



STATE OF RHODE ISLAND

RHODE ISLAND ETHICS COMMISSION

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NOTICE OF OPEN MEETING

AGENDA

1st Meeting

DATE: Tuesday, January 7, 2025

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/81158869373>

1. Call to Order.
2. Motion to approve minutes of Open Session held on December 10, 2024.
3. 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.
4. Advisory Opinions:

- a.) Adam M. Millard, Esq., 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 agency, in order to seek a certificate of appropriateness to replace an existing shed at his home. [Staff Attorney Papa]
- b.) Scott A. Gibbs, the town administrator for the Town of North Smithfield, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting part-time work as a private consultant. [Staff Attorney Papa]
- c.) Diane Hayde, a member of the New Shoreham Water District Commission and the New Shoreham Sewer District Commission, requests an advisory opinion regarding whether she qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before an agency of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle. [Staff Attorney Radiches]
- d.) Andy Andujar, a member-elect of the Cranston City Council, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from privately retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting various proposed municipal ordinances to be then submitted to the city council for its consideration. [Staff Attorney Radiches]

5. Motion to go into Executive Session, to wit:

- a.) Motion to approve minutes of Executive Session held on December 10, 2024, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Anastacia Williams, Complaint No. 2024-11, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- c.) In re: Michael DeFrancesco, Complaint No. 2024-13, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- d.) Motion to return to Open Session.

6. Motion to seal minutes of Executive Session held on January 7, 2025.

7. Report on actions taken in Executive Session.
8. Preliminary discussion and voting on Petition for Adoption/Amendment of Regulations from Common Cause Rhode Island regarding gifts, financial disclosure, and procurement. [Director Gramitt]
9. Discussion and potential voting regarding adoption or amendment of Fine Schedule for Financial Disclosure Complaints consistent with Commission Regulation 520-RICR-00-00-3.30 Procedure for Complaints Relating to Financial Disclosure (1023). [Director Gramitt]
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 January 2, 2025

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 7, 2025

Re: Adam M. Millard, Esq.

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 agency, in order to seek a certificate of appropriateness to replace an existing shed at his home.

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 agency, in order to seek a certificate of appropriateness to replace an existing shed at his home.

The Petitioner is a member of the East Greenwich Historic District Commission (HDC), having been appointed to that position by the East Greenwich Town Council in February of 2024 to a three-year term. The Petitioner represents that his personal residence, which he has owned since October of 2022, is located within the East Greenwich Historic District and, thus, subject to the jurisdiction of the HDC. He states that he would like to replace an existing shed at his home with a larger one. The Petitioner further states that, in order to do so, he must receive a certificate of appropriateness from the HDC prior to any exterior alterations to his historic property. The Petitioner explains that he plans to personally appear before the HDC and that he intends to recuse from participation in the HDC's discussions and decision-making relative to his application. Based on this set of facts, the Petitioner seeks an advisory opinion from the Ethics Commission regarding whether he qualifies for a hardship exception that will allow him to represent himself before the HDC.

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). 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 can be avoided under the Code of Ethics 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 to 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. See, e.g., 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 that 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 so that he could 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).

The Ethics Commission recently issued Advisory Opinion 2024-24 to the instant Petitioner granting him a hardship exception allowing him to appear before the HDC to both add a window to the south-facing side of his home and replace most of the home's existing windows which he described as old and having fallen into a state of disrepair. The Ethics Commission required him to recuse from participation and voting when the HDC considered his application and to, 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 with the advisory opinion.

In the present matter, the Petitioner seeks to replace the existing shed at his historic home with a larger one. The ownership of his home predates his appointment to the HDC and the relief sought is related to his personal residence rather than a commercial venture. Based upon the Petitioner's representations, and our 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 these particular circumstances justifies making an exception to § 36-14-5(e)'s prohibitions against representing oneself before one's own agency. 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 the existing shed 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 accord 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: January 7, 2025

Re: Scott A. Gibbs

QUESTION PRESENTED:

The Petitioner, the town administrator for the Town of North Smithfield, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from accepting part-time work as a private consultant.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the town administrator for the Town of North Smithfield, a municipal elected position, is not prohibited by the Code of Ethics from accepting part-time work as a private consultant.

The Petitioner is the newly elected town administrator for the Town of North Smithfield. He represents that for the past 40 years he has served as the president of the Economic Development Foundation of Rhode Island (EDFRI). The Petitioner describes EDFRI as a private, non-profit organization that engages in real estate development and offers economic development advisory services to municipalities. The Petitioner explains that EDFRI is winding down its operations and is in the process of selling its real estate, including two buildings and a parcel of land located in the Highland Corporate Park in Cumberland. The Petitioner represents that he will be resigning from his position as president of EDFRI at the end of December 2024. He further represents that EDFRI's Board of Directors would like to reengage the Petitioner's services as a part-time consultant to assist them with the winding down of the organization and the disposition of EDFRI's real estate. The Petitioner clarifies that his potential consulting position with EDFRI would be expected to last until the dissolution of the organization has been completed; however, he is unable to predict how long that process will last.

The Petitioner represents that he, through EDFRI, has been assisting the Town of Burrillville with managing the development of Commerce Park, a 253-acre town-owned industrial park. The Petitioner states that the Burrillville town manager has indicated that if the Petitioner is able to accept the above consulting position with EDFRI, then Burrillville would like to continue utilizing the Petitioner's advisory services relative to the Commerce Park through the Petitioner's consultant relationship with EDFRI.

