

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

August 21, 2018

The Rhode Island Ethics Commission held its 14th meeting of 2018 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, August 21, 2018, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Marisa A. Quinn, Vice Chair
J. Douglas Bennett
Arianne Corrente

Timothy Murphy
James V. Murray

The following Commissioner(s) were not present: Ross Cheit, Chair; M. Therese Antone; John D. Lynch, Jr.; and Robert A. Salk, Secretary.

Also present were Herbert F. DeSimone, Jr., Commission Legal Counsel; Jason Gramitt, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Teresa Giusti and Teodora Popova Papa; and Commission Investigators Steven T. Cross; Peter J. Mancini; and Gary V. Petrarca.

Discussion and public comment regarding proposed rulemaking. As set forth in a Public Notice dated June 15, 2018 (available on the Ethics Commission website and the RI Secretary of State website), the Ethics Commission is proposing to amend 520-RICR-00-00-3 to:

- a.) In § 3.11(A) [Finding of Probable Cause (1006)], remove language stating that a copy of the Investigative Report, and any written response thereto, be made public after the probable cause hearing and also add language to expressly state that the Investigative Report, and any written response thereto, shall at all times remain a confidential investigator record; and
- b.) In § 3.11(C) [Finding of Probable Cause (1006)], add language requiring that when the Ethics Commission dismisses a complaint following a probable cause hearing, it must prepare and issue a public, written Decision and Order explaining the basis for the dismissal.

Commissioner Quinn stated that the purpose of the workshop was to receive comments and

that no vote would be taken. Legal Counsel DeSimone explained that when the Commission votes at its next meeting on September 11, 2018, the assent of 2/3 of the Commissioners or six (6) affirmative votes is required pursuant to Article III, § 8, of the State Constitution.

Executive Director Gramitt provided background to the proposed amendments to Commission Regulation 1006.¹ He explained that pursuant to the terms of the settlement agreement with Antonio Fonseca, the Commission agreed to initiate rulemaking with respect to Regulation 1006. Executive Director Gramitt explained the proposed amendments: (1) the investigative report is not released and is a confidential record; and (2) issuing a written Decision and Order when the Commission dismisses a complaint at a probable cause hearing. In response to Commissioner Murphy, Executive Director Gramitt stated that if the Commission votes to amend the regulation, the investigative report would not be released following an adjudication. He explained that following a probable cause hearing, even if the investigative report remains confidential, the investigative facts would be disclosed through either an informal resolution and settlement agreement, a public document, or a public adjudication. In response to Commissioner Bennett, Executive Director Gramitt informed that if the Commission votes against the proposed amendment, the regulation remains status quo. He stated that public comments are ongoing and may still be received until the next meeting at which they will be presented to the Commission for further discussion and vote.

Two members of the public were in attendance to offer comments and written testimony and to answer questions posed by the commissioners: (1) Kevin Flynn, Governing Board member of Common Cause Rhode Island (“Common Cause”) and (2) Steven Brown, Executive Director of American Civil Liberties Union of Rhode Island (“ACLU”).

Kevin Flynn was the first sign-in. He stated that Common Cause’s letter had already been submitted to the Commission. He explained that Common Cause supports the proposed amendments. He stated that a dismissal in a given case should include the following components: (1) summary of facts of the complaint and jurisdiction; (2) summary of the Prosecution’s and Respondent’s arguments; and (3) explanation of the rationale for not finding probable cause. In response to Commissioner Bennett, Mr. Flynn stated that two court decisions ruled that the Commission cannot release the investigative report. He noted that Common Cause agrees with the proposed amendments subject to some minor changes.

Steven Brown was the next sign-in. He explained that Regulation 1006 presents competing interests. The ACLU supports transparency and the proposed amendment that the Commission issues a written decision when it dismisses a complaint at a probable cause hearing, but the ACLU opposes an amendment making the investigative report confidential. Mr. Brown argued that the current language of the Regulation does not bar the release of the investigative report. He added that if the General Assembly wanted to prohibit the release of the report, it could have done so clearly. He explained that, instead, the language states: “Nothing in this

¹ In May 2018, the Ethics Commission codified the Code of Ethics into the Rhode Island Code of Regulations (“RICR”), a uniform state code containing the rules and regulations of the various Rhode Island agencies. In order to do so, the Ethics Commission reformatted and renumbered the Code of Ethics. As a result, Regulation 36-14-1006 now corresponds to Regulation 520-RICR-00-00-3.11 Finding of Probable Cause (1006).

section shall be construed to authorize the Commission to make any of its investigatory records public.” Mr. Brown noted that this language only refers to that section and leaves open the possibility that other laws such as APRA allow the Commission to release the report. He argued that the release of the report is different than the release of the underlying investigative documents. Mr. Brown stated that the ACLU favors transparency and argued that the investigative report relates to the professional conduct of public officials where the public interest is at its highest. He added that if the prosecution consistently makes unfair recommendations, the public has a right to know and the release of the report keeps the prosecution in check. He argued that allowing the Commission to reject the prosecution’s recommendation regarding probable cause but hiding the report creates cynicism of the Commission. Mr. Brown stated that the allegations are already public and the best way to address them is to have a public investigative report and a written decision explaining why the Commission rejected the prosecution’s recommendation. He argued that releasing both the investigative report and a written decision allows the public to see both sides, more fairly vindicates the public official where appropriate, and holds the prosecution accountable.