



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

40 Fountain Street

Providence, RI 02903

(401) 222-3790 (Voice/TT) Fax: (401) 222-3382

ethics.email@ethics.ri.gov

<https://ethics.ri.gov>

NOTICE OF OPEN MEETING

AGENDA

13th Meeting

DATE: Tuesday, October 29, 2024

TIME: 9:00 a.m.

PLACE: Rhode Island Ethics Commission
Hearing Room - 8th Floor
40 Fountain Street
Providence, RI 02903

LIVESTREAM: The Open Session portions of this meeting will be livestreamed at:
<https://us02web.zoom.us/j/82014608609>

1. Call to Order.
2. Administration of Oath of Office to Dr. Michael Browner, Jr.
3. Motion to approve minutes of Open Session held on September 24, 2024.
4. Director's Report: Status report and updates regarding:
 - a.) Complaints and investigations pending;
 - b.) Advisory opinions pending;
 - c.) Access to Public Records Act requests since last meeting;
 - d.) Financial disclosure;
 - e.) General office administration.
 - f.) 2025 Tentative Meeting Schedule.
5. Advisory Opinions:

- a.) Gregory Mark Dantas, a member of the East Greenwich Historic District Commission, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board, in order to allow him to seek a certificate of appropriateness for the construction of a structure consisting of a three-car garage and a living space above it on his residential property located in the East Greenwich historic district. [Staff Attorney Papa]
 - b.) Gregory Mark Dantas, a member of the East Greenwich Historic District Commission, who in his private capacity owns and operates a real estate brokerage firm, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself, either personally or through a representative, before his own board, in order to allow him to seek a certificate of appropriateness for the installation of solar panels on a building that houses the headquarters of his firm and is located in the East Greenwich historic district. [Staff Attorney Papa]
 - c.) Andrew D. Kettle, NRP, I/C, requests an advisory opinion regarding whether the Code of Ethics precludes him from accepting the position of Emergency Management director for the Town of Charlestown, given that the Petitioner is privately employed, and intends to remain privately employed, as chief of Charlestown Ambulance-Rescue Service, a nonprofit corporation that currently contracts with the town to provide emergency medical services. [Staff Attorney Radiches]
6. Discussion and Vote regarding adoption of Fine Schedules for Financial Disclosure Complaints.
7. Motion to go into Executive Session, to wit:
- a.) Motion to approve minutes of Executive Session held on September 24, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - b.) In re: Michael Dowhan, Jr., Complaint No. NF2024-4, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - c.) In re: Scott Millar, Complaint No. 2024-8, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
 - d.) Motion to return to Open Session.
8. Motion to seal minutes of Executive Session held on October 29, 2024.
9. Report on actions taken in Executive Session.

10. New Business proposed for future Commission agendas and general comments from the Commission.

11. Motion to adjourn.

ANYONE WISHING TO ATTEND THIS MEETING WHO MAY HAVE SPECIAL NEEDS FOR ACCESS OR SERVICES SUCH AS A SIGN LANGUAGE INTERPRETER, PLEASE CONTACT THE COMMISSION BY TELEPHONE AT 222-3790, 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. THE COMMISSION ALSO MAY BE CONTACTED THROUGH RHODE ISLAND RELAY, A TELECOMMUNICATIONS RELAY SERVICE, AT 1-800-RI5-5555.

Posted on October 24, 2024

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 29, 2024

Re: Gregory Mark Dantas

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board, in order to allow him to seek a certificate of appropriateness for the construction of a structure consisting of a three-car garage and a living space above it on his residential property located in the East Greenwich historic district.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before his own board, in order to allow him to seek a certificate of appropriateness for the construction of a structure consisting of a three-car garage and a living space above it on his residential property located in the East Greenwich historic district.

The Petitioner is a member of the East Greenwich Historic District Commission (HDC), having served in that position since his appointment by the East Greenwich Town Council in December 2023. The Petitioner represents that he resides with his family in a home that he purchased in 2020 and which is located in the East Greenwich historic district. The Petitioner states that he would like to replace the existing garage with a new structure which would consist of a three-car garage and a living space above it for his mother. The Petitioner further states that prior to demolishing, erecting, or altering any part of his historic property, he is required to seek and receive a certificate of appropriateness from the HDC.¹ He represents that he would recuse from the HDC's discussions and decision-making relative to his application. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception that will allow him to represent himself before the HDC relative to the aforementioned application.

