

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2022-29

Hearing Date: October 18, 2022

Re: The Honorable Mark E. Liberati

QUESTION PRESENTED:

The Petitioner, a Jamestown Probate Judge, a municipal appointed position, who in his private capacity is a practicing attorney, requests an advisory opinion regarding whether the Code of Ethics prohibits him from representing a private client before the Jamestown Town Council, given that the Town Council is the appointing authority for the Probate Judge position.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a Jamestown Probate Judge, a municipal appointed position, who in his private capacity is a practicing attorney, is not prohibited by the Code of Ethics from representing a private client before the Jamestown Town Council, notwithstanding that the Town Council is the appointing authority for the Probate Judge position.

The Petitioner is a Probate Judge in the Town of Jamestown, a position to which he was appointed by the Jamestown Town Council (“Town Council”) on January 1, 2019. He is currently serving his second consecutive two-year term. The Petitioner states that one of his private clients has asked him for legal representation before the Town Council on a liquor license renewal application. The Petitioner explains that this representation would be unrelated to any matter in which he is involved as Probate Judge and not under the jurisdiction of the Probate Court. The Petitioner represents that his duties as Probate Judge are limited to adjudicating various probate matters outside of the Town Council’s jurisdiction, such as decedents’ estates, guardianships, and name changes. He states that neither the Probate Court, nor he in his capacity as Probate Judge, has any fiscal or jurisdictional authority over the Town Council. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits him from representing his client before the Town Council on the liquor license renewal application.

The Code of Ethics prohibits a public official from representing himself or others before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1) & (2) (“section 5(e)”); Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). A person represents himself or another person before an agency when he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency. Section 36-14-2(12) & (13); Regulation 1.1.4. Additionally, Commission Regulation 520-RICR-00-00-1.4.1 Acting as an Attorney for Other than State or Municipality (36-14-5008) (“Regulation 1.4.1”) prohibits, among other things, a

municipal appointed or elected official having fiscal or jurisdictional control over a municipal agency from acting as a compensated attorney before that agency in a matter in which the municipality has an interest or is a party.

Furthermore, no person subject to the Code of Ethics shall engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of his duties or employment in the public interest. Section 36-14-5(a) (“section 5(a)”). A substantial conflict of interest exists if a public official has reason to believe or expect that he, any person within his family, his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using his public office or confidential information received through his public office to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d) (“section 5(d)”). Finally, the Code of Ethics provides that a public official shall not accept other employment that would impair his independence of judgment as to his official duties or require or induce him to disclose confidential information acquired by him in the course of and by reason of his official duties. Section 36-14-5(b) (“section 5(b)”).

The Ethics Commission has consistently opined that the Code of Ethics does not prohibit various municipal judges, including probate court judges, from representing clients before other municipal bodies where the municipal judges do not have jurisdiction over such matters in their judicial roles. For example, in Advisory Opinion 96-1, the Ethics Commission opined that a Newport Probate Judge could represent clients before the Newport City Council in matters unrelated to those in which the petitioner was involved as a Probate Judge. The Ethics Commission further opined that the mere fact that a public official appears before his or her appointing authority does not constitute a violation of the Code of Ethics absent additional evidence implicating the specific prohibitions set forth in section 36-14-5. Additionally, the Ethics Commission found that there was no evidence to suggest that the petitioner: 1) would have an unfair advantage before the City Council or other municipal agencies; 2) exercised any sort of fiscal or jurisdictional control over the City Council or another municipal entity; or 3) would use his public position for improper private gain.

Similarly, in Advisory Opinion 2021-49, the Ethics Commission opined that an Associate Judge of the Cranston Municipal Court, who in his private capacity was a practicing attorney, was not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court, the Cranston Zoning Board of Review, and the Cranston City Council, or from representing clients charged with criminal offenses by the Cranston Police Department, provided that the representation was not related to a matter in which the petitioner was involved as an Associate Judge of the Cranston Municipal Court or over which the Cranston Municipal Court had jurisdiction. See also A.O. 2003-71 (opining that a Tiverton Municipal Court Judge could represent private clients before the Tiverton Town Council, the Tiverton Zoning Board of Review, and other municipal bodies, including individuals charged with criminal offenses by the Tiverton Police Department, provided that the representation was not related to a matter in which the petitioner was involved in his capacity as Municipal Court Judge or over which the Tiverton Municipal Court had jurisdiction). Contra A.O. 98-42 (finding, among other things, that an Alternate Woonsocket Municipal Court Judge could not represent individuals charged with

criminal violations by the Woonsocket Police Department while also conducting bail hearings involving members of the Woonsocket Department).

Here, although the Petitioner was appointed to his position as Probate Court Judge by the Town Council, he is not a member or an employee of the Town Council, does not have appointing authority over its members, and does not have any fiscal or jurisdictional control over it. Therefore, the prohibitions set forth in section 5(e) and Regulation 1.4.1 are inapplicable here. Furthermore, the Petitioner's duties as Probate Judge are limited to adjudicating certain probate matters outside of the Town Council's jurisdiction, such as decedents' estates, guardianships, and name changes. Finally, the Petitioner's representation of his client before the Town Council would be on a matter unrelated to any matter in which the Petitioner is involved as Probate Judge or over which the Probate Court has jurisdiction. Thus, the prohibitions found in sections 5(a), 5(b), and 5(d) are also inapplicable. Accordingly, based on the facts as represented, the relevant provisions of the Code of Ethics, and prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may represent his client before the Town Council relative to the client's liquor license renewal application.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(e)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

520-RICR-00-00-1.4.1 Acting as an Attorney for Other than State or Municipality (36-14-5008)

Related Advisory Opinions:

A.O. 2021-49

A.O. 2003-71

A.O. 98-42

A.O. 96-1

Keywords:

Acting as Agent

Private Employment