The Petitioner represents that his normal working hours as town administrator are Monday through Wednesday from 8:00 a.m. to 4:00 p.m., Thursday from 8:00 a.m. to 7:00 p.m., and Friday from 8 a.m. to 12 p.m. He adds that he will also be attending town council meetings, which are conducted every other Monday at 6:45 p.m. The Petitioner states that if permitted to accept the part-time consulting position with EDFRI, he would perform such duties outside of his normal working hours as town administrator, including nights and weekends, and without the use of public resources. He further states that neither he nor EDFRI has any real estate interest, except for his personal home, in North Smithfield. The Petitioner adds that neither he nor EDFRI has provided advisory services to the Town of North Smithfield. The Petitioner represents that the towns of North Smithfield and Burrillville have no contractual relationship with one another, with the exception of the Mutual Aid Agreement during emergencies, the parties to which are all of the municipalities in the state. Given this set of facts, the Petitioner seeks guidance regarding whether the Code of Ethics prohibits him from accepting part-time work as a private consultant.

The Code of Ethics provides that a public official or employee 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 substantial conflict of interest exists if a public official or employee 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). Also, no person subject to the Code of Ethics shall 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. § 36-14-5(b). Further, no person subject to the Code of Ethics shall use 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. § 36-14-5(d).

The Ethics Commission has consistently opined that public officials and employees are not inherently prohibited from holding other employment that is secondary to their 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. The Ethics Commission examines several factors when considering potential conflicts of interest regarding other employment. These factors include, but are not limited to, the nexus between the public official or employee's public duties and other employment; whether the public official or employee completes such other work outside of normal working hours and without the use of public resources; whether the public official or 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 public official or employee has decision-making jurisdiction; and whether the public official or employee uses his public position to solicit business or customers. See General Commission Advisory No. 2009-4.

In Advisory Opinion 2021-51, for example, the Ethics Commission opined that the supervising forensic scientist for the Rhode Island Department of Health (RIDOH) was not prohibited by the Code of Ethics from working as a private consultant on matters outside of, and with no relation to, the State of Rhode Island, provided that all of the work was performed on his own time and without the use of public resources or confidential information obtained as part of his employment at the RIDOH. Nor could that petitioner use his public employment to recruit or obtain potential clients or advertise or promote his private work. See also A.O. 2019-27 (opining that a motor vehicle operator examiner for the Rhode Island Division of Motor Vehicles (DMV) was not prohibited by the Code of Ethics from accepting employment as a course administrator for the Driver Retraining Program at the Community College of Rhode Island (CCRI), given that there was no evidence that the petitioner's employment with the CCRI would either impair his independence of judgment or create an interest in substantial conflict with his public duties at the DMV).

Here, based on all of the above representations, and the review of the relevant provisions of the Code of Ethics and prior advisory opinions issued, it is the opinion of the Ethics Commission that there is no evidence that the Petitioner's part-time work with EDFRI would either impair his independence of judgment or create an interest in substantial conflict with his public duties as town administrator. Accordingly, the Code of Ethics does not prohibit the Petitioner from simultaneously serving as town administrator and providing part-time consulting services to EDFRI in the manner described above, provided that all of work is performed on his own time and without the use of public resources or confidential information obtained as part of his duties as town administrator and, further provided, that the Petitioner does not use his public position to advertise or promote his private work or to recruit or obtain potential clients for his private employer.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise for the Petitioner while serving as town administrator and engaging in other employment with EDFRI. Thus, the Petitioner is encouraged to seek additional advice from the Ethics Commission if any specific questions regarding potential conflicts of interest arise.

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(a)

§ 36-14-5(b)

§ 36-14-5(d)

§ 36-14-7(a)

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

Related Advisory Opinions:

G.C.A. 2009-4

A.O. 2021-51

A.O. 2019-27

Keywords:

Secondary Employment

DRAFT

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 7, 2025

Re: Diane Hayde

QUESTION PRESENTED:

The Petitioner, a member of the New Shoreham Water District Commission and the New Shoreham Sewer District Commission, both municipal appointed positions, requests an advisory opinion regarding whether she qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before an agency of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the New Shoreham Water District Commission and the New Shoreham Sewer District Commission, both municipal appointed positions, qualifies for a hardship exception to the Code of Ethics' prohibition against representing herself before an agency of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle.

The Petitioner is a member of the New Shoreham Water District Commission, to which she was appointed by the New Shoreham Town Council in 2018, and for which she currently serves as vice-chairperson. The Petitioner is also a member of the New Shoreham Sewer District Commission, to which she was also appointed by the town council in 2018.¹ The Petitioner states that she and her spouse have owned and operated the Sheffield House (B&B) in New Shoreham since 2005, with the exception of a six-year period between 2009 and 2015, during which they leased the property to an island resident and business owner.

¹ The Petitioner explains that the same people serve on both the water commission and the sewer commission. The two commissions conduct joint meetings to discuss matters of general concern to both commissions, such as rates and contracts; however, each of the commissions also conducts its own separate meetings and reviews agenda items specific to that particular commission.

The Petitioner identifies innkeeping as her main source of income. She explains that in January 2022, she and her spouse purchased the Sheffield Cottage, a two-bedroom dwelling unit located behind the B&B that had previously only contained one bedroom. The Petitioner states that she, her spouse, and their son reside in the cottage on a full-time basis.

