



STATE OF RHODE ISLAND  
**RHODE ISLAND ETHICS COMMISSION**  
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## **NOTICE OF OPEN MEETING**

### **AGENDA**

#### **12<sup>th</sup> Meeting**

**DATE:** Tuesday, August 19, 2025

**TIME:** 9:00 a.m.

**PLACE:** Rhode Island Ethics Commission  
Hearing Room – 8<sup>th</sup> Floor  
40 Fountain Street  
Providence, RI 02903

**LIVESTREAM:** The Open Session portions of this meeting will be livestreamed at:  
<https://us02web.zoom.us/j/84591015403>

1. Call to Order.
2. Motion to approve minutes of Open Session held on July 29, 2025.
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; and
  - e.) General office administration;

#### 4. Advisory Opinions:

- a.) The Honorable Jason Knight, a legislator serving as a member of the Rhode Island House of Representatives, who in his private capacity is a criminal defense attorney licensed to practice in Rhode Island and Massachusetts, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from re-applying to be included on the list of court-appointed attorneys to represent indigent clients in the Rhode Island criminal courts. [Staff Attorney Radiches]
- b.) Samantha Contreras, a staff interpreter for the Rhode Island Supreme Court, who in her private capacity owns and operates SC Interpreting and Translation Services, LLC, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from registering her private business as a vendor for the State of Rhode Island in order to provide language services to various non-state and state agencies, excluding the Rhode Island Judiciary. [Staff Attorney Radiches]
- c.) The Town of New Shoreham Town Council, by and through its solicitor, Nicholas A. Solitro, requests an advisory opinion regarding whether one or more town council members may, pursuant to the Rule of Necessity, participate in the town council's consideration of a proposed ordinance that would regulate the operation of courtesy shuttles by local business owners, notwithstanding the stated conflicts of interest by those town council members, so that the town council can achieve a necessary quorum of three members. [Staff Attorney Radiches]
- d.) Mark Schwager, a member of the East Greenwich Town Council, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the East Greenwich Historic District Commission, a municipal agency over which the town council has appointing authority, in order to request approval of the replacement of three windows and a door at his primary residence. [Staff Attorney Papa]

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

- a.) Motion to approve minutes of Executive Session held on July 29, 2025, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).
- b.) In re: Robert L. Lombardo, Complaint Nos. 2025-3 & 2025-5, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) & (4).

- c.) In re: Jeffrey McCormick, Complaint No. 2025-6, 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 August 19, 2025.
- 7. Report on actions taken in Executive Session.
- 8. New Business proposed for future Commission agendas and general comments from the Commission.
- 9. 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 August 14, 2025*

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: August 19, 2025

**Re: The Honorable Jason Knight**

### **QUESTION PRESENTED:**

The Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, who in his private capacity is a criminal defense attorney licensed to practice in Rhode Island and Massachusetts, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from re-applying to be included on the list of court-appointed attorneys to represent indigent clients in the Rhode Island criminal courts.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a legislator serving as a member of the Rhode Island House of Representatives, who in his private capacity is a criminal defense attorney licensed to practice in Rhode Island and Massachusetts, is prohibited by the Code of Ethics from re-applying to be included on the list of court-appointed attorneys to represent indigent clients in the Rhode Island criminal courts, while serving in the General Assembly and for a period of one year after leaving legislative office.

The Petitioner is a member of the Rhode Island House of Representatives and has served continuously in that capacity for the last eight years. He represents House District 67, encompassing Barrington and Warren. The Petitioner states that in his private capacity he is licensed to practice law in Rhode Island and Massachusetts and works full-time as a criminal defense attorney. The Petitioner further states that, prior to his election to the House of Representatives in 2016, his name was on a rotating list of qualified attorneys licensed in Rhode Island available for court appointments to represent indigent clients in the state's criminal courts. He explains that the court-appointed list is monitored and maintained by the Administrative Office of State Courts through the case management system. He adds that payment for services as a court-appointed attorney is issued by the Rhode Island Judiciary.

The Petitioner represents that in 2019 he requested that his name be removed from the court-appointed list. He further represents that he would now like to re-apply to have his

name added to the court-appointed list. Cognizant of the Code of Ethics, and desirous of acting in conformance therewith, the Petitioner seeks advice from the Ethics Commission regarding whether, under the circumstances as described, he is prohibited by the Code of Ethics from re-applying for inclusion on the court-appointed list.

The Code of Ethics contains both statutory and regulatory revolving door provisions that are applicable to current and former members of the legislature. Pursuant to R.I. Gen. Laws § 36-14-5(n)(1) of the Code of Ethics:

No state elected official, while holding state office and for a period of one (1) year after leaving state office, shall seek or accept employment with any other state agency, as defined in section 36-14-2(8)(i), other than employment which was held at the time of the official's election . . . except as provided herein.