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf before a state or municipal agency of which he is a member, by

¹ The Petitioner explains that he may have to appear before other boards such as the East Greenwich Planning Board or the East Greenwich Zoning Board, but that he does not have any supervisory or appointing authority over those boards.

which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1); 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). Absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists, these prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5(e)(1) & (4). Moreover, while many conflicts under the Code of Ethics can be avoided by recusing from participation, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions against self-representation absent an express finding by the Ethics Commission that a hardship exists. Upon receiving a hardship exception, the public official is required to recuse from participating in his agency's consideration and disposition of the matter at issue. § 36-14-5(e)(1)(ii). The public official must also "follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter." § 36-14-5(e)(1)(iii).

Here, the Petitioner's proposed conduct falls squarely within § 36-14-5(e)(1)'s prohibition on representing himself before an agency of which he is a member. Thus, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship that will permit him to appear, either personally or through a representative, before the HDC. The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative. For example, in Advisory Opinion 2024-24, the Ethics Commission granted a hardship exception to another member of the East Greenwich Historic District Commission, allowing him to represent himself before his own commission in order to seek a certificate of appropriateness to add a window and replace most of the existing windows on his historic home, the ownership of which predated his appointment to the HDC. The Ethics Commission required that petitioner to recuse from participation and voting when the HDC considered his application and, prior to or at the time of his appearance before the HDC, to inform the other HDC members of his receipt of the advisory opinion and of his recusal in accordance therewith. See also A.O. 2020-26 (granting a hardship exception to an East Greenwich Historic Commission member, allowing him to represent himself before his own commission in order to seek certificates of appropriateness to install a new shed and roof-mounted solar array on his property, the ownership of which predated his appointment to the Historic District Commission); A.O. 2020-15 (granting a hardship exception to an Exeter Zoning Board of Review member, allowing him to represent himself before his own board in order to seek a dimensional variance to construct a shed at his personal residence that he acquired prior to his appointment to the zoning board, but requiring him to recuse from participation and voting during the zoning board's consideration of his request for relief).

In the present matter, the Petitioner seeks to replace the existing garage on his property with a new structure which will include a three-car garage and a living space above it for his mother. He represents that he purchased the property in 2020, which predates his appointment to the HDC by more than four years. Further, the relief sought involves the Petitioner's principal residence and not a new commercial venture. Based upon the Petitioner's representations, and the review of the

relevant provisions of the Code of Ethics and prior advisory opinions, it is the opinion of the Ethics Commission that the totality of the circumstances justifies making an exception to § 36-14-5(e)'s prohibitions against representing oneself before one's own board. Accordingly, the Petitioner may appear, either personally or through a representative, before the HDC in order to seek a certificate of appropriateness for the replacement of his garage with the new structure at his personal residence. However, as the Petitioner correctly anticipated, he must recuse from participation and voting when the HDC considers his application. Pursuant to § 36-14-5(e)(1), the Petitioner shall, prior to or at the time of his appearance before the HDC, inform the other HDC members of his receipt of the instant advisory opinion and of his recusal in accordance therewith. Notice of recusal must be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This Draft 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)

§ 36-14-6

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

Related Advisory Opinions:

A.O. 2024-24

A.O. 2020-26

A.O. 2020-15

Keywords:

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 29, 2024

Re: Gregory Mark Dantas

QUESTION PRESENTED:

The Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity owns and operates a real estate brokerage firm, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself, either personally or through a representative, before his own board, in order to allow him to seek a certificate of appropriateness for the installation of solar panels on a building that houses the headquarters of his firm and is located in the East Greenwich historic district.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Historic District Commission, a municipal appointed position, who in his private capacity owns and operates a real estate brokerage firm, qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself, either personally or through a representative, before his own board, in order to allow him to seek a certificate of appropriateness for the installation of solar panels on a building that houses the headquarters of his firm and is located in the East Greenwich historic district.