The Petitioner represents that when she and her spouse purchased the B&B in 2005, a single water meter was used for both the B&B and the cottage. She adds that, at the time, the cottage was owned by someone else who also lived there. The Petitioner states that a deduction meter located in the B&B determined usage by the cottage so that the cottage owner could then be billed for his portion of the water and sewer fees. She further states that it was eventually decided that the cottage owner would be directly metered and billed for his water and sewer usage, and that separate meters and billing for the B&B and the cottage remain in effect today. The Petitioner explains that, separate meters for the B&B and the cottage notwithstanding, an allocation split is in place for both the B&B and the cottage due to the limitation of resources available in the town for water and sewer usage. The Petitioner represents that the B&B is allocated 68,750 gallons for water usage and 67,500 gallons for sewer usage per three-month period, and the cottage is allocated 10,000 gallons for water usage and 10,000 gallons for sewer usage per three-month period. Because there are now three adults residing in the cottage, the Petitioner would like the allocation for the cottage increased to 16,000 gallons for water usage and 16,000 gallons for sewer usage per three-month period. The Petitioner would like the allocation for the B&B decreased to 62,750 gallons for water usage and 61,500 gallons for sewer usage per three-month period.²

The Petitioner represents that because she and her spouse now own both the B&B and the cottage, and there is still a single water line that provides for both properties, she would like to seek credits from both the water commission and the sewer commission for penalties or overpayments made for their over-usage in the cottage during the previous billing cycle.³ Specifically, the Petitioner would like to seek credits in the amount of \$165 for water over-usage and \$51 for sewer over-usage. The Petitioner explains that the process for seeking the reallocation and credit from both the water commission and the sewer commission

² The Petitioner's proposed reallocations of water usage and sewer usage for both the cottage and the B&B do not change the original combined total allocations, which remain 78,500 for water usage (originally 68,750 + 10,000, sought to be reallocated to 62,750 + 16,000) and 77,500 for sewer usage (originally 67,500 + 10,000, sought to be reallocated to 61,500 + 16,000).

³ The Petitioner notes that, during the time period in which the cottage used *more* than its allotment for water and sewer usage, the inn used *less* than its allotment for water and sewer usage.

involves the submission of a written application to each commission for its consideration. In the event that the water commission and/or the sewer commission has questions for the Petitioner regarding her application, arrangements would be made for the Petitioner to appear before one or both commissions to respond to those questions. It is in the context of these facts that the Petitioner seeks a hardship exception to the Code of Ethics' prohibition against representing herself before the water commission and the sewer commission.

The Code of Ethics prohibits a public official from representing herself, or authorizing another person to appear on her behalf, before a state or municipal agency of which she is a member, by which she is employed, or for which she 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) (Commission Regulation 1.1.4). Pursuant to Commission Regulation 1.1.4(A)(1)(a), a person will "represent [] herself before a state or municipal agency" if she "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of that agency in [] her own favor." While many conflicts can be avoided under the Code of Ethics by recusing from participating and voting in certain matters, such recusal is insufficient to avoid § 36-14-5(e)'s prohibitions. 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). Upon receipt of a hardship exception, the public official must also advise the state or municipal agency in writing of the existence and the nature of her interest in the matter at issue; recuse herself from voting on or otherwise participating in the agency's consideration and disposition of the matter at issue; and follow any other recommendations that the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. § 36-14-5(e)(1).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing herself before an agency of which she is a member. Having determined that § 36-14-5(e)'s prohibitions apply to the Petitioner, the Ethics Commission will consider whether the unique circumstances represented by her herein justify a finding of hardship to permit her to appear before the water and sewer commissions to request from each an amended allocation for water and sewer usage and to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle. The Ethics Commission reviews questions of hardship on a case-by-case basis and has, in the past, considered 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 her public office or was recently acquired; whether the relief sought involved a new commercial venture or an existing business; whether the matter involved a significant economic impact; and whether the public official's interests were brought before an agency by a third party. The Ethics Commission may consider other factors and no single factor is determinative.

The Ethics Commission has previously granted hardship exceptions to members of New Shoreham's sewer commission and water commission who wished to represent themselves before their own agency in order to appeal the amount of sewer assessments made against their personal residences and, in one case, a rental property. For example, in Advisory Opinion 2022-14, the Ethics Commission allowed a sewer commission member to appeal excess sewer charges which had been assessed against his personal residence and a rental property that he owned which was located on a lot adjacent to the one on which his personal residence was located. The charges had been assessed following the completion of a landscaping project involving the irrigation of hydroseeds over a large area that stretched over the lots of both his personal property and his rental property. That petitioner was required to recuse himself from participating in the sewer commission's consideration of the matter. He was further required to inform the other sewer commission members of his receipt of the advisory opinion and of his recusal in accordance therewith. Also, in Advisory Opinion 2021-50, the Ethics Commission granted a hardship exception to another sewer commission member so that he could appear before that agency in order to appeal a sewer assessment against his personal residence following a leak in one of the home's water pipes. That petitioner had resided in his home for nearly a decade prior to his appointment to the sewer commission. He was also required to recuse himself from participating in the sewer commission's consideration and voting on that particular matter and was, concurrent with his recusal, required to inform the other sewer commission members of his receipt of the advisory opinion and his recusal in accordance therewith.

