RHODE ISLAND ETHICS COMMISSION

Advisory Opinion 2025-53

Approved: September 30, 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 seeking re-certification to the list of court-appointed attorneys available to represent indigent clients in criminal matters before the Rhode Island 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 not prohibited by the Code of Ethics from seeking re-certification to the list of court-appointed attorneys available to represent indigent clients in criminal matters before the Rhode Island 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 and at the time of his election to the House of Representatives in 2016, he was certified by the Rhode Island Judiciary to appear on a rotating list of qualified attorneys licensed in Rhode Island who are available for court appointments to represent indigent clients in criminal matters before the state's courts (court-appointed list).[1]

[1] The Sixth and Fourteenth Amendments to the United States Constitution guarantee the right of a criminal defendant to be represented by counsel, appointed by the court if the defendant is indigent, in both federal and state court proceedings. Gideon v. Wainwright, 372 U.S. 335, 344, 83 S.Ct. 792 (1963). This is accomplished in Rhode Island through

The Rhode Island Supreme Court is responsible for setting the procedures for court-appointment of private counsel. Pursuant to Executive Order 2025-02 issued by the Supreme Court in April 2025,[2] appointments from a court-appointed list will be made only after written certification by the public defender of a person's inability to pay for an attorney and the existence of a conflict of interest on the part of the public defender in representing that person. The Executive Order contains certain other requirements relating to the application and qualification for certification to the court-appointed list. Generally speaking, an attorney must be a member of the Rhode Island Bar in good standing; provide proof of the requisite malpractice insurance coverage; acquire sufficient bonding in matters that may involve the handling and managing of funds; and be the only attorney to represent the client to whom they are assigned. The Executive Order specifies that participating attorneys are appointed pursuant to a rotating system that may only be deviated from under enumerated, special circumstances which must be noted by the appointing judicial officer in the case file. The Executive Order also states that court appointment panels "shall be structured to include as large a list of qualified and willing attorneys as is feasible."

The Petitioner explains that the court-appointed list is monitored and maintained by the Administrative Office of State Courts through a case management system. He adds that payment for services as a court-appointed attorney is issued by the Rhode Island Judiciary. The Executive Director of the Judiciary's Office of Finance and Budget (finance director) is the individual to whom those seeking to join the list of court-appointed attorneys are directed regarding payment questions. In a telephone conversation with Ethics Commission staff, the finance director explained that court-appointed attorneys' fees are funded through the state's general revenue. He added that court-appointed attorneys must submit an IRS Form W-9 so that the state can later issue them a Form 1099 for tax purposes. The finance director stated that attorneys on the state's court-appointed list are not state employees but are considered independent contractors.[3]

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referral to the Office of the Rhode Island Public Defender or, in cases in which the public defender has a conflict of interest precluding such representation, by court appointment of a private attorney to represent the indigent defendant.

[2] Executive Order 2025-02 supersedes and repeals 17 similar Executive Orders issued between April 1995 and July 2023.

[3] Here, as court-appointed counsel for indigent defendants, the Petitioner would be paid by the state as an independent contractor. "[A]n independent contractor relationship exists when one is retained to perform a task independent of and not subject to the control of the employer." Toledo v. Van Waters & Rogers, Inc., 92 F.Supp.2d 44, 53 (D.R.I. 2000)(citing Webbier v. Thoroughbred Racing Protective Bureau, Inc., 105 R.I. 605, 254 A.2d 285, 289 (1969); McAlice v. Safeco Life Ins. Co., 1997 WL 839882 at *2 (R.I. Super.), aff'd, 741 A.2d 264 (R.I. 1999)(citing 41 Am.Jur.2d Independent Contractors § 1 (1969))). Faced

The Petitioner represents that, in 2019, he requested that his name be removed from the court-appointed list based on the needs of his legal practice at that time. He states that due to changed circumstances, including a recent increase in the reimbursement rates for court-appointed counsel, he would now like to become re-certified to the court-appointed list. Cognizant of the Code of Ethics, and wishing to comply with its requirements, the Petitioner seeks advice from the Ethics Commission regarding whether, under the circumstances as described, the revolving door provisions of the Code of Ethics prohibit him from seeking re-certification to the court-appointed list.