The term "employment," as used in § 36-14-5(n), includes "service as an independent contractor or consultant to the state or any state agency, whether as an individual or principal of an entity performing such service." 520-RICR-00-00-1.5.6 Revolving Door, "Employment" Defined (36-14-5017).

Section 36-14-5(n)(2)-(4) contains exceptions for appointments to senior positions on a general officer's or the general assembly's staff, appointments to a department director position by the governor, election to a constitutional office, or other employment for which the Ethics Commission determines that authorizing an exception would not create an appearance of impropriety.

While § 36-14-5(n) applies generally to all state elected officials, the Code of Ethics contains a more specific, regulatory prohibition that applies only to members of the General Assembly. Originally adopted in 1991 by the Ethics Commission, along with several other regulations aimed at strengthening the Code of Ethics, 520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007) (Regulation 1.5.2) currently reads as follows:

No member of the General Assembly shall seek or accept state employment, not held at the time of the member's election, while serving in the General Assembly and for a period of one (1) year after leaving legislative office. For purposes of this regulation, "employment" shall include service as defined in R.I. Gen Laws § 36-14-2(4) and shall also include service as an independent contractor or consultant to the state or any state agency, whether as an individual or a principal of an entity performing such service.

Unlike its statutory counterpart, Regulation 1.5.2 does not authorize the Ethics Commission to grant any exceptions to its strict prohibition.

The Rhode Island Supreme Court issued a decision in 1993 specifically upholding the constitutionality of both § 36-14-5(n) and Regulation 1.5.2. In re Advisory from the Governor, 633 A.2d 664 (R.I. 1993). In its decision, our Supreme Court recognized that “[t]he legislative aim of the revolving-door provisions is to ensure that public officials adhere to the highest standards of conduct, avoid the appearance of impropriety, and do not use their positions for private gain or advantage.” Id. at 671 (citing R.I. Const., art. 3, sec. 7). The Court further observed that “[t]he integrity of our government officials is quintessential to our system of representation. In general, the purpose of revolving-door provisions is to prevent ‘government employees from unfairly profiting from or otherwise trading upon the contacts, associations and special knowledge that they acquired \* \* \*.’” Id. (quoting Forti v. New York State Ethics Comm’n, 554 N.E.2d 876, 878 (1990)). The Court concluded that “the revolving-door legislation is an effective device by which the public trust may be enhanced.” Id.

In the years following our Supreme Court’s 1993 decision, the Ethics Commission has several times applied § 36-14-5(n) and Regulation 1.5.2 to legislators. For example, in Advisory Opinion 2009-44, the Ethics Commission opined that both § 36-14-5(n) and Regulation 1.5.2 prohibited a state senator from providing arbitration and/or mediation services to state entities pursuant to a master price agreement with the Rhode Island Department of Administration, Division of Purchasing, although he was allowed to provide such services to non-state agencies who utilized the same master price agreement to select qualified arbitrators and mediators. See also A.O. 2006-25 (opining that the Code of Ethics prohibited a state representative from providing insurance brokerage services to a quasi-public state agency); A.O. 2001-6 (opining that the Code of Ethics prohibited a state representative from accepting work as a part-time instructor at Rhode Island College).

In contrast, in Advisory Opinion 2011-25, the Ethics Commission allowed R.T. Nunes & Sons, Inc., for which a member of the Rhode Island House of Representatives was an employee, officer, and part-owner, to continue to provide snowplowing services to the Rhode Island Department of Transportation (RIDOT) because it qualified as employment held at the time of the petitioner’s election to the General Assembly. Notably, that petitioner represented that Nunes & Sons had provided snowplowing services to RIDOT on a continuing basis for more than 28 years, having initially secured a place on the snowplow list and then renewing its contract with RIDOT each fall to plow the same routes year after year. The Ethics Commission determined that the continuous nature of RIDOT’s snowplow list, coupled with Nunes & Sons’ having remained on it consistently for more than 28 years, qualified the contract between Nunes & Sons and RIDOT as employment held at the time of the petitioner’s election.