The Petitioner is a member of the East Greenwich Historic District Commission (HDC), having served in that position since his appointment by the East Greenwich Town Council in December 2023. The Petitioner represents that in his private capacity he owns and operates Rhode Island Real Estate Services, a private real estate brokerage firm that he established in July 2012 and that specializes in the buying, selling, and leasing of real estate. The Petitioner states that he has been in the real estate business as a real estate licensee for the past 27 years. He further states that in March of 2023 he purchased a building, located in the East Greenwich historic district, that houses the headquarters of his real estate firm. The Petitioner describes the building as an 8,000-square-foot, two-story structure, 70 percent of which is occupied by his firm. He informs that the remaining 30 percent of the building is occupied by a tenant who has been operating a clothing store for the past 10 years out of that location. The Petitioner notes that he does not intend to sell the building. He represents that his business also has satellite offices in Jamestown, Narragansett, and North Kingstown. The Petitioner states that the real estate firm is his primary and only business, and his primary source of income. He further states that he would like to install solar panels on the building to make it more efficient and to be able to benefit from the many tax credit incentives associated with the installation of solar panels. The Petitioner explains that, given that

the building is located in a historic district, he is required prior to altering its exterior to seek and receive a certificate of appropriateness from the HDC. He represents that he would recuse from the HDC's discussions and decision-making relative to his application. The Petitioner states that he plans to hire a firm called Summit Energy to handle the whole process associated with the installation of the solar panels, including obtaining the certificate of appropriateness from the HDC.

The Petitioner explains that the town welcomes the use of solar energy. He notes that since his appointment to the HDC, the HDC has reviewed three applications relative to the installation of solar panels on properties located in the East Greenwich historic district. The Petitioner further notes that all three applications were approved without any changes, recommendations, or objections. The Petitioner represents that the HDC is considering simplifying the approval process for the installation of solar panels by delegating such approval to town employees within the Building Inspector's Office and removing it from the review by the HDC. The Petitioner explains that solar panels are not considered permanent structures and the solar project proposals reviewed by the HDC are ordinarily prepared by electrical engineers and not the homeowners. Based on this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception that will allow him to represent himself, or to be represented by another person, before the HDC relative to the aforementioned application.

The Code of Ethics prohibits a public official from representing himself or authorizing another person to appear on his behalf 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); 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016). These prohibitions continue while the public official remains in office and for a period of one year thereafter. § 36-14-5(e)(1) & (4). While many conflicts under the Code of Ethics can be avoided by recusing from participation, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions against self-representation absent an express finding by the Ethics Commission in the form of an advisory opinion that a hardship exists. Upon receiving a hardship exception, the public official is required to recuse from participating in his agency's consideration and disposition of the matter at issue. § 36-14-5(e)(1)(ii). The public official must also "follow any other recommendations that the Ethics Commission may make to avoid any appearance of impropriety in the matter." § 36-14-5(e)(1)(iii).

Here, the Petitioner's proposed conduct falls squarely within § 36-14-5(e)(1)'s prohibition on representing himself before an agency of which he is a member. Thus, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner herein justify a finding of hardship that will permit him to appear, either personally or through a representative, before the HDC. The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered some of the following factors in cases involving real property: whether the subject property involved the official's principal residence or principal place of business; whether the official's interest in the property was pre-existing to his public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; and whether the matter involved a significant economic impact. The Ethics Commission may consider other factors and no single factor is determinative.

In past advisory opinions, the Ethics Commission has applied the hardship exception where the matter involved a modification to the official's principal place of business. In Advisory Opinion 2023-5, for example, the Ethics Commission granted a hardship exception to a member of the East Providence Development Commission in order to appear before his own agency to seek a federal grant funding administered by that agency. In his private capacity, that petitioner owned and operated the Indoor Tennis Court located in East Providence. He wished to avail himself of the federal funds in order to restore and renovate the front of the commercial property from which he had been operating the business. The Indoor Tennis Court had been that petitioner's only employment for approximately two decades prior to his appointment to the East Providence Development Commission. Similarly, in Advisory Opinion 2011-33, the Ethics Commission granted a hardship exception to a former Westerly Planning Board member, allowing him to seek a permit from his former board to install an additional sign at his ice cream shop. The additional sign allowed him to take advantage of the newly cleared line of sight to a busy street, hoping to increase his ice cream sales during the busy summer season rather than waiting until the following December when the one-year revolving door prohibition would have expired. That petitioner's request for a hardship exception involved the petitioner's principal place of business, his ownership of which predated his appointment to the planning board by six years, and the relief sought was not a new commercial venture but rather a minor improvement to his principal place of business and primary source of income. See also A.O. 2001-29 (granting a hardship exception to a member of the Narragansett Town Council, allowing him to appear before the Narragansett Zoning Board, over which he had appointing authority, in order to apply for an alteration to the condominium site plan to enclose the outdoor sitting areas that were used during the summer season, based on the fact that the petitioner had owned and operated the restaurant for eight years prior to his election to the town council).