Here, the Petitioner seeks to appear before both the water and sewer commissions of which she is a member in order to request from each commission an amended allocation for water and sewer usage pertaining to her primary residence and her primary place of business. She also wishes to seek credit for penalties paid or overpayments made relative to her water and sewer usage during the previous billing cycle. The Petitioner has lived in her home since January of 2022 and has owned the rental property adjacent to her home since 2005. The Petitioner's purchase of the B&B in 2005 predates her appointment to the water commission and the sewer commission by thirteen years. Although the cottage was purchased six years after the Petitioner's appointment to the water and sewer commissions, the increased allocations sought for her personal residence are directly connected to the decreased allocations sought for her primary business.

In consideration of the facts as represented above, and consistent with the applicable provisions of the Code of Ethics and prior advisory opinions issued, 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. Accordingly, the Petitioner may appear before the water commission and the sewer commission in order to request from each commission an amended allocation for water and sewer usage pertaining to her properties and to seek credit for penalties paid or overpayments made for her water and sewer usage during the previous billing cycle. However, as properly anticipated, the Petitioner must recuse herself from participation in the consideration of this matter by both the water and sewer commissions.

Notice of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6. Finally, pursuant to § 36-14-5(e)(1), the Petitioner shall, prior to or at the time of her submission of her written applications to the water commission and the sewer commission, inform the other water and sewer commission members of her receipt of this advisory opinion and of her recusal in accordance therewith.

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 (36-14-5006)

Related Advisory Opinions:

A.O. 2022-14

A.O. 2021-50

Keywords:

Hardship Exception

RHODE ISLAND ETHICS COMMISSION

Draft Advisory Opinion

Hearing Date: January 7, 2025

Re: Andy Andujar

QUESTION PRESENTED:

The Petitioner, a member-elect of the Cranston City Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from privately retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting various proposed municipal ordinances to be then submitted to the city council for its consideration.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member-elect of the Cranston City Council, a municipal elected position, is not prohibited by the Code of Ethics from privately retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting various proposed municipal ordinances to be then submitted to the city council for its consideration, consistent with the provisions set forth herein.

The Petitioner was elected to serve as a member of the Cranston City Council on November 5, 2024. He is scheduled to be sworn in on January 7, 2025. The Petitioner states that he would like to draft one or more municipal ordinances for consideration by the city council. He specifically identifies ordinances relating to the creation of a city housing court, homestead tax relief for homeowners, and tax relief for business owners. The Petitioner explains that he would like to retain the services of one or more consultants to conduct impact studies and related research for the Petitioner's personal use when drafting the ordinances. He emphasizes that he would retain the services of the consultant(s) in his private capacity and pay for those services using his own personal funds. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether he may do so.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(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. R.I. Gen. Laws § 36-14-7(a). The Code of Ethics further prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). A “business associate” is defined as “a person joined together with another person to achieve a common financial objective.” R.I. Gen. Laws § 36-14-2(3). A “person” is defined as “an individual or a business entity.” § 36-14-2(7).

The Code of Ethics also prohibits a public official from representing himself, or any other person, before a municipal agency of which he is a member or for which he is the appointing authority. § 36-14-5(e)(1) & (2); 520-RICR-00-00-1.1.4(A)(1)(c) & (2)(c) 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 in his favor or in favor of another person. § 36-14-2(12) & (13); Regulation 1.1.4(A)(1) & (2). Under the Code of Ethics, a public official must also recuse from participation in a matter when his business associate, or a person authorized by his business associate, appears or presents evidence or arguments before the public official’s municipal agency. 520-RICR-00-00-1.2.1(A)(2) & (3) Additional Circumstances Warranting Recusal (36-14-5002). All notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6.

Here, the Petitioner has asked whether the Code of Ethics prohibits him from engaging in conduct in his private capacity; specifically, retaining the services of one or more consultants to conduct impact studies and related research for the Petitioner’s personal use when drafting various proposed municipal ordinances which the Petitioner then intends to submit to the city council for its consideration. It is the opinion of the Ethics Commission that the Code of Ethics does not prohibit this proposed private conduct. However, the Petitioner is advised to remain aware that the relationship between him and any consultant whose services he retains will constitute a business associate relationship between them under the Code of Ethics, in which case the Petitioner must remain mindful of the prohibitions listed above.

In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines the nature of the association and the scope of the business dealings between the parties and looks to, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, or there exists an anticipated future relationship between them. See, e.g., A.O. 2015-49 (opining that a zoning official who had done private electrical work for the Fort Adams Trust in the past, and who planned to bid on future work, was a business associate of the Trust); A.O.

2015-12 (opining that ongoing handyman work for a private individual, which was reasonably foreseeable to continue, constituted a business associate relationship).

In past advisory opinions, the Ethics Commission has required a public official to recuse from consideration of a matter if the public official had an ongoing business relationship with an individual or entity appearing before his public body. See, e.g., A.O. 2016-45 (opining that a member of the Tiverton Planning Board was prohibited from participating in the planning board's discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects, often referred work and clients to each other, and would continue to refer work and clients to each other).

Therefore, the Petitioner will be required by the Code of Ethics to recuse from participating in matters before the city council that involve or will directly financially impact a consultant he has hired in his private capacity. Also, the Petitioner is prohibited from using his public office, or confidential information received through his public office, to obtain financial gain for his business associate. Nor is the Petitioner permitted under the Code of Ethics to represent the interests of his business associate before the city council. Further, the Petitioner will be required to recuse if a consultant he has hired, or an authorized representative of a consultant he has hired, appears before the city council to present evidence or argument, including in a matter unrelated to the work performed on behalf of the Petitioner.¹ All notices of recusal must be filed with the Ethics Commission consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This advisory opinion cannot anticipate every possible situation in which a conflict of interest might arise and, thus, provides only general guidance as to the application of the Code of Ethics based upon the facts represented above. The Petitioner is advised to remain vigilant about identifying potential conflicts of interest and to either recuse or seek further guidance from the Ethics Commission in the future as warranted.

