

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-13

Approved: March 4, 2025

Re: Stephen H. Marsella, Esq.

QUESTION PRESENTED:

The Petitioner, the former assistant solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, requests an advisory opinion regarding whether, and to what extent, he is prohibited by the Code of Ethics from representing clients before the Narragansett Planning Board, Zoning Board, Town Council, and Probate Court following the date of his official severance from the position of assistant solicitor.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, the former assistant solicitor for the Town of Narragansett, a municipal appointed position, who is also an attorney in private practice, is prohibited by the Code of Ethics from representing clients before the Narragansett Planning Board and the Narragansett Zoning Board until the expiration of one year after the date of the appointment of his successor, which marked the Petitioner's official severance from the position of assistant solicitor. Further, the Petitioner is prohibited from representing clients before the Narragansett Town Council until the expiration of one year following his last appearance before that agency. Finally, the Petitioner is not prohibited from representing clients before the Narragansett Probate Court within one year after the date of his official severance from the position of assistant solicitor, because such representation pertains to matters of public record in a court of law and, therefore, the Petitioner's proposed actions fall within the exception found at R.I. Gen. Laws § 36-14-5(e)(4).

The Petitioner is an attorney who has been licensed to practice law in the State of Rhode Island since 1992. In 2017, he was appointed by the Narragansett Town Council to a two-year term as the assistant solicitor for the town and assigned to represent and provide counsel to the town's zoning board and planning board. The Petitioner states that he was reappointed to the same position in 2019 and 2021. The Petitioner further states that in January 2023, the town council voted to replace him as the assistant solicitor and appoint another attorney to that position. He explains that in February 2023, he prepared copies of his files and participated in transition meetings with the town manager, the town solicitor,

and with the attorney who was expected to be sworn in as his replacement. The Petitioner informs that, later that month, the vote to appoint the newly selected assistant solicitor was tabled by the town council. He adds that, ultimately, the newly selected assistant solicitor was never sworn in and never attended any additional meetings. The Petitioner informs that his firm, though never officially voted on or reappointed, reassumed the position of counsel to the zoning board and the planning board and has been since billing the town for those services on a month-to-month basis. He states that no subsequent vote to reappoint him as assistant solicitor was ever taken by the town council.¹ The Petitioner informs that his representation of the planning board continued until December 17, 2024, and his representation of the zoning board continued until December 19, 2024. He represents that on January 6, 2025, the town council voted to appoint a new assistant solicitor.²

The Petitioner states that although his duties were limited to providing counsel to the planning and zoning boards, on June 11, 2024, he filled in for the town's solicitor at a town council meeting because the town solicitor was on vacation. The Petitioner further states that on June 27, 2024, he presided over the probate court for one session because both the probate judge and the town solicitor were on vacation. It is under this set of facts that the Petitioner seeks guidance regarding whether, and to what extent, he is prohibited by the Code of Ethics from representing clients before the probate court, town council, zoning board, and planning board following his severance from the position of assistant solicitor.

The Code of Ethics strictly prohibits a public official from representing himself, or another person, before a state or municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. R.I. Gen. Laws § 36-14-5(e)(1)&(2); 520-RICR-00-00-1.1.4(A)(1)&(2) Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). These prohibitions continue while the public official remains in office and for a period of one year thereafter; however, §36-14-5(e)(4) states that "this prohibition shall not pertain to a matter of public record in a court of law."

Planning Board and Zoning Board

The Ethics Commission has consistently concluded that solicitors may represent private clients before municipal boards, courts, or other entities before which they do not represent their municipality or over which they do not have any official duties. See, e.g., A.O. 2015-23 (opining that a former assistant solicitor for the Town of Burrillville, whose duties consisted of prosecuting criminal complaints in the Providence County District Court and the Town of Burrillville's Municipal Court, was not prohibited from representing clients

¹ The Petitioner represents that he did disclose his representation of the town in the role of assistant solicitor to the Ethics Commission on his 2023 Yearly Financial Statement.

² The assistant solicitor appointed by the town council on January 6, 2025, was not the individual selected to replace the Petitioner as assistant solicitor in January 2023.

before the Burrillville Planning Board and Burrillville Zoning Board within one year following the end of his tenure as assistant solicitor); A.O. 2013-24 (opining that a Providence assistant city solicitor, whose duties were limited to acting as legal counsel for the Providence School Board, was not prohibited from representing private clients before other Providence boards, courts, commissions, or entities before which he did not represent the City as assistant city solicitor and over which he exercised no authority or control, such as the city council, zoning board, planning board, probate court, municipal court, and board of tax appeal).

