiality are under the jurisdiction of the Advisory Committee on the Code of Judicial Conduct. Upon motion made by Commissioner Antone and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Michele H. Kazarian, Esq., the Probate Judge for the City of East Providence, who also works part time as an attorney for the Rhode Island General Assembly.

The fourth advisory opinion was that of:

Robert Kempenaar II, a member of the Middletown Town Council, requesting an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics’ prohibition on representing himself before the Middletown Zoning Board and the Middletown Planning Board in order to construct a new gate lodge/lobby at a Howard Johnson Inn that he owns, which will bring it into compliance

with Howard Johnson brand specifications.

Staff Attorney Stewart presented the Commission Staff recommendation. Christopher S. Gontarz, Esq., was present on behalf of the Petitioner. In response to Chair Cheit, Attorney Gontarz stated that the Middletown Zoning Board's consideration of the Petitioner's application was currently on hold, given the continuance of this matter at the Commission's April 28, 2015 meeting. Attorney Gontarz discussed Howard Johnson's brand specifications and stated that it was strongly suggested that these modifications are necessary to maintaining the brand designation.

Chair Cheit stated that hardship exceptions are considered on a case-by-case basis and are a judgment call for the Commission. He stated that there are true costs imposed on individuals who are in public service because of the Code of Ethics. He explained that hardship exceptions are justified when the Code of Ethics' restrictions result in an unreasonable cost for a public official.

Commissioner Salk stated that he supported granting an exception based on the fact that the motel has been in existence for many years. Chair Cheit agreed, noting that the Petitioner has had an ownership interest in this motel since 1969. Upon motion made by Commissioner Salk and duly seconded by Commissioner Antone, it was

VOTED: To issue an advisory opinion, attached hereto, to Robert Kempenaar II, a member of the Middletown Town Council.

AYES: Frederick K. Butler; James V. Murray; Marisa A. Quinn; John D. Lynch, Jr.; M. Therese Antone; Robert A. Salk; Ross Cheit.

NOES: Timothy Murphy.

The fifth advisory opinion was that of:

Amy M. Grzybowski, the Director of Planning, Code Enforcement and Grants Administration for the Town of Westerly, who is also temporarily serving as Interim Town Manager, requesting an advisory opinion regarding whether the Code of Ethics prohibits her from participating in the Town of Westerly's review of a non-profit entity's development proposal that may involve the Community College of Rhode Island, given that she is an online adjunct faculty member of the Community College of Rhode Island.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Upon motion made by Commissioner Butler and duly seconded by Commissioner Murphy, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Amy M. Grzybowski, the Director of Planning, Code Enforcement and Grants

Administration for the Town of Westerly, who is also temporarily serving as Interim Town Manager.

The final advisory opinion was that of:

Steven M. Hudak, Esq., a member of the Town of Bristol Zoning Board of Review, requesting an advisory opinion as to whether he qualifies for a hardship exception to the Code of Ethics' prohibition on appearing before his own Board, for purposes of obtaining a dimensional variance to construct a second-story bedroom on his personal residence.

Staff Attorney Giusti presented the Commission staff recommendation. The Petitioner was present. Upon motion made by Commissioner Antone and duly seconded by Commissioner Murphy, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Steven M. Hudak, Esq., a member of the Town of Bristol Zoning Board of Review.

The next order of business was:

Executive Session.

At 10:13 a.m., upon motion made by Commissioner Quinn and duly

seconded by Commissioner Lynch, it was unanimously

VOTED: To go into Executive Session, to wit:

- 1. Motion to approve minutes of the Executive Session held on April 28, 2015.**
- 2. In re: Bonnita Van Slyke, Complaint No. 2014-21, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**
- 3. In re: Daniel P. Reilly, Complaint No. 2014-18, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**
- 4. In re: Paul Rodrigues, Complaint No. 2014-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**
- 5. In re: Susan Cicilline-Buonanno, Complaint No. 2015-3, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**
- 6. Annual discussion and review re: Legal Counsel's contract, pursuant to R.I. Gen. Laws § 42-46-5(a)(1).**

The Commission reconvened in Open Session at approximately 11:41 a.m.

****** Commissioner Quinn left the meeting at 11:41 a.m. and did not**

participate in any of the following matters.

[Reporter's note: Commissioner Antone and Commissioner Salk both left the meeting during executive session and were not present for the following matters, as noted below in the Report on Actions Taken in Executive Session.]