In contrast, the Ethics Commission has previously declined to grant a hardship exception for matters involving new commercial ventures. In Advisory Opinion 2003-49, for example, the assistant solicitor for the Town of Lincoln wished to represent himself before the Lincoln Town Council, Zoning Board, and Planning Board regarding the development of two parcels of real estate that he owned in the town. The hardship exception was not granted because the petitioner's ownership of the lots did not predate his appointment as assistant solicitor and it was uncertain as to whether either lot would be used as the petitioner's primary residence or simply resold in commercial transactions after development. The Ethics Commission also declined to grant a hardship exception in Advisory Opinion 2000-41, where an Exeter Zoning Board member sought to generate additional income by entering into a contract with Sprint Cellular Communications to locate a cellular communications tower on his residential property. Although the subject property involved the petitioner's principal residence, the proposed commercial venture served only to generate additional income for the petitioner.

In the present matter, the Petitioner would like to install solar panels on the building that houses the headquarters of his real estate firm which is his primary source of income, and which he has owned and operated for the last 12 years. The Petitioner is hoping that the installation of the solar panels will make the building more efficient and that he would also be able to benefit from the many tax credit incentives associated with the solar program. He represents that he purchased the building approximately nine months prior to his appointment to the HDC and that he does not

intend to sale it. Further, the relief sought involves an alteration to the Petitioner's principal place of business and not a new commercial venture.

Based upon the Petitioner's representations, and the review of the relevant provisions of the Code of Ethics and prior advisory opinions, it is the opinion of the Ethics Commission that the totality of the circumstances justifies making an exception to § 36-14-5(e)'s prohibitions against representing oneself before one's own board. Accordingly, the Petitioner may appear before the HDC, either personally or through a representative, in order to seek a certificate of appropriateness for the installation of solar panels on the building which is his primary place of business. However, as the Petitioner correctly anticipated, he must recuse from participation and voting when the HDC considers his application. Pursuant to § 36-14-5(e)(1), the Petitioner shall, prior to or at the time of his appearance before the HDC, inform the other HDC members of his receipt of the instant advisory opinion and of his recusal in accordance therewith. Notice of recusal must be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This Draft 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)

§ 36-14-6

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

Related Advisory Opinions:

A.O. 2023-5

A.O. 2011-33

A.O. 2003-49

A.O. 2001-29

A.O. 2000-41

Keywords:

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: October 29, 2024

Re: Andrew D. Kettle, NRP, I/C

QUESTION PRESENTED:

The Petitioner requests an advisory opinion regarding whether the Code of Ethics precludes him from accepting the position of Emergency Management director for the Town of Charlestown, a municipal appointed position, given that the Petitioner is privately employed, and intends to remain privately employed, as chief of Charlestown Ambulance-Rescue Service, a nonprofit corporation that currently contracts with the town to provide emergency medical services.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Code of Ethics precludes the Petitioner from accepting the position of Emergency Management director for the Town of Charlestown, a municipal appointed position, given that the Petitioner is privately employed, and intends to remain privately employed, as chief of Charlestown Ambulance-Rescue Service, a nonprofit corporation that currently contracts with the town to provide emergency medical services.

The Petitioner, who is currently not subject to the Code of Ethics, represents that he is employed as chief of Charlestown Ambulance-Rescue Service (CARS), a private, non-profit corporation that is governed by a board of directors and which currently contracts with the Town of Charlestown to provide emergency medical and rescue services. He adds that, in this role, he oversees emergency medical service operations for CARS, and advises the town concerning matters in which CARS has expertise including, but not limited to, emergency preparedness, air-medical resources, and community safety. The Petitioner states that his work hours are Monday through Friday from 9:00 a.m. – 5:00 p.m., and that he is on call twenty-four hours per day, seven days per week. He informs that the current contract between CARS and the town runs for the period of July 1, 2024, through June 30, 2027. He adds that the contract bears his signature in his capacity as chief, and that of the president of the CARS board of directors. The Petitioner states that the contract was signed on behalf of the town by the town council president and the town administrator. The Petitioner represents that he participated in the negotiation of the contract between CARS and the town, but that the town's current Emergency Management (EM) director did not. The Petitioner further represents that he reports directly to the CARS board of directors, and that his subordinates include a deputy chief, two captains, three lieutenants, and 30 active providers which include emergency medical technicians and paramedics.