In our analysis of the instant question presented, it is instructive to consider the history and evolution of the Code of Ethics' revolving door provisions.[4] The Code of Ethics contains both statutory and regulatory revolving door provisions that are applicable to current and former members of the legislature. The first of these provisions was a regulation enacted in 1991 by the Ethics Commission, aimed at barring members of the General Assembly from obtaining judgeships or other state jobs. Commission Regulation 520-RICR-00-00-1.5.2 Prohibition on State Employment (36-14-5007) (Regulation 1.5.2), as it is currently named, originally read as follows, in full:

> No member of the General Assembly shall seek or accept state employment as an employee or consultant, 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.

Notably, Regulation 1.5.2 as originally enacted only prohibited state employment or consulting, but did not expressly prohibit work as an independent contractor for the state. It also did not set forth any exceptions to its strict prohibition and one-year "cooling off"

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with a fact pattern that is somewhat analogous to the instant situation, the Rhode Island Supreme Court determined that dentists and dental hygienists who were hired by the state to provide dental services to inmates of the Adult Correctional Institutions were independent contractors. See Absi v. State Department of Administration, 785 A.2d 554 (R.I. 2001). "[T]he test [as to] whether a person is an independent contractor is based on the employer's right or power to exercise control over the method and means of performing the work and not merely the exercise of actual control." Id. at 556 (citing Pasetti v. Brusa, 81 R.I. 88, 91, 98 A.2d 833, 834 (1953)).

[4] A detailed, anecdotal recounting of the Ethics Commission's and General Assembly's rationale for, and deliberations over, enactment of the revolving door provisions at issue here are recounted by former Common Cause Rhode Island Executive Director H. Philip West Jr. in his book, *Secrets & Scandals* 82, 86-89, 151-152, 167, 170-179 (Rhode Island Publications Society 2014).

period. The Ethics Commission's authority to enact Regulation 1.5.2 was challenged by then-Governor Sundlun and several members of the General Assembly, ultimately resulting in an opinion of the Rhode Island Supreme Court in 1992 declaring that a 1986 amendment to the Rhode Island Constitution[5] vested the Ethics Commission with the limited power to enact substantive ethics laws such as Regulation 1.5.2, concurrent with the General Assembly's power to enact ethics laws "that are not inconsistent with, or contradictory to, the code of ethics adopted by the commission." In re Advisory Opinion to the Governor, 612 A.2d 1, 14 (R.I. 1992).

With the Ethics Commission's 1991 enactment of Regulation 1.5.2, and the issue of its authority to do so now settled by the Supreme Court, in 1992 the General Assembly enacted its own statutory revolving door provision, R.I. Gen. Laws § 36-14-5(n), extending its applicability beyond members of the General Assembly to include *all* state elected officials, including the five general officers:

> 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 . . . other than employment which was held at the time of the official's election . . . except as provided herein.

Like the Ethics Commission's revolving door regulation, § 36-14-5(n) prohibited state *employment* but it did not expressly prohibit work as an independent contractor for the state. However, unlike Regulation 1.5.2, § 36-14-5(n) did set forth several exceptions that allow for: (1) appointment to a senior position on a general officer's or the general assembly's staff; (2) appointment to a department director position by the governor; (3) election to a constitutional office; or (4) other employment for which the Ethics Commission determines that authorizing an exception would not create an appearance of impropriety.