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,

¹ The Petitioner would not be required to recuse himself if his business associate is before the city council during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the business associate is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion. See 520-RICR-00-00-1.2.1(B)(2) Additional Circumstances Warranting Recusal (36-14-5002).

ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-2(12)

§ 36-14-2(13)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

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:

A.O. 2016-45

A.O. 2015-49

A.O. 2015-12

Keywords:

Business Associate

Recusal

MEMORANDUM

To: Rhode Island Ethics Commission

From: Jason Gramitt, Executive Director

Date: December 31, 2024

Re: Petition for Adoption/Amendment of Regulations – Common Cause Rhode Island

Common Cause Rhode Island has filed the attached petition, asking the Ethics Commission to consider the following actions:

1. **Gifts.** Amending Commission Regulation 520-RICR-00-00-1.4.2 pertaining to “Gifts,” to expand the definition of an “interested person” from whom gifts are regulated/prohibited to *always* include registered lobbyists. Currently, a registered lobbyist may or may not be an “interested person” depending upon whether or not the lobbyist or their client “has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.” 520-RICR-00-00-1.4.2(C).
2. **Financial Disclosure.** Adopting or amending a financial disclosure regulation to require the *disclosure* of gifts worth \$25 or more that are NOT governed or prohibited by the above-referenced gift rule (because the gift is given by a non-interested person), *if* it is more likely than not that the gift would not have been given but for the fact that the person receiving the gift holds public office or employment. In practice, this would likely be an expansion of the “Out-of-State Travel” disclosure mandated by Commission Regulation 520-RICR-00-00-4.12, which requires disclosure of gifts of out-of-state travel to public officials from a non-interested person if it is more likely than not that the travel would not have been provided but for the public office or employment held by the person receiving the travel.
3. **Procurement.** Reviewing and examining R.I. Gen. Laws § 36-14.1-1 *et seq.* pertaining to procurement officials and vendors. This is a state statute enacted by the General Assembly that is *not* a part of the Code of Ethics, which regulates gifts of \$100 or more from state vendors to state procurement officials and authorizes fines of up to \$2,000 per offense. Although the General Assembly did authorize the Ethics Commission to enforce the statute’s requirements, any amendment to the statute must come from the General Assembly itself.

A petition for rulemaking is authorized by the Rhode Island Administrative Procedures Act (R.I. Gen. Laws § 42-35-6) and by the Ethics Commission's own procedures (520-RICR-00-00-2.9 Petition for Adoption of Regulations). Upon receipt of such a petition, the Ethics Commission has 30 days to either deny the petition (stating the reasons for such denial) or to initiate rule-making procedures. Initiating rule-making procedures may involve such preliminary steps as directing staff to compile additional information for the Commission's consideration and discussion at a future meeting.

Common Cause's petition is on the Commission's January 7, 2025 agenda for discussion and a vote to either deny the petition or to initiate rulemaking. I will make a brief presentation at the start of this item and will be available throughout to answer questions. Common Cause has been notified of this agenda item and invited to make a brief oral presentation in support of its petition.

For your convenience and reference, I have attached to this memorandum a "Guide to Statutes and Regulations Referenced in Petition for Rulemaking."

GUIDE TO STATUTES AND REGULATIONS REFERENCED IN PETITION FOR RULEMAKING

R.I. Gen. Laws § 42-35-6. Petition for promulgation of rules.

Any person may petition an agency to promulgate a rule. An agency shall prescribe, by rule, the form of the petition and the procedure for its submission, consideration, and disposition. Not later than thirty (30) days after submission of a petition, the agency shall:

- (1) Deny the petition in a record and state its reasons for the denial; or
- (2) Initiate rulemaking.

520-RICR-00-00-2.9 Petition for Adoption of Regulations (1026)

- A. Any interested person may petition the Commission for the promulgation, amendment, repeal or adoption of any regulation. The petition shall be signed by the petitioner and shall state the specific reasons for the request. The Commission shall thereafter acknowledge receipt of the petition and advise the petitioner of the right to submit supporting data.
- B. Within thirty (30) days of receipt of the petition, the Commission shall either deny the petition in writing (stating its reasons for the denial) or initiate rule-making procedures in accordance with R.I. Gen. Laws § 42-35-3.
- C. The Commission shall notify the petitioner of the date the Commission intends to consider the petition and may, at its discretion, invite the petitioner or other interested parties to make oral or written presentation.

520-RICR-00-00-1.4.2 Gifts (36-14-5009)

A. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift of cash, forbearance or forgiveness of indebtedness from an interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

B. No person subject to the Code of Ethics, either directly or as the beneficiary of a gift or other thing of value given to a spouse or dependent child, shall accept or receive any gift(s) or other thing(s) having either a fair market value or actual cost greater than twenty-five dollars (\$ 25), but in no case having either an aggregate fair market value or aggregate actual cost greater than seventy-five dollars (\$ 75) in any calendar year including, but not limited to, gifts, loans, rewards, promises of future employment, favors or services, gratuities or special discounts, from a single interested person, as defined herein, without the interested person receiving lawful consideration of equal or greater value in return.