The Petitioner states that he has been approached by Charlestown's town administrator and offered the position of EM director for the town. He explains that the town charter mandates the establishment of a Department of Emergency Management and the appointment of an EM director by the town administrator. He adds that the charter also mandates the establishment of the Charlestown Emergency Management Agency (CEMA), comprised of the EM director and other personnel qualified in emergency service and approved by the EM director. The Petitioner states that, in the current absence of a deputy director of emergency management which is mandated by the town charter, there are three assistant directors who work part-time, as needed.

The Petitioner explains that the town administrator has proposed appointing the Petitioner to the position of EM director on a part-time, contractual basis for a period of two years. The Petitioner further explains that his work hours would be flexible and vary from week to week, but that he anticipates working an average of 8-12 hours each week during the evenings and/or on the weekends. The EM director's duties as identified by the town charter include the following: (1) preparing a comprehensive plan for the utilization of town facilities, equipment, and personnel during any emergency; (2) equipping and maintaining an emergency communications center; (3) assisting the council president in any declared emergency as recognized under the "Unified Command"¹ principle; (4) acting as liaison with the Rhode Island Emergency Management Agency; (5) acting as liaison between the local full-time and/or part-time public, private and volunteer public safety agencies; (6) submitting to the budget commission a request for funds to be used in the event of an emergency within the town, and then maintaining those funds in a separate reserve account to be used for the sole purpose of assisting to cover the costs to procure resources during the emergency situation; and (7) performing any other duties or functions as provided in federal law, state law, or as the town council may direct by ordinance.

The Petitioner offers the following information about how a number of his public duties as EM director would involve or impact CARS as his private employer. First, as to the duty of the EM director to prepare a comprehensive plan for the utilization of town facilities, equipment, and personnel during an emergency, the Petitioner states that CARS would be expected to respond to an emergency in town, but that he is unsure at this time of how the comprehensive plan would incorporate CARS. Regarding the EM director's duty to assist the town council president in any declared emergency, the Petitioner explains that while this could involve CARS, the responsibilities of CARS and the compensation it receives for meeting those responsibilities are outlined in the contract between the town and CARS. With regard to the EM director's responsibility to act as a liaison for the town with various public service agencies, the Petitioner affirms that CARS is one such agency. He adds that the EM director would be expected to host the chief of CARS at monthly meetings during the exercise of this particular responsibility. The Petitioner offers that, in the event he is able to accept the EM director position, he will either recuse from participating in these monthly meetings in his public capacity and the town administrator will take his place, or recuse from participating in his private capacity and a member of the CARS board of directors will take his place.

The Petitioner represents that his submission to the town budget commission of a request for funds to be used in the event of an emergency would be limited to use by CEMA only, explaining that

¹ The Petitioner states that, in its simplest form, the "Unified Command" principle is a team effort that allows multiple agencies to work together to manage an incident.

the funds used to compensate CARS under the contract are a line item in the town's annual budget as approved by the taxpayers. He further represents that CARS is paid by the town's finance director by way of direct deposit each month and that, as EM director, he would not be involved in compensating CARS under its contract with the town. The Petitioner states that in the event that CARS were to seek reimbursement from the Federal Emergency Management Agency following an emergency, the Petitioner would recuse from any involvement in his role as EM director in the processing of that reimbursement. He further states that, to the extent that extraordinary expenses are incurred by CARS in the delivery of services to the town, the CARS board of directors would negotiate with the town council and the town administrator with input from the Petitioner in his capacity as chief. The Petitioner offers that, in the event he is appointed EM director for the town, he would recuse from providing input in his role as chief. The Petitioner represents that his performance of any other duties or functions with which he might be tasked by the town council would not include the evaluation of CARS' performance under the contract. The Petitioner notes that the town is CARS' sole client, and that the CARS board of directors supports the Petitioner's appointment to the position of EM director.

Regarding the Petitioner's responsibility in his private capacity as chief of CARS to counsel and advise the town on matters such as emergency preparedness, air-medical resources, and community safety, the Petitioner states that he would recuse from doing so and that the president of the CARS board of directors would act in the Petitioner's place. The Petitioner informs that, in the event of an emergency in town, he would be expected to be present at the emergency site in his private capacity as chief of CARS and be present at the emergency operations center at the town's police station in his public capacity as EM director. It is under this set of facts that the Petitioner seeks guidance regarding whether the Code of Ethics precludes his acceptance of an appointment to the position of EM director for the Town of Charlestown.