Here, the Petitioner last represented the planning board on December 17, 2024, and last represented the zoning board on December 19, 2024. However, a new assistant solicitor was not appointed by the town council until January 6, 2025. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing clients before both the planning board and the zoning board prior to the expiration of one year following the appointment of the new assistant solicitor.

Town Council

Additionally, in other advisory opinions the Ethics Commission has considered circumstances in which municipal solicitors sought guidance on the propriety of serving as substitute legal counsel for other solicitors serving in the same municipality. For example, in Advisory Opinion 2023-20, a former solicitor for the Town of Narragansett, whose main responsibilities involved advising the town council and the town's staff on legal issues, on one occasion during his tenure as solicitor served as substitute counsel at a town zoning board meeting at the request of the assistant solicitor who could not attend. That petitioner sought advice regarding whether the Code of Ethics' revolving door restrictions prohibited him from representing clients before the zoning board within one year following the end of his service to the town as its solicitor. The Ethics Commission opined that the petitioner was prohibited from representing clients before the zoning board until the expiration of one year following his service as substitute counsel. Also, in Advisory Opinion 97-71, the Ethics Commission opined that the solicitor for the Town of New Shoreham, who also served as legal advisor once or twice per year when the Town of Foster's solicitor had a conflict of interest in a matter, was prohibited from representing clients before Foster's zoning board until the expiration of one year following the severance of his relationship with that zoning board. There, the Ethics Commission concluded that an ongoing relationship could include one in which an attorney represents a board once or twice per year, particularly if it is reasonably foreseeable that future representation would occur.

Here, the Petitioner filled in for the solicitor as counsel to the town council on one occasion, which occurred on June 11, 2024. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is prohibited by the Code of Ethics from representing clients before the town council prior to the expiration of one year after that date.

Probate Court

In prior advisory opinions, the Ethics Commission has recognized that the one-year waiting period set forth in § 36-14-5(e)(4) does not extend to individuals who wish to represent clients within one year following the date of their official severance from public service when such representation pertains to matters of public record in a court of law. More specifically, the Ethics Commission has consistently opined that probate courts are courts of public record, and have allowed petitioners to represent clients before probate courts within one year after leaving public office. See, e.g., A.O. 2021-1 (opining that a former member of the Cranston City Council, who was privately employed as an attorney, was not prohibited by the Code of Ethics from representing clients before the Cranston Probate Court within one year following the date of his official severance from the Cranston City Council, because such representation would pertain to matters of public record in a court of law and, therefore, the petitioner's proposed actions fell within the exception found at § 36-14-5(e)(4)); A.O. 2015-1 (opining that a former member of the East Providence City Council and other members of his law firm were not prohibited by the Code of Ethics from representing clients before the East Providence Probate Court or the East Providence Municipal Court within one year from the date of the petitioner's official severance from the city council, because such representation pertained to matters of public record in a court of law and, therefore, were not subject to the one-year probationary period).

Here, the Petitioner presided over the Narragansett Probate Court at its session held on June 27, 2024, in the absence of both the town's probate judge and solicitor, which would generally implicate the revolving door prohibitions in § 36-14- 5(e). However, the instant matter falls squarely within the exception found at § 36-14-5(e)(4) of the Code of Ethics relating to matters of public record in a court of law. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from representing clients before the Narragansett Probate Court within one year after June 27, 2024.

Summary

In consideration of the facts as represented, 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 Petitioner is prohibited by the Code of Ethics from representing clients before the planning board and the zoning board until the expiration of one year after the date of the appointment of his successor, which marked the Petitioner's official severance from the position of assistant solicitor. The Petitioner is further prohibited from representing clients before the town council until the expiration of one year following his last appearance before that agency. Finally, the Petitioner is not prohibited from representing clients before the probate court within one year after the date of his having presided over the probate court, because such representation pertains to matters of public

record in a court of law and, therefore, the Petitioner's proposed actions fall within the exception found at R.I. Gen. Laws § 36-14-5(e)(4).

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

Code Citations:

§ 36-14-5(e)

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

Related Advisory Opinions:

A.O. 2023-20

A.O. 2021-1

A.O. 2015-23

A.O. 2015-1

A.O. 2013-24

A.O. 97-71

Keywords:

Private Employment

Revolving Door