1. For purposes of this regulation a "single interested person" shall include all employees or representatives of an individual, business, organization or entity.

2. The prohibitions in this section do not apply if the gift or other thing of value is:

a. a campaign contribution as defined by the laws of the state;

b. services to assist an official or employee in the performance of official duties and responsibilities, including but not limited to providing advice, consultation, information, and communication in connection with legislation, and services to constituents; or

c. a plaque or other similar item given in recognition of individual or professional services in a field of specialty or to a charitable cause.

C. "**Interested person**," for purposes of this section, means a person or a representative of a person or business that has a direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or to participate in the making of, as part of his or her official duties.

D. The prohibitions in this section do not apply if the gift or thing of economic value is given:

1. because of the recipient's membership in a group, a majority of whose members are not persons subject to the Code of Ethics, and an equivalent gift is given or offered to other members of the group; or

2. by an interested person who is a person within the family of the recipient, unless the gift is given on behalf of someone who is not a member of said family.

E. For purposes of this regulation, a gift or other thing of value is considered received when it comes into the possession or control of the person subject to the Code of Ethics, or his or her spouse or dependent child, and is a gift or other thing of value subject to the requirements of this regulation unless it is immediately returned to the interested person or given to a bona fide charitable organization without benefit accruing to the person subject to the Code of Ethics.

4.12 Out-of-State Travel (36-14-17009)

A. Any public official or employee who is required to file a yearly financial statement pursuant to R.I. Gen. Laws § 36-14-16(a) shall disclose the source, value and description of any out-of-state travel and related transportation, lodging, meals and entertainment having an aggregate fair market value or actual cost greater than two hundred fifty dollars (\$250) provided by any person or entity, other than the state or municipal agency of which he or she is a member or by which he or she is employed or his or her regular private employer, if under the totality of the circumstances it is more likely than not that the person or entity would not have provided the travel but for the official's or employee's public office or position.

B. Circumstances indicating that the person or entity would not have provided the travel but for the official's or employee's public office or position may include, but are not limited to, one or more of the following:

1. The official or employee became acquainted with the provider through his or her public agency;
2. The official or employee was offered the out-of-state travel and related transportation, lodging, meals and entertainment through a communication sent to or through the public official's or employee's agency;
3. Other officials or employees in the same agency are offered, or have been offered, out-of-state travel and related transportation, lodging, meals and entertainment from the provider;
4. The official's or employee's counterparts in other public agencies or jurisdictions have been offered similar out-of-state travel and related transportation, lodging, meals and entertainment by the provider;
5. The provider is affiliated with any "interested person," as defined by § 1.4.2 of this Subchapter, or has allowed an interested person to underwrite expenses associated with the out-of-state travel and related transportation, lodging, meals and entertainment;
6. The provider is an entity whose membership is limited to, or is largely comprised of, public officials;
7. The official or employee had not received out-of-state travel and related transportation, lodging, meals and entertainment from the provider prior to attaining his or her public office or employment;
8. If the out-of-state travel and related transportation, lodging, meals and entertainment involves attendance at an event, any written references by the provider or affiliated persons relative to the public official's or employee's attendance or participation refer to his or her public office, duties or agency.
9. If the travel involves a conference or seminar, the subject matter of the conference or seminar directly pertains to the public official's or employee's official duties.

State Vendors Providing Goods or Services to Public Officials

R.I. Gen. Laws § 36-14.1-1. Definitions

As used in this chapter:

- (1) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit is conducted.
- (2) "Procurement official" means an elected or appointed state official or employee who has the authority to make decisions concerning the purchasing of goods or services for a state agency or who has supervisory authority over the person empowered to make decisions concerning the purchase of goods or services for the state agency.
- (3) "State agency" means a branch, department, division, agency, commission, board, office, bureau, or authority of the government of the state of Rhode Island.
- (4) "State vendor" means:
 - (i) A person or business entity that sells goods or provides services to any state agency,
 - (ii) A person or business entity which has an ownership interest of ten percent (10%) or more in a business entity that sells goods or provides services to any state agency, or
 - (iii) A business entity that is a parent or subsidiary of a business entity that sells goods or services to any state agency.

R.I. Gen. Laws § 36-14.1-2. Prohibited conduct - Exceptions

- (a) No state vendor shall provide goods or services for less than fair market value for the personal use of a procurement official of a state agency if the vendor has sold goods and services during the preceding twenty-four (24) months to the state agency or if the vendor knows or has reason to know he or she will be submitting a bid or making a proposal for the sale of goods or services within the succeeding twenty-four (24) months to the state agency.
- (b) No procurement official of a state agency shall accept goods or services for his or her personal use for less than fair market value from a state vendor who has sold goods or services to the agency during the preceding twenty-four (24) months or who the procurement official knows or has reason to know will be submitting a bid or making a proposal for the sale of goods or services to the agency within the succeeding twenty-four (24) months.
- (c) The prohibition set forth in subsection (a) of this section shall not apply to goods or services having a fair market value of less than one hundred dollars (\$100).

R.I. Gen Laws § 36-14.1-3. Civil penalty

Every state vendor and every procurement official that knowingly and willfully violates the provisions of this chapter shall be subject to a civil penalty of not more than two thousand dollars (\$2,000) per offense.