Consistent with the Ethics Commission’s interpretation of the “revolving door” provisions relative to state employment, the Ethics Commission has likewise opined that, under 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014), an exception for a municipal official who held the employment in question at the time of his or her election to office did not apply in circumstances under which the elected official had resigned from his or her employment. In Advisory Opinion 2021-9, the Ethics Commission opined that a member of the Little Compton School Committee was prohibited by the Code of Ethics from seeking or accepting employment, including part-time employment, as a nurse at the Wilbur McMahon School in Little Compton, to assist with the testing of students, faculty, and staff for COVID-19. There, the petitioner, who had held the position of substitute nurse at the Wilbur McMahon School prior to her election to the school committee in 2018, resigned from her substitute nurse position immediately following her election to the school committee. The Ethics Commission determined that, notwithstanding the COVID-19 pandemic at the time, the convenience of bringing back a former substitute nurse to the school, albeit on a part-time basis for the next six months, did not eliminate an appearance of impropriety, given that the former substitute nurse was now an elected member of the town’s school committee.

Here, the Petitioner represents that, prior to his election to the House of Representatives in 2016, his name was on a rotating list of qualified attorneys licensed in Rhode Island available for court appointments to represent indigent clients in the state’s criminal courts. However, the Petitioner states that in 2019 he requested that his name be removed from the court-appointed list. The Petitioner’s name was not on the court-appointed list when he was most recently re-elected in 2024. Therefore, the general prohibitions of § 36-14-5(n) and Regulation 1.5.2 apply. Unlike § 36-14-5(n), which pertains to state elected officials in general, Regulation 1.5.2, which pertains specifically to members of the General Assembly, does not authorize the Ethics Commission to grant any exceptions to its strict prohibition. Accordingly, it is the opinion of the Ethics Commission that the Petitioner may not re-apply to be included on the list of court-appointed attorneys, while serving in the General Assembly and for a period of one year after leaving legislative office.

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

Code Citations:

§ 36-14-2(4)

§ 36-14-2(8)

§ 36-14-5(n)

520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007)  
520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014)  
520-RICR-00-00-1.5.6 Revolving Door, “Employment” Defined (36-14-5017)

Other Related Authority:

*In re Advisory from the Governor*, 663 A.2d 664 (R.I. 1993)

Related Advisory Opinions:

A.O. 2021-9  
A.O. 2011-25  
A.O. 2009-44  
A.O. 2006-25  
A.O. 2001-6

Keywords:

Legislator  
Prospective Employment  
Revolving Door



# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: August 19, 2025

**Re: Samantha Contreras**

### **QUESTION PRESENTED:**

The Petitioner, a staff interpreter for the Rhode Island Supreme Court, a state employee position, who in her private capacity owns and operates SC Interpreting and Translation Services, LLC, requests an advisory opinion regarding whether she is prohibited by the Code of Ethics from registering her private business as a vendor for the State of Rhode Island in order to provide language services to various non-state and state agencies, excluding the Rhode Island Judiciary.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a staff interpreter for the Rhode Island Supreme Court, a state employee position, who in her private capacity owns and operates SC Interpreting and Translation Services, LLC, is not prohibited by the Code of Ethics from registering her private business as a vendor for the State of Rhode Island in order to provide language services to various non-state and state agencies, excluding the Rhode Island Judiciary.

The Petitioner is employed full-time as a staff interpreter for the Rhode Island Supreme Court (RISC). She has held this position since September 2022. The Petitioner states that she is tasked with providing English and Spanish interpreting services and that her work hours are from 8:30 a.m. to 4:00 p.m., Monday through Friday. She further states that she does not provide interpreting services for any other state courts in Rhode Island.

The Petitioner represents that in her private capacity she is the sole owner and lead interpreter for SC Interpreting and Translation Services, LLC (business). She further represents that she started the business in March 2025 and currently has no employees or clients. The Petitioner explains that she would like to contract with as many different interpreters as possible including, but not limited to, those who can translate the following languages: English, Spanish, Portuguese, Cape Verdean, Haitian, and Chinese. She adds that she does not currently maintain a list of interpreters and has yet to advertise for them. The Petitioner informs that, eventually, she would like to use the interpreters with whom she contracts to provide interpreting and/or translation services to, among others, Rhode

Island state agencies, excluding the judiciary in its entirety, and to non-state agencies including, but not limited to, municipal school departments and private hospitals and healthcare providers.

The Petitioner states that the business has no established hours of operation, but that she anticipates that requests could be made for interpreting and translation services any day of the week at any hour of the day or night. She further states that she does not expect to personally provide language services to her clients, but that she would be willing to do so as necessary outside of her regular working hours for the state and without the use of state resources. The Petitioner represents that she can think of no way in which engaging in her prospective other employment would impair her independence of judgment with regard to her official duties or require or induce her to disclose confidential information obtained during the course of her official duties. She further represents that her public duties do not include participating in the decision to select interpreters for the RISC, adding that all languages are currently covered in an exclusive vendor list kept and used by the RISC.