Under the Code of Ethics, a "municipal appointed official" includes any officer or member of a municipal agency who is appointed to an office specified by the constitution or a statute of this state, or a charter or ordinance of any city or town, or who is appointed by or through the governing body or highest official of municipal government. R.I. Gen. Laws § 36-14-2(9); 520-RICR-00-00-1.1.3 (B) Additional Definitions (36-14-2002) ("Regulation 1.1.3") The Code of Ethics defines "municipal agency" to include any department, division, agency, commission, board, office, bureau, authority, corporation or subsidiary, quasi-public authority, or school, fire or water district within Rhode Island, other than a state agency, and whether comprised of officials and employees from a single or multiple municipalities, and any other agency that is in any branch of municipal government and which exercises governmental functions other than in a purely advisory nature. § 36-14-2(8)(ii); Regulation 1.1.3(E).

The Code of Ethics provides that a public official shall not have any interest, financial or otherwise, direct or indirect, or engage in any business, employment, transaction, or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official has an interest which is in substantial conflict with the proper discharge of his duties in the public interest if he 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. R.I. Gen. Laws § 36-14-7(a). The Code of Ethics also provides that a

public official shall not use his public office or confidential information received through his holding 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. § 36-14-5(d). The Code of Ethics further provides that a public official shall not accept other employment which will either impair his independence of judgment as to his official duties or employment, or require or induce him to disclose confidential information acquired by him in the course of, and by reason of, his official duties or employment. § 36-14-5(b).

Additionally, the Code of Ethics prohibits a public official or employee from representing himself or any other person, or acting as an expert, before a state or municipal agency of which he is a member or by which he is employed. § 36-14-5(e)(1)-(3). A person “represents” himself before a state or municipal agency if he participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his favor or in favor of another person. § 36-14-2(12) & (13); 520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016). These prohibitions extend for a period of one year after the public official or employee has officially severed his position with the subject state or municipal agency. § 36-14-5(e)(4). Finally, a public official must recuse from participation in any matter in which his business associate or employer appears or presents evidence or arguments before his state or municipal agency. 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002).

When considering potential conflicts regarding other employment, the Ethics Commission examines several factors. These factors include, but are not limited to, the nexus between the official’s public duties and other employment; whether the employee completes such other work outside of his normal working hours and without the use of public resources; whether the employee is required to appear before his own agency as part of his other employment; whether such other work is to be conducted outside of the areas over which the person has decision-making jurisdiction; and whether the employee uses his public position to solicit business or customers. See General Commission Advisory No. 2009-4.

The Ethics Commission has also consistently opined that public officials and employees are not inherently prohibited from holding other employment that is secondary to their primary public positions, provided that the other employment would neither impair their independence of judgment nor create an interest in substantial conflict with their public duties, and subject to certain other restrictions. For example, in Advisory Opinion A.O. 2004-34, the Ethics Commission opined that the coordinator of community planning and development for the Rhode Island Department of Elderly Affairs (RIDEA) could continue her private employment as the executive director of the New England Gerontology Academy (NEGA), given that her RIDEA duties and NEGA duties were separate and distinct. The Ethics Commission further opined that, unless some issue came before one of the forums in which the petitioner served that directly impacted the other, no conflicts of interest under the Code of Ethics appeared to be present. See also A.O. 2003-45 (opining that a recipient of a conditional offer of employment for the position of town engineer/public works director for the Town of Burrillville, should he accept such employment, could continue to operate his private practice of consultant engineering outside of the town).

The Ethics Commission has specifically permitted public officials and employees to engage in other employment that was outside of their official public jurisdiction. For example, in Advisory Opinion 2001-27, a captain in the Cranston Fire Department was not prohibited from accepting employment with an architect to review plans for submission to another municipality for fire code compliance, provided that he had no involvement with those plans subject to his official jurisdiction; he performed such work on his own time and without the use of public resources; and that he did not use his position with the fire department to recruit potential clients. The Ethics Commission reasoned that, because the petitioner would not be acting in matters in his private capacity where he exercised authority in his public capacity, he would not be in substantial conflict with the performance of his duties in the public interest, nor would his judgment be impaired as to his public duties. That petitioner was advised of his obligation to recuse himself from participating in the review of plans submitted by his private employer and that, when his recusal was required, he could not delegate to a subordinate within his department to handle his private employer's plan review. The Ethics Commission then acknowledged the lack of representation or indication that the petitioner's involvement with a private employer would have an adverse impact on his public employer owing to the need for frequent recusals, adding that if the petitioner's private employer ever began a large volume of work in Cranston, it might be necessary to revisit the situation.