In 1993, Governor Sundlun asked the Rhode Island Supreme Court to weigh in again, this time regarding the authority of either the Ethics Commission or the General Assembly to restrict the gubernatorial powers of appointment through the enactment of revolving door provisions Regulation 1.5.2 and § 36-14-5(n), respectively. In response, the Court issued an advisory opinion that reviewed, compared, and specifically upheld the constitutionality of both revolving door provisions. In re Advisory from the Governor, 633 A.2d 664 (R.I. 1993). In comparing the two provisions, the Court wrote:

[5] "The general assembly shall establish an independent non-partisan ethics commission *which shall adopt a code of ethics* including, but not limited to, provisions on conflicts of interest, confidential information, use of position, contracts with government agencies and financial disclosure." R.I. Const. art III, sec. 8 (emphasis added).

> The regulations complement the statute which broadens their application to a larger group of individuals. An individual could be found to have violated the regulations while being in compliance with the statute. The statute and the regulations are not inconsistent but are compatible.

Id. at 669. In finding that the revolving door provisions were constitutional, the Court wrote:

> The 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. See R.I. Const., art. 3, sec. 7. The 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. at 471 (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.

While state elected officials were now clearly subject to both regulatory and statutory revolving door provisions, the Code of Ethics contained no analogous revolving door prohibitions for *municipal* elected officials. So, in 2006, the Ethics Commission adopted Regulation 520-RICR-00-00-1.5.4 Municipal Official Revolving Door (36-14-5014). The Municipal Official Revolving Door was meant to prohibit on the municipal level that which was already prohibited on the state level by Regulation 1.5.2 and § 36-14-5(n), namely, elected officials obtaining public employment within one year of leaving elective office.

As enacted, the Municipal Official Revolving Door prohibited municipal elected officials from seeking or accepting employment from the same municipality while serving in office and for a year after leaving office. Interestingly, like the statutorily enacted § 36-14-5(n), the Municipal Official Revolving Door included an express exception in cases where the Ethics Commission found that there would not be an appearance of impropriety. It also contained the first occurrence of the expanded definition of "employment" to include "service as an independent contractor or consultant to any municipality or municipal agency[.]" The reason for expanding the definition of "employment" was to ensure that an elected official could not avoid the revolving door prohibition by being deemed an independent contractor rather than an employee. As noted above, this newly expanded definition of "employment" in the Municipal Official Revolving Door was not yet included in the other revolving door provisions of the Code of Ethics.

Then, in 2007, the Ethics Commission conducted further rulemaking to cause the revolving door provisions of the Code of Ethics applicable to state officials to contain the newly expanded definition of "employment" that was included in the Municipal Official Revolving Door. First, the Ethics Commission adopted Regulation 520-RICR-00-00-1.5.6 Revolving Door, "Employment" Defined (36-14-5017), which reads:

> For purposes of R.I. Gen. Laws []§ 36-14-5(n) . . . , "employment" 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.

During the public hearing on this amendment, the Ethics Commission staff attorney noted that the intent was to mirror the language that the Ethics Commission used in its recently adopted Municipal Official Revolving Door provision. The amendment passed unanimously.

Simultaneous to the Commission's 2007 adoption of an expanded definition of employment in § 36-14-5(n), it also amended the regulatory revolving door provision of Regulation 1.5.2 to add the following sentence:

> 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.

At the public hearing on this amendment, the Ethics Commission staff attorney explained that this amendment was simply to conform to the definition of "employment" just approved in the adoption of Regulation 1.5.6, which was intended to mirror the definition used in the Municipal Official Revolving Door regulation. The amendment passed unanimously.

Over the years, the Ethics Commission has 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 that 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 its 28-year history of providing snowplowing services to the Rhode Island Department of Transportation because it qualified as employment held at the time of the petitioner's election to the General Assembly.

Consistent with our interpretation of the revolving door provisions relative to state employment, the Ethics Commission has likewise opined that under the similarly worded Municipal Official Revolving Door provision, an elected official who resigned her municipal employment position following her election was prohibited from accepting new part-time work in the town. In Advisory Opinion 2021-9, the Ethics Commission opined that the Code of Ethics prohibited a member of the Little Compton School Committee 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 declined to apply the "no appearance of impropriety" exception included in the regulation given that petitioner as a member of the school committee was in the chain of command of her proposed position and "in light of the narrowness of the Town's search to employ an individual who does not have a conflict of interest under the Code of Ethics, coupled with the potential availability of two substitute nurses and the apparent availability of the Town's Fire Chief and EMS team to be of assistance."