The Petitioner explains that she would like to register her business as a vendor on the state's Master Price Agreement (MPA) list through the Department of Administration, Division of Purchases. "An MPA provides for broad categories of goods and services for a specified period on a statewide basis. State agencies order their goods and services off relevant MPAs, as their agency needs arise. Statewide applicability (state law) permits quasi-agencies, municipalities, and school districts to piggy-back the [s]tate's MPA pricing contracts, at the vendor's discretion."<sup>1</sup> Each state-issued MPA goes through a bid solicitation process and requires vendor bid submissions. "Vendors who meet the requirements of the solicitation may be added to the MPA vendor pool. The MPA is a qualified list allowing agencies to seek quotes from the pool of vendors, and as such is not a guarantee that the vendor will be issued contracts for goods or services."<sup>2</sup>

The Petitioner represents that her business would provide the same services to state agencies, other than the judiciary, and to non-state agencies as she does in her capacity as a RISC employee. She clarifies that these services would not be performed in a courtroom. The Petitioner explains that assignments through her business would be made outside of her regular work hours for the state, such as during the evening for the following day. She states that she would not use her state employment to promote her business; nor would she solicit her RISC colleagues to work for her business. It is under this set of facts that the Petitioner seeks advice from the Ethics Commission regarding whether she is prohibited

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<sup>1</sup> <https://ridop.ri.gov/master-price-agreements/mpa-faqs> (last visited August 4, 2025).

<sup>2</sup> Id.

from registering her business as a vendor with the state in order to provide the language services described above.<sup>3</sup>

The Code of Ethics provides that no state employee shall accept other employment which will either impair her independence of judgment as to her official duties or require or induce her to disclose confidential information acquired by her in the course of, and by reason of, her official employment. R.I. Gen. Laws § 36-14-5(b). Additionally, the Code of Ethics provides that a public 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 her duties in the public interest. § 36-14-5(a). A public employee has an interest which is in substantial conflict with the proper discharge of her duties in the public interest if she has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. R.I. Gen. Laws § 36-14-7(a). Additionally, the Code of Ethics provides that a public employee shall not use her public office or confidential information received through her holding public office to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she 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 Ethics Commission has consistently opined that public 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. The Ethics Commission examines several factors when considering potential conflicts regarding other employment. These factors include, but are not limited to, the nexus between the public official’s public duties and other employment; whether the employee completes such other work outside of their regular working hours and without the use of public resources; whether the employee is required to appear before their own agency as part of their 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 their public position to solicit business or customers for their secondary position. See General Commission Advisory No. 2009-4.

The Ethics Commission has previously advised public employees who wished to engage in private secondary employment of their obligations under the Code of Ethics. For example, in Advisory Opinion 2019-67, the Ethics Commission opined that a Rhode Island

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<sup>3</sup> The Petitioner states that she has consulted with and received approval from her state supervisor to engage in the proposed secondary employment.

Family Court investigator was not prohibited by the Code of Ethics from owning and operating a private investigation firm, 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 state employment with the Family Court. Further, that petitioner could not use his public position to promote or advertise his private employment, nor could he list his public employment as part of the advertisement of his private work. Additionally, that petitioner was required to recuse from any matter that came before him as a Family Court investigator that involved any of the attorneys or entities for which he either provided private investigative services or with which he contracted on a regular basis. See also A.O. 2019-53 (opining that a vocational rehabilitation counselor for the Rhode Island Department of Human Services, Office of Rehabilitation Services (ORS), was not prohibited by the Code of Ethics from working as a certified yoga instructor for young children and/or adults with disabilities, provided that all of the work was performed on her own time and without the use of public resources or confidential information obtained as part of her state employment at ORS and, further provided that the petitioner did not use her public position to promote or advertise her private employment, or list her public employment as part of the advertisement of her private work).

Here, based upon the Petitioner's representations, there appears to be no evidence that the provision by her business of language services to various non-state and state agencies, excluding the Rhode Island Judiciary, would either impair her independence of judgment as to her state employment or create an interest that is in substantial conflict with her public duties. Additionally, there appears to be no relationship between the Petitioner's public duties as an interpreter for the RISC and her intended work as the owner and operator of an interpreting and language translation business, despite the similar skill set involved for each. Importantly, the Petitioner states that she would complete her private work outside of her regular working hours for the state and without the use of public resources. She further states that she would not be required to, nor would she, appear before the RISC as part of her other employment and that her other work would not be something over which she would have decision-making jurisdiction as a state employee. Additionally, the Petitioner represents that she would not use her public position to solicit business or customers for her business; nor would she solicit her RISC colleagues to contract with her to perform interpreting and language services.