Here, were the Petitioner to become the town's EM director, even on a part-time, contractual basis, he would be a municipal appointed official as that term is defined by the Code of Ethics and, therefore, be subject to its provisions. The Petitioner states that CARS would be expected to respond to an emergency in town, but that he is unsure at this time of how the comprehensive plan for which he would be responsible in his role as EM director would incorporate CARS. Thus, it is impossible to determine the extent to which any official activity on the part of the Petitioner would directly financially impact his private employer. Although the Petitioner states that he would not be tasked with evaluating CARS' performance under the contract, it is difficult to conceive that the EM director would be completely excluded by the town administrator and the town council when making such a determination.

The Petitioner further states that the monthly report with which the chief is tasked to distribute to the town council would not also be sent to the EM director; however, it is again difficult to conceive that the monthly report from CARS would not ultimately be forwarded by another town official to the EM director to assist him with the exercise of his public duties. That the EM director would be expected to host the chief of CARS at monthly meetings is particularly troubling, given that the Petitioner would be expected to run those meetings in his public capacity and attend them in his private capacity. The Petitioner offers to recuse from participating in these monthly meetings in his public capacity, in which case the town administrator would take his place. Alternatively, the Petitioner offers to recuse from participating in these monthly meetings in his private capacity, in which case a member of the CARS board of directors would take his place. Either option does little to convince the Ethics Commission that the Petitioner could perform both roles simultaneously without confusing everyone in attendance at these meetings, and without an impaired independence of judgment as to the performance of his public duties.

Unlike the petitioner in Advisory Opinion 2001-27 who sought to engage in private employment outside of the municipality by which he was employed, or the petitioner in Advisory Opinion 2004-34 whose public and private duties were separate and distinct, the instant Petitioner's situation is

such that, were he to accept appointment to the EM director position, the nexus between his public duties and those associated with his private employment as chief of CARS would overlap to such a degree as to impair his independence of judgment and create a substantial conflict of interest. Additionally, the Petitioner could not realistically complete his other employment for CARS outside of his working hours for the town, despite their flexibility, given that he is on call 24/7 for CARS. Further, in an emergency situation, the Petitioner would be expected to be present at the emergency operations center at the town's police station in his public capacity and at the site of the emergency in his private capacity. Even if the Petitioner were to recuse from performing his private role as chief during an emergency, someone else from CARS would be responding to an emergency for which the Petitioner in his public role as EM director would be responsible.

Here, the Petitioner would risk significant impairment to his independence of judgment as a public official by holding these dual roles. The Petitioner seeks to serve both publicly as the EM director for the town who oversees emergencies, and privately as the chief of the contractor that provides medical and rescue services to the town during those emergencies. The Petitioner's multiple proposed recusals from performing essential duties in both his public and private positions serve only to highlight the inherent conflicts of interest embedded in serving in both capacities. It seems impossible that the Petitioner could provide counsel to the administrator and town council in his role as chief of CARS relative to town emergencies and then report to the town administrator and town council in his public capacity as EM director relative to those emergencies without impairment to his independence of judgment as to his public duties. Accordingly, in consideration of the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Code of Ethics precludes the Petitioner's acceptance of the position of EM director for the Town of Charlestown.

This Draft 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(8)

§ 36-14-2(9)

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-7(a)

520-RICR-00-00-1.1.3 Additional Definitions (36-14-2002)

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

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

GCA 2009-4

A.O. 2004-34

A.O. 2003-45

A.O. 2001-27

Keywords:

Secondary Employment

DRAFT

**SCHEDULE OF FINES AND PENALTIES
FOR THE INFORMAL DISPOSITION OF COMPLAINTS
ALLEGING A DELINQUENT FINANCIAL DISCLOSURE STATEMENT**

In accordance with 520-RICR-00-00-3.30(A)(1), the Rhode Island Ethics Commission hereby adopts the following schedule of fines and penalties for the informal disposition of complaints that solely allege a delinquent financial disclosure statement. If the Respondent wishes to contest the complaint or fails to satisfy any of the conditions set forth herein for an informal disposition, the matter shall proceed pursuant to the Ethics Commission's formal procedures for contested matters.

For the purposes of this schedule, a financial disclosure statement is "delinquent" when it has not been properly transmitted to or received by the Ethics Commission by the applicable filing deadline.

- I. **Delinquent statement filed within 30 days of the filing deadline.**
 - A. A complaint alleging that a financial disclosure statement is delinquent shall be administratively dismissed without the need to appear before the Ethics Commission if, within 30 days of the applicable filing deadline, the Respondent properly files the delinquent statement.

