

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2024-2

Approved: January 23, 2024

**Re: Matthew McGeorge, AIA, LEED AP**

### **QUESTION PRESENTED:**

The Petitioner, a former member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing his client before the Historic District Commission prior to the expiration of one year following the severance of the Petitioner's position with that agency.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a former member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity is an architect, qualifies for a hardship exception pursuant to General Commission Advisory 2010-1, as more fully set forth below, that will allow him to represent his client before the Historic District Commission prior to the expiration of one year following the severance of the Petitioner's position with that agency.

The Petitioner is a former member and chairperson of the East Greenwich Historic District Commission ("HDC"), on which he served continuously from 2011 until August 2023. He represents that this was an unpaid, volunteer position. The Petitioner states that in his private capacity he has been a registered architect in Rhode Island since 2007 with his own private practice since 2010. He represents that he earned a Bachelor of Environmental Design from the University of Tasmania, Tasmania, Australia, and a Master of Architecture from the Illinois Institute of Technology. The Petitioner states that he specializes in historic preservation, adaptive reuse, and the design of new structures with historic character allusions and that he and his firm have completed more than 15 historic adaptive reuse projects, including a 25-million-dollar adaptive reuse of the Elizabeth Mill in Warwick, as well as several historic renovation projects including the Edward Bannister House for Brown University, the Caleb Greene House in Warwick for AAA New England, the Saw Tooth Mill in Warwick, and several other projects on Federal Hill and West Providence with the Omni Group. He further states that over thirty percent (30%) of his work involves historic structures.

The Petitioner represents that he has been advising a client regarding the client's Comprehensive Master Plan relative to a Multi-Structure Development ("Development") consisting of residential and commercial units located within the East Greenwich Historic District. The Petitioner states that, because the proposed Development includes deed restricted affordable housing units, the

review process is conducted by the East Greenwich Planning Board (“Planning Board”) rather than the HDC, which would normally have jurisdiction over the construction of new buildings or over exterior alterations to existing buildings located in the East Greenwich Historic District. He clarifies, however, that in the normal course of review of the application for the proposed Development (“Application”), the Planning Board would typically request an advisory opinion from the HDC on the Application. The Petitioner would like to submit the design plans to the HDC and attend and speak at any hearings that might be scheduled before the HDC on the Application. The Petitioner states that the pre-application sets of plans have been submitted to the East Greenwich Planning Department by the Development’s civil engineer, and that at this time no advisory opinion has been requested from the HDC. However, given that a request for an advisory opinion from the HDC is expected, the Petitioner seeks a hardship exception that will allow him to represent his client before the HDC within the year after leaving office, pursuant to General Commission Advisory 2010-1 (“GCA 2010-1”).

R.I. Gen. Laws § 36-14-5(e)(1)-(3) (“Section 5(e)”) of the Code of Ethics prohibits a public official from representing himself, representing another person, or acting as an expert witness before a municipal agency of which he is a member or by which he is employed. See also Commission Regulation 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016) (“Regulation 1.1.4”). These prohibitions continue while a public official remains in office and for a period of one year thereafter. Section 5(e)(4).

The Petitioner’s proposed conduct falls squarely within section 5(e)’s prohibition against representing his client before an agency of which the Petitioner was a member during the one-year period after leaving office. However, the Ethics Commission has carved out a specific hardship exception to section 5(e) outlined in GCA 2010-1 for “Historic Architects Who Are Members of Historic District Commissions.”<sup>1</sup> This exception is based upon the Ethics Commission’s finding that “municipal historic district commissions within the state of Rhode Island are best served if they are able to have a sitting member who specializes in historic architecture and preservation.” GCA 2010-1. The Ethics Commission has concluded that, given the limited number of historic architects in the state, recruiting qualified persons to serve on historic district commissions would be difficult and would reduce the ability of historic district commissions to effectively function if those architects were thereafter prohibited from representing private clients before the commissions on which they serve.

However, pursuant to GCA 2010-1, current or former members of historic district commissions may not presume that the exception is applicable to their specific set of circumstances, and are required to seek an advisory opinion each time they consider accepting a client whose project would require them to appear before their own boards. Additionally, GCA 2010-1’s narrow exception applies only to historic architects and does not apply to other architectural specialties. See A.O. 99-120 (declining to grant a hardship exception to a member of the New Shoreham Historic District

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<sup>1</sup> On November 30, 1989, the Ethics Commission issued GCA No. 8, “Architect Members of State and Local Historic Preservation Commissions Appearing Before Their Respective Agencies,” allowing architects who specialize in historic preservation and who serve on historic district commissions to represent clients before their respective commissions without violating the Code of Ethics. In 2010, after considering public comment, and in response to overwhelming support for continuing the use of the exception, the Ethics Commission replaced GCA No. 8 with GCA 2010-1 entitled “Historic Architects Who Are Members of Historic District Commissions.”

Commission, who was a landscape architect and the owner of a landscape architecture business on the island, because his qualifications did not meet the standards of those of a historic architect).

For GCA 2010-1 to apply, the Petitioner must make representations to establish that he is a qualified historic architect. In the present matter, the Petitioner is an architect who specializes in historic preservation and represents that his work experience and education exceed the minimum professional qualifications for a historic architect promulgated by the National Park Service.<sup>2</sup> It is significant to note that when the Petitioner served on the HDC, the Ethics Commission issued six similar advisory opinions to him in which hardship exceptions were granted based on his status as a historic architect, allowing him to represent clients before the HDC while serving on it. See A.O. 2023-31; A.O. 2021-47; A.O. 2021-39; A.O. 2021-35; A.O. 2019-43; A.O. 2017-27.

Considering all of the above, it is the opinion of the Ethics Commission that the Petitioner qualifies for a hardship exception to the Code of Ethics' prohibition against representing his client before his former agency during the one-year period after leaving service, in accordance with GCA 2010-1.

**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:

§ 36-14-5(e)

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

Related Advisory Opinions:

G.C.A. 2010-1

A.O. 2023-31

A.O. 2021-47

A.O. 2021-39

A.O. 2021-35

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<sup>2</sup> In order to ascertain whether someone is a historic architect, GCA 2010-1 incorporated the minimum professional qualifications for historic architecture promulgated by the National Park Service, as codified in the Code of Federal Regulations at 36 CFR Part 61. The minimum professional qualifications are:

A professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects.

Such study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

<https://www.nps.gov/articles/sec-standards-prof-quals.htm> (last visited on January 16, 2024).

A.O. 2019-43

A.O. 2017-27

A.O. 99-120

Keywords:

Hardship Exception

Historic Architect