Upon motion made by Commissioner Butler and duly seconded by Commissioner Murphy, it was unanimously

VOTED: To seal the minutes of the Executive Session held on May 19, 2015.

The next order of business was:

Report on Actions Taken in Executive Session.

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

1. Voted to approve the minutes of the Executive Session held on April 28, 2015.

[The vote was as follows:

AYES: Frederick K. Butler; James V. Murray; Timothy Murphy; Marisa

A. Quinn; John D. Lynch, Jr.; Robert A. Salk; Ross Cheit.

ABSTENTIONS: M. Therese Antone.]

2. In the matter of In re: Bonnita Van Slyke, Complaint No. 2014-21, unanimously voted (8-0) to find that probable cause does not exist to believe that the Respondent violated the Code of Ethics as alleged in the Complaint. Therefore, the Complaint was dismissed with prejudice.

3. In the matter of In re: Daniel P. Reilly, Complaint No. 2014-18, unanimously voted (8-0) to find that probable cause does not exist to believe that the Respondent violated the Code of Ethics as alleged in the Complaint. Therefore, the Complaint was dismissed with prejudice.

[Commissioner Antone left the meeting at 11:10 a.m. and did not participate in any of the following matters.]**

4. In the matter of In re: Paul Rodrigues, Complaint No. 2014-8, unanimously voted (7-0) to find that probable cause does not exist to believe that the Respondent violated the Code of Ethics as alleged in the Complaint. The Complaint was dismissed with prejudice.

[* Commissioner Salk left the meeting at 11:37 a.m. and did not participate in any of the following matters.]**

5. Unanimously voted (6-0) to initially determine that the facts alleged in In re: Susan Cicilline-Buonanno, Complaint No. 2015-3, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized an investigation.

6. Discussed the renewal of Legal Counsel's contract.

The next order of business was:

Annual Discussion and Potential Vote Re: Legal Counsel's Contract

This matter was previously discussed in Executive Session. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Murray, it was unanimously

VOTED: To renew Legal Counsel's contract for another year.

The next order of business was:

Director's Report.

Executive Director Willever reported that there were seven (7) complaints and one (1) advisory opinion pending. He stated that twenty-two (22) APRA requests were granted since the last meeting, twenty-one (21) of which were completed within one (1) business day.

He stated that one APRA request, which was voluminous, was completed within four (4) business days.

The next order of business was:

Legislative Update

Staff Attorney Gramitt continued with his discussion of the proposed compromises to Senator Sheehan's bill, S 0056, regarding the restoration of the Ethics Commission's jurisdiction over the General Assembly. He stated that, with respect to the speech in debate clause, the newly proposed language restores the Commission's jurisdiction "provided, however, that no member shall be questioned for any works publicly presented on the floor of the House of Representatives or the Senate or in committees thereof." Chair Cheit questioned whether a vote would constitute speech on the floor. Staff Attorney Gramitt stated that the intention was for votes not to constitute speech.

Staff Attorney Gramitt stated the newly proposed language relative to judicial review of Commission decisions remains as is under the Administrative Procedures Act "provided, however, any person against whom the commission finds a violation of the code of ethics for any conduct that was criminal in nature at common law shall be entitled to a trial by jury." He explained that, for example, violations of section 36-14-5(d) of the Code of Ethics may be entitled to a jury

trial, but violations related to financial disclosure and the gift regulation would not trigger that provision.

Discussion ensued. Commissioner Murphy stated that he had no problem with the judicial review language but still had some concerns about the speech language being too ambiguous as to voting. Chair Cheit agreed that these are mostly good compromises, but the speech language needed some improvement. Commissioner Butler agreed.

The final order of business was:

New Business

Chair Cheit commented that, as always, he was pleased to hear the respondents and their legal counsel compliment the Commission Prosecutors and Investigators on the complaint process.

Commissioner Murphy requested further examination of the definition of “hardship” in R.I. Gen. Laws § 36-14-5(e). Chair Cheit stated that the Commission currently relies on common law definitions based upon how the hardship exception was applied in prior advisory opinions. Chair Cheit asked the staff to at look other jurisdictions to see if there are any definitions of “hardship.” Commissioner Murphy also reiterated his request for the Commission to consider a restriction on filing complaints prior to an election, especially

complaints related to financial disclosure errors. Executive Director Willever stated that he has both issues on his list and the staff will report back at a future meeting.

At 11:55 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

**Robert A. Salk
Secretary**