R.I. Gen Laws § 36-14.1-4. Enforcement

(a) The Rhode Island Ethics Commission is hereby empowered to investigate and adjudicate allegations of violations of this chapter in accordance with the provisions of § 36-14-13 (a) through (f). Upon a finding of violation of this chapter, the adjudicatory panel of the ethics commission may issue an order requiring the violator to pay a civil penalty in accordance with § 36-14.1-3.

(b) Nothing contained in this section shall be construed to limit the authority of the attorney general to enforce the provisions of this chapter.



Rhode Island
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www.commoncause.org/ri

VIA ELECTRONIC MAIL

December 18, 2024

Lauren E. Jones, Chair
Rhode Island Ethics Commission
40 Fountain Street, 8th Floor
Providence, RI 02903

Dear Chair Jones:

On behalf of Common Cause Rhode Island, I write to petition that the Rhode Island Ethics Commission, pursuant to § 42-35-6 of the Administrative Procedures Act, engage in rule-making.

Gift Rule

Specifically, Common Cause Rhode Island requests that the definition of an “interested person” in 520-RICR-00-00-1.4.2 Gifts (36-14-5009)(C) be amended to include anyone registered as a lobbyist pursuant to § 42-139.1-4, or their principal or their agent. We strongly believe that the “gift rule” in the Rhode Island Code of Ethics should prohibit registered lobbyists from providing gifts in excess of the values outlined in the Code.

As you know, the Code currently places limits on gifts from those who have a “direct financial interest in a decision that the person subject to the Code of Ethics is authorized to make, or participate in the making of, as part of his or her official duties.” 520-RICR-00-00-1.4.2 Gifts (36-14-5009)(C). Common Cause Rhode Island believes that the current requirement that there be a financial nexus for the “gift rule” to apply is insufficiently protective of the public interest. We ask the Commission to amend the gift rule to protect the public interest by including lobbyists as a class.

The Commission’s constitutional mandate is to ensure that “public officials and employees ... adhere to the highest standards of ethical conduct, *respect the public trust* and the rights of all persons, be open, accountable and responsive, *avoid the appearance of impropriety* and *not use their position for private gain* or advantage” (emphasis added). When registered lobbyists, who by definition are paid to influence public officials, are giving gifts to those same public



officials, it undermines “the public trust,” gives the “appearance of impropriety,” and suggests that public officials are using their official positions for “private gain.”

Including registered lobbyists in the definition of an “interested person” creates a bright-line rule that those subject to the Code can easily understand, and that the Commission can easily enforce.

While not comprehensive, our review of gift rules for state legislators in other states indicates that at least twenty-two (22) states have bars and other limits on gifts specifically from lobbyists, their principals, or their agents.¹ A cursory review of lobbying laws that apply to the executive branch reveals that bars on gifts from lobbyists are commonplace.²

Financial Disclosure

In addition to the above changes to the “gift rule,” we request additional rule-making to add a question to the financial disclosure form. Specifically, we seek a question that requires disclosure of gifts “if, under the totality of the circumstances, it is more likely than not that the person or entity would not have given the gifts but for the official’s or employee’s public office or position.” See 520-RICR-00-00-4.12 Out-of-State Travel (36-14-17009).

Common Cause Rhode Island last petitioned the Commission to engage in rule-making in 2012. The result of that petition was the current rule, 520-RICR-00-00-4.12 Out-of-State Travel (36-14-70009). This carefully-crafted rule has led to the disclosure of a significant number of instances of out-of-state travel of public officials provided by third parties. We believe such disclosure is in the public interest and furthers the Commission’s mission to promote transparency.

However, we also believe that there are gifts that fall outside of the category of Out-of-State Travel and are given by persons who are not an interested person as defined by the Code, yet whose disclosure is in the public interest. As in our 2012 petition, here we are not seeking to ban these gifts, but to shed sunlight on them. And again, like in 2012, we are not petitioning the Commission to adopt specific language, but are articulating our goal and asking the Commission and staff to craft a rule that achieves that goal in a way that is enforceable.

Procurement

¹ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Indiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, and West Virginia. See: <https://www.ncsl.org/ethics/legislator-gift-restrictions> (Accessed on December 17, 2024).

² See: <https://www.naag.org/state-gift-laws/> (Accessed on December 17, 2024).



Finally, in light of recent events, we believe that the Commission should examine the section of the Code that applies to procurement. While we have no specific recommendations at this time with respect to R.I.G.L. § 36-14.1-1 et seq., this section of the Code has not been amended since 1993. We hope that a review of best practices from other jurisdictions will reveal policies that better protect the procurement process from political interference.

Common Cause Rhode Island looks forward to working with the Commission to craft language that will effectuate these changes to the Code of Ethics.

Sincerely,

John Marion
Executive Director

CC: Jason Gramitt, Executive Director



MEMORANDUM

To: Rhode Island Ethics Commission

From: Jason Gramitt, Executive Director

Date: December 31, 2024

Re: Fine Schedule for Financial Disclosure Complaints

At its meeting on October 29, 2024, the Ethics Commission considered an initial draft of an amended fine schedule to be used in complaints alleging deficient or delinquent financial disclosure statements. Based on the discussion at that meeting, attached to this Memorandum is a revised and consolidated draft of the fine schedule for the Commission's further consideration.