In the instant matter, after considering the unique facts presented, the history and evolution of the revolving door provisions of the Code of Ethics, and our past advisory opinions, it is the opinion of the Ethics Commission that strict application of Regulation 1.5.2 here would lead to an unintended and inconsistent result. If we were applying the statutory revolving door provision of § 36-14-5(n), or if the Petitioner were a municipal appointed official, it is evident that he would qualify for an exception because allowing him to be re-certified to the revolving list of court-appointed attorneys creates no appearance of impropriety. Facts supporting this conclusion include the Petitioner's recent, prior history serving as a court-appointed attorney; that his inclusion on the list does not preclude others from also being certified to the list; that the required revolving selection process forecloses risk of favoritism in appointment; and, significantly, the clear need for more attorneys to fill the constitutionally necessary role of court-appointed conflict counsel for indigent defendants.

While Regulation 1.5.2 does not include the statutory exceptions found in either § 36-14-5(n) or the Municipal Official Revolving Door, we are of the opinion that the 2007 amendment to expand the definition of "employment" did not contemplate, nor was its intended purpose to prohibit, a public official's inclusion in a rotating list of attorneys available to accept court appointment to represent indigent defendants. Rather, the 2007

amendment was intended to guard against the creation of "independent contractor" positions in lieu of state employee positions that were already prohibited by the existing revolving door provisions. Such is not the case here. Inclusion on the judiciary's rotating court-appointed list is not comparable to state employment. Unlike state employment, or most independent contractor positions for the state, certification to the court-appointed list is not competitive in that the Petitioner's inclusion does not limit others from application or selection. Indeed, the Executive Order creating the court-appointed panels states that the goal is to create "as large a list of qualified and willing attorneys as is feasible." Finally, the court-appointed attorneys are not supervised or directed in their work by any state employee or official but owe their fiduciary duty and loyalty only to the indigent client being represented.[6]

In conclusion, having found no appearance of impropriety and no conceivable indication that the Petitioner's public position could influence his re-certification to the court-appointed list, we see no rational basis to support strict construction and reliance on the revolving door regulation to the exclusion of the revolving door statute's applicable exception in this case. Therefore, it is our opinion that the Petitioner is not prohibited by the Code of Ethics from seeking re-certification to the list of court-appointed attorneys available to represent indigent clients in criminal matters before the Rhode Island courts. This opinion is based on, and strictly limited to, the unique facts presented herein by this Petitioner.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. An advisory opinion rendered by the Commission, until amended or revoked by a majority vote of the Commission, is binding on the Commission in any subsequent proceedings concerning the person who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. 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.

[6] In Polk County v. Dodson, 454 U.S. 312, 320-321, 102 S.Ct. 445 (1981), the United States Supreme Court found that criminal defense counsel, even if paid administratively by the state, "is not, and by the nature of his function cannot be, the servant of an administrative superior" and does not act under color of state law. The Court went on to note that the constitutional right of a criminal defendant to the assistance of counsel "is the assumption that counsel will be free of state control." Id. at 320.

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:
Absi v. State Department of Administration, 785 A.2d 554 (R.I. 2001)
In re Advisory from the Governor, 663 A.2d 664 (R.I. 1993)
In re Advisory Opinion to the Governor, 612 A.2d 1 (R.I. 1992)
Polk County v. Dodson, 454 U.S. 312, 102 S.Ct. 445 (1981)
Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792 (1963)
Toledo v. Van Waters & Rogers, Inc., 92 F.Supp.2d 44 (D.R.I. 2000)

Related Advisory Opinions:
A.O. 2021-9
A.O. 2011-25
A.O. 2009-44
A.O. 2006-25
A.O. 2001-6

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