Accordingly, based upon the Petitioner's representations, a review of 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 Petitioner is not prohibited by the Code of Ethics from registering her private business as a vendor for the State of Rhode Island in order to provide language services to various non-state and state agencies, excluding the Rhode Island Judiciary. Finally, 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, agency policy, ordinance, constitutional provision, charter provision, or canon of judicial or professional ethics may have on this situation.**

Code Citations:

§ 36-14-2(3)  
§ 36-14-2(7)  
§ 36-14-5(a)  
§ 36-14-5(b)  
§ 36-14-5(d)  
§ 36-14-7(a)

Related Advisory Opinions:

A.O. 2019-67  
A.O. 2019-53  
G.C.A. 2009-04

Keywords:

Secondary Employment

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: August 19, 2025

**Re: The Town of New Shoreham Town Council**

### **QUESTION PRESENTED:**

The Town of New Shoreham Town Council, by and through its solicitor, Nicholas A. Solitro, requests an advisory opinion regarding whether one or more town council members may, pursuant to the Rule of Necessity, participate in the town council's consideration of a proposed ordinance that would regulate the operation of courtesy shuttles by local business owners, notwithstanding the stated conflicts of interest by those town council members, so that the town council can achieve a necessary quorum of three members.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the town council member identified below may, pursuant to the Rule of Necessity, participate in the town council's consideration of a proposed ordinance that would regulate the operation of courtesy shuttles by local business owners, notwithstanding the stated conflict of interest by that town council member, so that the town council can achieve a necessary quorum of three members.

The solicitor for the Town of New Shoreham, writing on behalf of the New Shoreham Town Council, informs that the town council consists of five members. The solicitor states that earlier this year, the town council received a letter from two New Shoreham residents who own and operate taxi businesses on the island. Enclosed with the letter was a proposed ordinance for consideration by the town council which would regulate the provision of courtesy shuttles by local businesses to their patrons. The solicitor informs that the increased use of courtesy shuttles over the past several years has become contentious as it may be taking business away from taxi and bus drivers.<sup>1</sup>

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<sup>1</sup> Following telephone conversations with each of the town council members who ultimately cited conflicts of interest in this matter, Ethics Commission staff learned that there are approximately 34 active taxi licenses in New Shoreham and there is an extensive waitlist for which people will wait years for an opportunity to obtain a taxi license. Additionally, there are two active bus licenses in New Shoreham. There are reportedly at least ten courtesy shuttles currently operating on the island, some of which travel from an

The solicitor advises that when this matter appeared on the town council's agenda last June, the following three town council members recused, citing a conflict of interest: Tristan Payne, Margaret O'Neill, and William McCombe. The solicitor states that there remain only two town council members who did not recuse and are able to participate in the consideration of the proposed ordinance. However, the solicitor further states that Article IV, Section 405 of New Shoreham's Home Rule Charter requires a quorum of three members for a town council meeting. The solicitor represents that, under the circumstances, the town council is unable to conduct its statutorily assigned duties and seeks permission to invoke the Rule of Necessity to allow the participation of at least one of the presumably conflicted members to achieve a quorum.<sup>2</sup>

Under the Code of Ethics, a public official may not participate in any matter in which they have an interest, financial or otherwise, which is in substantial conflict with the proper discharge of their duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that they, any person within their family, their business associate, or any business by which they are employed or which they represent, will derive a direct monetary gain or suffer a direct monetary loss by reason of their official activity. R.I. Gen. Laws § 36-14-7(a). A public official has reason to believe or expect a conflict of interest exists when it is "reasonably foreseeable," meaning the probability is greater than conceivably but the conflict of interest is not necessarily certain to occur. 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). The Code of Ethics also prohibits a public official from using their public position to obtain financial gain, other than that provided by law, for themselves, a person within their family, their business associate, or any business by which they are employed or which they represent. § 36-14-5(d).

The Code of Ethics contains specific provisions aimed at curbing nepotism which are laid out in 520-RICR-00-00-1.3.1 Prohibited Activities - Nepotism (36-14-5004) (Regulation 1.3.1). Pursuant to Regulation 1.3.1(B)(1), a public official may not participate in any matter as part of their public duties if there is reason to believe or expect that any person within their family is a party to or participant in such matter or will be directly financially impacted or obtain an employment advantage by reason of the public official's participation. The definition of "any person within [their] family" expressly includes mother and spouse. Regulation 1.3.1(A)(2). A public official must also recuse from participation in a matter in which any member of their family appears or presents evidence or arguments before their municipal agency, except during a period where public comment

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owner's place of business to a set drop-off location, and others which travel from the owner's place of business to locations as requested by the guests of those businesses.