- II. **Delinquent statement filed more than 30 days after the filing deadline.**
 - A. A complaint alleging that a financial disclosure statement is more than 30 days delinquent shall be informally resolved without the need to appear before the Ethics Commission if, within 30 days of the filing of the complaint but prior to a hearing on probable cause, the Respondent:
 1. properly files the delinquent statement;
 2. executes and delivers to the Ethics Commission a "Consent to Finding of Violation" form; and
 3. tenders payment of a civil penalty in the amount of \$100.

- III. **Reduced civil penalties.**
 - A. The Executive Director or their designee is authorized to accept the payment of a reduced civil penalty, or to waive the payment of any civil penalty, in all complaints subject to this schedule, for good cause upon a determination that unique circumstances justify such a reduction.

Commentary: *This schedule only applies to complaints alleging a "delinquent" financial statement, meaning a statement that was either filed after the applicable deadline or was never filed. **Section I** applies to situations where the filer is 30 days or less late. In those cases, if the filer properly files the statement within the 30-day window following the deadline, the staff would automatically and administratively dismiss the complaint with no civil penalty and without it ever having to go before the Ethics Commission for a hearing. **Section II** applies to situations where the filer is more than 30 days late. In all such cases, prior to a probable cause hearing the filer shall be entitled to informally resolve the complaint by filing the delinquent form, admitting to a violation of the financial disclosure statute, and paying a civil penalty of \$100. This would be handled by the staff without the need for the filer to go before the Ethics Commission at a hearing. **Section III** continues the current practice in which the Executive Director has discretion to lower or waive the \$100 fine if circumstances justify such a reduction. In all cases subject to this schedule, the filer would have an absolute right to reject any informal resolution and instead appear before the Ethics Commission to contest the complaint.*

**SCHEDULE OF FINES AND PENALTIES
FOR THE INFORMAL DISPOSITION OF COMPLAINTS
ALLEGING A DEFICIENT FINANCIAL DISCLOSURE STATEMENT**

In accordance with 520-RICR-00-00-3.30(A)(1), the Rhode Island Ethics Commission hereby adopts the following schedule of fines and penalties for the informal disposition of complaints that solely allege a **deficient** financial disclosure statement. If the Respondent wishes to contest the complaint or fails to satisfy any of the conditions set forth herein for an informal disposition, the matter shall proceed pursuant to the Ethics Commission's formal procedures for contested matters.

For the purposes of this schedule, a financial disclosure statement is "**deficient**" when the filer has omitted any of the information required by law to be disclosed.

I. **Corrected PRIOR TO filing of complaint.**

- A. **More than 30 days prior to filing of complaint.** A complaint alleging that a financial disclosure statement is deficient shall be administratively dismissed without the need to appear before the Ethics Commission if, more than 30 days prior to the filing of the complaint, the Respondent properly amended the allegedly deficient statement.
- B. **30 days or less prior to filing of complaint.** A complaint alleging that a financial disclosure statement is deficient may, in the discretion of the Executive Director or their designee, be administratively dismissed without the need to appear before the Ethics Commission if, during the 30-day period prior to the filing of the complaint, the Respondent properly amended the allegedly deficient statement.

II. **Corrected AFTER filing of complaint.**

- A. **Within 14 days after filing of complaint.** A complaint alleging that a financial disclosure statement is deficient may be informally resolved with the consent of both the Respondent and the Executive Director, and without the need to appear before the Ethics Commission if, within 14 days of the filing of the complaint, the Respondent:
 - 1. amends the deficient statement to correct the deficiency;
 - 2. corrects all other deficiencies identified by the Executive Director or their designee; and
 - 3. executes and delivers to the Ethics Commission a "Consent to Finding of Violation" form.
- B. **More than 14 days after filing of complaint.** A complaint alleging that a financial disclosure statement is deficient may be informally resolved with the consent of both the Respondent and the Executive Director, and without the need to appear before the Ethics Commission if, more than 14 days after the filing of the complaint, the Respondent:
 - 1. amends the deficient statement to correct the deficiency;
 - 2. Corrects all other deficiencies identified by the Executive director or their designee;
 - 3. executes and delivers to the Ethics Commission a "Consent to Finding of Violation" form; and
 - 4. tenders payment of a civil penalty in the amount of \$100.
- C. The Executive Director or their designee is authorized to accept the payment of a reduced civil penalty, or to waive the payment of any civil penalty, for good cause upon a determination that unique circumstances justify such a reduction.