Below are relevant excerpts from the official minutes of the October 29th meeting containing the Commission's feedback and direction for the current draft:

**October 29, 2024 Minutes of RIEC:
Discussion and Vote regarding adoption of
Fine Schedules for Financial Disclosure Complaints.**

Executive Director Gramitt presented to the Commission a memorandum along with two proposed fine schedules, one for the informal disposition of complaints alleging a delinquent financial disclosure statement and the other for the informal disposition of complaints alleging a deficient financial disclosure statement. He stated that these proposals were prepared pursuant to the Commission's discussion at a recent meeting regarding Commission Regulation 3.30 and its contemplation of a fine schedule applicable to complaints relating to delinquent and deficient financial disclosure statements, whether filed by the Commission staff or third parties. He stated that the proposals provide that the Executive Director may exercise discretion to reduce or waive a civil penalty for good cause upon a determination of unique circumstances.

In response to Commissioner Susi, Executive Director Gramitt explained how discretion would be exercised when deciding whether a deficient complaint should be brought before the Commission. He discussed the necessity of a respondent coming in, meeting with staff, explaining any deficiencies, and accepting responsibility. Commissioner Cenerini noted that Regulation 3.30 states that the fine schedule is used

“unless otherwise determined by the Commission.” He expressed concern over always requiring specific penalty amounts and stated that the Commission should have flexibility to assess higher penalties where the circumstances support doing so. Chair Jones noted that matters warranting higher penalties would be brought before the Commission and not handled administratively. Commissioner Cenerini suggested that there be a formal procedure for the Executive Director to report to the Commission those instances in which he utilized discretion to waive or reduce penalties. Chair Jones noted that such reporting would allow the Commission to give the Director input into future uses of discretion. Commissioner Peterson stated that there should be a provision in both schedules that allows the Executive Director to bring a matter before the Commission rather than informally resolving it. She indicated that habitually delinquent filers should be brought before the Commission. Commissioner Peterson agreed with having a formal reporting requirement to inform the Commission as to how cases were administratively resolved. Commissioner Ricci expressed that neither the Commission nor the Executive Director should be bound by fine ceiling and that discretion should remain with the Executive Director to require a higher civil penalty when appropriate. Commissioner Peterson added that the Executive Director should come before the Commission in those cases in which he believes the penalties should be higher than the amounts in the fine schedules. Commissioner Rabideau expressed concern with granting anyone unlimited discretion to impose a civil penalty and proposed that discretion to increase a civil penalty be capped at a reasonable amount such as, for instance, \$500.

Further discussion ensued as to the degree of discretion that should be afforded to the Executive Director in any given case. In response to Commissioner Ricci, Executive Director Gramitt stated that he appreciates the discretion that the Commission grants to him, but he also agrees that there should be limits. He explained, for example, where he believes that a matter should be informally resolved but for an amount higher than the amount set forth in the fine schedule, he would bring that informal resolution and settlement to the Commission and it may either approve the amount, suggest a different amount, or direct him to proceed instead with an investigation. Executive Director Gramitt proposed removal of language from the schedule that suggests that a respondent is entitled to informally resolve a complaint and, instead, proposed the addition of language that provides discretion to the Executive Director to either informally resolve a complaint or bring the matter to the Ethics Commission, and further provides that the Commission is not bound by the amounts set forth in the schedule. In response to Commissioner Peterson’s concern over the various different time periods in the proposed deficient statement schedule, Executive Director Gramitt stated that he intends to remove the different time frames from the next draft.

Commissioner Jones directed Executive Director Gramitt to revise the draft schedules based on the Commission’s comments today and, if possible, to present amended proposals at the next meeting for discussion and potential vote.

**SCHEDULE OF FINES AND PENALTIES
FOR THE INFORMAL DISPOSITION OF COMPLAINTS
ALLEGING A DELINQUENT OR 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 to allow for the informal disposition of complaints that solely allege a delinquent or deficient financial disclosure statement. Notwithstanding adoption of this schedule, in any complaint either the Executive Director or the Respondent may elect to disregard this schedule and to proceed pursuant to the Ethics Commission's formal procedures for contested matters, or the parties may agree to an alternative resolution and settlement for consideration by the Ethics Commission.

Definitions. 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; and a financial disclosure statement is “**deficient**” when the filer has omitted any of the information required by law to be disclosed.

I. DELINQUENT STATEMENT.

A. Filed within 30 days of the filing deadline.

1. A complaint alleging that a financial disclosure statement is delinquent may be administratively dismissed, in the discretion of the Executive Director and 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.

B. Filed more than 30 days after the filing deadline.

1. A complaint alleging that a financial disclosure statement is more than 30 days delinquent may be informally resolved, in the discretion of the Executive Director and without the need to appear before the Ethics Commission if, prior to a hearing on probable cause, the Respondent:
 - a. properly files the delinquent statement;
 - b. executes and delivers to the Ethics Commission a “Consent to Finding of Violation” form; and
 - c. tenders payment of a civil penalty in the amount of \$100.

II. DEFICIENT STATEMENT.

- A. A complaint alleging that a financial disclosure statement is deficient may, in the discretion of the Executive Director, be either administratively dismissed or informally resolved without the need to appear before the Ethics Commission, provided that prior to a hearing on probable cause the Respondent has properly amended the allegedly deficient statement including correction of any

additional deficiencies identified by the Executive Director, and upon satisfaction of any other conditions imposed by the Executive Director. If proceeding with an informal resolution, the Executive Director is authorized to require and accept the payment of a civil penalty of up to \$500.

- III. In any case resolved pursuant to this schedule, the Executive Director 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.
- IV. The Executive Director shall regularly provide the Ethics Commissioners with the details of any and all complaints that are either administratively dismissed or informally resolved pursuant to this schedule.

DRAFT