<sup>2</sup> Town council members Payne, O'Neill, and McCombe have each assented to the solicitor's request for this advisory opinion on behalf of the town council. Their signatures appear on page three of the request letter.

is allowed on a matter of general public interest, and further provided that the family member is not otherwise a party or participant and has no personal financial interest in the matter under discussion. 520-RICR-00-00-1.2.1(A)(1) & (B)(2) Additional Circumstances Warranting Recusal (36-14-5002).

The Ethics Commission has recognized and permitted a Rule of Necessity exception in matters where recusals inhibit governmental process, such as where the majority of public body members must recuse themselves and a resulting failure of a quorum renders the entity unable to act. Public bodies may not, on their own, invoke the Rule of Necessity. Rather, public bodies are required to seek an advisory opinion from the Ethics Commission permitting the use of the Rule of Necessity each time conflicts of interest would inhibit their necessary governmental processes. In fact, the Ethics Commission has previously considered and applied the Rule of Necessity to proceedings before municipal agencies, including the New Shoreham Town Council. For example, in Advisory Opinion 2020-5, the Ethics Commission opined that the town council could utilize the Rule of Necessity to achieve a quorum of three members to hear and decide a matter relating to the potential amendment of a town ordinance that would provide for the issuance of municipal permits for the operation of mobile food establishments in conformance with state law. There, four of the five town council members had conflicts of interest requiring recusals. See also A.O. 2018-45 (opining that the New Shoreham Zoning Board of Review could utilize the Rule of Necessity to achieve a quorum of five members to hear and decide an application for a special use permit for a utility facility, given that three of the seven zoning board members had conflicts of interest requiring their recusals); A.O. 2008-9 (opining that the Town of Smithfield Zoning Board of Review could utilize the Rule of Necessity to achieve a quorum of five members to hear and decide an appeal from a decision of the planning board, given that three of the seven zoning board members had conflicts of interest requiring their recusals).

In the instant matter, town council member Payne is the sole employee of a helicopter tour business which offers a free courtesy shuttle to its patrons. During a telephone conversation with Ethics Commission staff, Mr. Payne noted that he not only pilots the helicopter but operates the courtesy shuttle to transport patrons between the ferry landing and the airport. Mr. Payne states that he has held this employment for ten years and explains that the reason he has transported patrons between the ferry landing and the airport for the last seven years is to ensure timely arrivals in order to adhere to a strict tour schedule. He adds that he is not paid extra by his employer for these transports and accepts no gratuities from patrons for them.<sup>3</sup> Mr. Payne confirms that his mother is one of the two women who sent the letter to the town council requesting consideration of the ordinance regulating courtesy shuttles. He states that his mother is a farmer who also has driven a taxi on the island for approximately fifty years. Mr. Payne further states that, without the regulation of courtesy shuttles on the island, his mother and other similarly situated taxi drivers on the island will

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<sup>3</sup> He does, however, accept gratuities from patrons for the tours he provides.



have fewer opportunities to transport people, which will impact their income. Mr. Payne acknowledges his conflict of interest under the circumstances. See, e.g., A.O. 2020-40 (opining that a member of the Jamestown Town Council was prohibited from participating in the town council's discussions and voting relative to a proposed amendment to the Jamestown Code of Ordinances pertaining to the height of structures in special flood hazard areas, given that a piece of commercial property for which his employer had the real estate sale listing, and that was then under contract, was located within such an area); A.O. 2020-2 (opining that a member of the Newport Planning Board was prohibited by the Code of Ethics from participating in discussions and decision-making relative to matters concerning the proposed demolition of property and subsequent development of a hotel in Newport, given that her mother owned property within 200 feet of the hotel's proposed location).

Next, council member O'Neill's spouse has held a taxi license issued by the town for 14 years which he uses to derive an income. During a telephone conversation with Ethics Commission staff, Ms. O'Neill explained that her spouse, who is employed full-time as a carpenter, drives a taxi approximately two days weekly during the summer months. Additionally, Ms. O'Neill's spouse employs three other drivers who work most days and evenings. Ms. O'Neill acknowledges that, because taxi license holders will be directly financially impacted by the regulation of courtesy shuttles through an ordinance drafted and passed by the town council, she is required to recuse from participation in the matter. See, e.g., A.O. 2021-44 (opining, among other things, that a member of the North Smithfield Town Council was prohibited by the Code of Ethics from participating in discussion and voting relative to any town council matter in which his sister would be financially impacted, was a party or participant, would receive an employment advantage, or appeared or presented evidence or arguments).

Finally, town council member McCombe holds a motor vehicle for hire license (bus license) issued by the town. Ethics Commission staff spoke with Mr. McCombe, who informed that he is employed by Interstate Navigation, a/k/a The Block Island Ferry. Mr. McCombe states that he possesses one of only two bus licenses currently issued on the island. He further states that he allows his employer to utilize his license to offer and conduct bus tours or transport wedding parties and guests numbering 20-49 people at a time. Mr. McCombe explains that, on those occasions where he himself operates the bus, he receives no additional compensation from his employer. Mr. McCombe further explains that his employer reimburses him for the cost of the bus license and any additional fees associated therewith, such as those for the two other drivers allowed to operate under the license. Mr. McCombe opines that an ordinance addressing courtesy vehicles would likely have no financial impact upon him or his employer because the bus used by The Block Island Ferry does not operate as a taxi.

Because the proposed ordinance regulating courtesy shuttles on the island has yet to be considered, and potentially amended, by the town council, it is unclear at this time whether and to what extent the employers and family members, and even these three town council

members themselves, could be impacted. For this reason, it appears that three of the five town council members have each properly recused at this time. Thus, given the legal requirement that there be participation by three town council members to consider the proposed ordinance, and based on the reviews of prior advisory opinions issued, it is appropriate for the Ethics Commission to apply the Rule of Necessity.

Under the Rule of Necessity, the two town council members who have not asserted a conflict are required to participate. Then, the remaining official or officials determined by the Ethics Commission to have the least conflict may be permitted to participate so that an important governmental function can be accomplished. See, e.g., A.O. 2020-5; A.O. 2018-45; A.O. 2008-9, supra. Here, Mr. Payne's private employer owns the helicopter tour business for which Mr. Payne is the sole employee and occasionally shuttles patrons back and forth between the ferry and the airport. Mr. Payne's employer would be directly financially impacted by an ordinance regulating courtesy vehicles. Also, Mr. Payne's mother is one of the two taxi drivers who submitted the letter and proposed ordinance to the town council for consideration. For these reasons, Mr. Payne shall remain disqualified and recuse. Ms. O'Neill shall also recuse, given that her spouse holds one of approximately 34 taxi licenses issued by the town from which he derives income. It is the opinion of the Ethics Commission that Mr. McCombe is the least conflicted because, as the owner of a bus license that is used by his employer to transport groups of 20-49 people for tours and weddings, neither he nor his employer appear at this time to stand to be personally financially impacted by an ordinance regulating courtesy shuttles in the manner that a taxi operator would. However, a conflict for Mr. McCombe cannot be ruled out completely because it remains to be seen whether and how an ordinance regulating courtesy shuttles in New Shoreham would directly financially impact the drivers who operate buses under the two bus licenses issued by the town. Accordingly, in order that the town council may conduct its statutorily assigned duties, Mr. McCombe shall, prior to participation in the matter, file a conflict of interest statement consistent with the provisions of R.I. Gen. Laws § 36-14-6. He shall disclose his interest in the matter and shall affirm that, despite his interest, he is willing and able to participate fairly, objectively, and in the public interest. Mr. Payne and Ms. O'Neill shall recuse from participation and voting on the matter consistent with the provisions of § 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, agency policy, ordinance, constitutional provision, charter provision, or canon of judicial or professional ethics may have on this situation.**

Code Citations:  
§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

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

520-RICR-00-00-1.3.1 Prohibited Activities – Nepotism (36-14-5004)

Related Advisory Opinions:

A.O. 2021-44

A.O. 2020-40

A.O. 2020-5

A.O. 2020-2

A.O. 2018-45

A.O. 2008-09

Keywords:

Recusal

Rule of Necessity

# RHODE ISLAND ETHICS COMMISSION

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## Draft Advisory Opinion

Hearing Date: August 19, 2025

**Re: Mark Schwager**

### **QUESTION PRESENTED:**

The Petitioner, a member of the East Greenwich Town Council, a municipal elected position, requests an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the East Greenwich Historic District Commission, a municipal agency over which the town council has appointing authority, in order to request approval of the replacement of three windows and a door at his primary residence.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the East Greenwich Town Council, a municipal elected position, qualifies for a hardship exception to the Code of Ethics' prohibition against representing himself before the East Greenwich Historic District Commission, a municipal agency over which the town council has appointing authority, in order to request approval of the replacement of three windows and a door at his primary residence.

The Petitioner is the president of the East Greenwich Town Council. He represents that he has been a member of the town council continuously since his election in 2014 and has served as its president since 2018.<sup>1</sup> The Petitioner states that in August 2024, he and his spouse purchased a home in the historic district of East Greenwich, in which they have resided since. The Petitioner represents that, prior to that time, he resided in his previous home, also in East Greenwich, for approximately 30 years.

The Petitioner would like to replace three windows and a metal door at his home with ones of "like kind." The Petitioner describes the current windows as inoperable, and he believes the door to be from 1984. He states that because the home is located in the East Greenwich historic district, any alterations to the home's exterior will be subject to review and approval by the East Greenwich Historic District Commission (HDC). The Petitioner

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<sup>1</sup> The Petitioner explains that he was also elected and served two consecutive two-year town council terms in 2006 and 2008.

further states that he has already submitted an application to the HDC for approval; however, because he has appointing authority over the members of the HDC, the application is currently on hold pending the receipt of the instant advisory opinion. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition against representing 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 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 Representing Oneself or Others, Defined (36-14-5016) (Regulation 1.1.4). Pursuant to Regulation 1.1.4(A)(1)(a) and (b), a person will represent himself before a municipal agency if he or, pursuant to his authorization and/or direction, another person "participates in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in his [] favor." 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 follow any other recommendations the Ethics Commission may make in order to avoid any appearance of impropriety in the matter. § 36-14-5(e)(1)(i-iii).

The Petitioner's proposed conduct falls squarely within the Code of Ethics' prohibition against representing oneself before an agency for which he is the appointing authority. Therefore, the Ethics Commission will consider whether the unique circumstances represented by the Petitioner justify a finding of hardship to permit him to appear before the HDC, whether personally or through an authorized representative.

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.

The Ethics Commission has previously granted hardship exceptions to public officials who sought to appear before boards for which they were the appointing authority in various circumstances involving their personal residences. For example, in Advisory Opinion 2024-8, the Ethics Commission granted a hardship exception to a member of the Newport City Council that allowed him to represent himself before the Newport Historic District Commission and the Newport Zoning Board of Review, both municipal agencies over which the city council had appointing authority, in order to request approval of repairs and

renovations he had planned for a home that he had purchased following his election to the city council. In granting that hardship exception, the Ethics Commission considered, *inter alia*, the fact that although the home was not acquired prior to the petitioner's election to the city council, the relief sought involved his anticipated future personal residence and not a new commercial venture. However, in order to avoid even the appearance of impropriety, the petitioner was required to recuse from the city council's discussions and decision-making relative to the appointment or reappointment of any person to the historic district commission and/or to the zoning board until after the election cycle for his city council seat following the complete resolution of the historic district commission's and zoning board's review and approval of his applications, including any appeals related to them. Additionally, that petitioner was required, prior to his appearance before the historic district commission and the zoning board relative to the repairs and renovations to his home, to inform the members of those boards of his receipt of the advisory opinion and that, consistent therewith, he would recuse from the city council's discussions and decision-making regarding the appointment of those members as set forth in the advisory opinion. See also A.O. 2022-10 (granting a hardship exception to a member of the Scituate Town Council allowing him to appear before the Scituate Building and Zoning Official, over whom the town council had appointing authority, in connection with the building of a new home in which the petitioner intended to reside with his family, noting that, although the subject property was not acquired prior to the start of the petitioner's public service, the relief sought involved the petitioner's anticipated future personal residence and not a new commercial venture).

In the instant matter, the Petitioner would like to replace three inoperable windows and an old metal door with ones of "like kind." Further, although the purchase of the home does not predate the Petitioner's election to the town council, the relief sought relates to the Petitioner's personal residence and not a new commercial venture. The Petitioner also represents that prior to the purchase of his current home, he resided in another home in the same town for approximately 30 years. In consideration of the Petitioner's representations, 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 these particular circumstances justifies making an exception to § 36-14-5(e)'s prohibitions. Accordingly, the Petitioner may represent himself, either personally or through a representative, before the HDC relative to the proposed replacement of the windows and the metal door. However, in order to avoid even the appearance of impropriety, the Petitioner must recuse from the town council's discussions and decision-making relative to the appointment and reappointment of members of the HDC until after the election cycle for his town council seat following the complete resolution of the HDC's review and approval of his application, including any appeals. Notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6. Additionally, the Petitioner shall, prior to his appearance before the members of the HDC relative to the application described herein, inform them of his receipt of the instant advisory opinion and that, consistent herewith, he will recuse from any discussions and decision-making regarding their reappointments.

**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, agency policy, ordinance, constitutional provision, charter provision, or canon of judicial or 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. 2024-8

A.O. 2022-10

Keywords:

Hardship Exception