STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION

In re: Joseph S. Larisa, Jr., Esq., Respondent. **Complaint No. 2007-06**

Decision of the Ethics Commission

This matter was heard before the State of Rhode Island Ethics Commission on September 23, 2008, pursuant to R.I. Gen. Laws § 36-14-13 and Ethics Commission Regulation 1015. After a full hearing thereon, it was determined by a 4-2 vote of the State of Rhode Island Ethics Commission, that the Respondent Joseph S. Larisa, Jr. Esq., a former member of the East Providence City Council, committed a knowing and willful violation of R.I. Gen. Laws § 36-14-5(e)(4) when he represented Thomas C. Riley pro bono before the East Providence City Council on July 12, 2007.

Findings of Fact

Based on the evidence presented, the State of Rhode Island Ethics Commission ("the Commission") makes the following findings of fact.

The Respondent, Joseph S. Larisa, Jr., ("the Respondent") was elected to the East Providence City Council ("the Council") in November 1992. With the exception of a two year term from 2002-2004, the Respondent served as a member thereof until December 7, 2006. He is again running for councilman at large on the November 4, 2008 ballot. The Respondent also has a private legal practice with his own firm which was founded in 2003.

By correspondence dated June 20, 2007, the East Providence City Solicitor, William J. Connelly, Jr., ("Solicitor Connelly") advised Thomas C. Riley ("Mr. Riley"), a member of the East Providence Canvassing Authority, that the Council had received a complaint from Dorothy O'Gara, the Chairperson of the East Providence Canvassing Authority, regarding certain email

communications she had received from Mr. Riley that allegedly contained vulgar and slanderous content directed toward her and the East Providence Canvassing Authority Clerk, Maryann Callahan. Solicitor Connelly advised Mr. Riley that the Council would conduct a "pre-disciplinary hearing" on July 12, 2007 ("the Hearing"), pursuant to Section 11-46 of the Ordinances of the City of East Providence. The stated reason for the hearing was the content of the email communications that Mr. Riley had allegedly forwarded to Ms. O'Gara. Mr. Riley was informed that he would be given an opportunity to be heard in his defense, the Hearing would be public at his option, and that he may be represented by counsel.

Thereafter, Mr. Riley contacted the Respondent to inquire whether he would represent Mr. Riley *pro bono* before the Council at the Hearing. The Respondent represented that he knew Mr. Riley and believed he was a crusader against voter fraud and other voting irregularities within the City of East Providence. According to the Respondent, he agreed to represent Mr. Riley at the Hearing *pro bono* because he believed that representing Mr. Riley would support Mr. Riley's efforts of curtailing voter fraud and other voter irregularities within the City of East Providence. The Respondent considered these matters to be of important public interest. The Respondent also explained that he believed that by representing Mr. Riley, he was engaged in the practice of public interest law; that is, representing a client for free to further a greater cause.[1]

On July 12, 2007, the Council did, in fact, conduct the Hearing for the purpose of determining what disciplinary action, if any, should be taken against Mr. Riley. Mr. Riley required that the Hearing be conducted in open session in accordance with R.I. GEN. LAWS § 42-

[1] As an additional personal interest, the Respondent represented that he lost an election by 16 votes out of over 17,000 votes cast. There was another election in East Providence won by only 21 votes. The Respondent believed that the Providence Journal reported that an investigation into voting irregularities in the 2006 election revealed that more ballots were cast in East Providence than persons who were recorded as voting. This was of great concern to the Respondent. None of that evidence was challenged.

46-5(a)(1). The Hearing was well attended by individuals who appeared to support Mr. Riley and those in opposition to him. Members of the East Providence Tax Payers Association, the East Providence Citizens League, the East Providence Concerned Voters, and the East Providence Republican Party believed that issues broader than Mr. Riley's e-mail communications were being implicated by the Hearing.

During the Hearing, the Respondent acted as Mr. Riley's attorney. The Respondent engaged in the presentation of legal argument, the examination of Mr. Riley and participated in Mr. Riley's defense. Prior to the start of the Hearing, the Respondent sent a letter to the Council advising, "I represent *pro bono* Canvassing Board member Tom Riley in connection with the purported 'pre-disciplinary hearing' to be conducted by the Council this evening." The Respondent introduced this correspondence (with attachments) as an exhibit during the presentation of his case on behalf of Mr. Riley. The Respondent also prepared and submitted a legal memorandum. Ultimately, the Council voted 4-1 to issue Mr. Riley a written reprimand, which was to be placed in Mr. Riley's file. Mr. Riley did not appeal the Council's decision. The Respondent's representation of Mr. Riley before the Council on July 12, 2007 occurred prior to the expiration of one (1) year following his severance from the Council.

The Commission also found that from 1995 to 2003, the Respondent served as former Governor Lincoln Almond's executive counsel. In that capacity, the Respondent served as the Administration's ethics officer to interface between the Commission and Administration officials. As part of his duties he reviewed and was familiar with the Code of Ethics, Commission Regulations, and various advisory opinions. The Respondent provided ethics advice to state employees, particularly cabinet directors. He also coordinated ethics training seminars with the Commission. The Respondent explained that either during his tenure with the

Governor or at some point shortly thereafter, the Respondent formed a legal opinion that the Rhode Island Code of Ethics prevented representation of private interests for financial gain for a period of one (1) year after leaving office. The Respondent did not review the Rhode Island Code of Ethics immediately prior to agreeing to represent Mr. Riley *pro bono.* However, he believed that the ban did not affect representation involving no financial gain, especially when the representation was *pro bono* and concerned an issue of general public interest.

Conclusions of Law

I. R.I. Gen. Laws § 36-14-5 prohibits all members of any municipal agency from representing anyone before that agency for a period of one year after he or she has officially severed his or her position with said agency.

The Rhode Island Code of Ethics is codified at R.I. GEN. LAWS § 36-14-1 et. seq., ("the Code"). It states:

> It is the policy of the State of Rhode Island that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety, and not use their position for private gain or advantage. R.I. Gen. Laws § 36-14-1.

As a member of the Council, the Respondent was subject to the Code. All municipal elected officials are subject to the provisions of the Code. R.I. GEN. LAWS § 36-14-4(1) ("The following persons shall be subject to the provisions of the Code in government: (1) State and municipal elected officials [.]"). The Code prohibits certain activities of elected municipal officials. See for e.g. R.I. GEN. LAWS § 36-14-5. It also extends those prohibitions for a period of one (1) year after leaving office. R.I. GEN. LAWS § 36-14-5(e)(4). This provision is known as the "revolving door." Specifically, R.I. GEN. LAWS § 36-14-5(e), provides, in pertinent part:

(e) No person subject to this Code of Ethics shall:

* * *

(2) Represent[2] any other person before any state or municipal agency of which he or she is a member or by which he or she is employed.

* * *

(4) Shall engage in any of the activities prohibited by subsection (e)(1), (e)(2), or (e)(3) of this section for a period of one year after he or she has officially severed his or her position with said state or municipal agency; provided however, that this prohibition shall not pertain to a matter of public record in a court of law.

Based on the plain reading of this statute alone, the Respondent's representation of Mr. Riley during the Hearing was in violation of the Code. The only exception to this section is for a matter of public record in a court of law. Clearly, this exception does not apply here as the Hearing was not conducted in a court of law.

In past Advisory Opinions, the Commission has explained that the "revolving door" language of R.I. GEN. LAWS § 36-14-5(e) is provided "so as to minimize any influence the former public official may have in a consideration by his former agency that is not available to the general public." A.O. No. 2001-42. Further, past Advisory Opinions have characterized this "revolving door" language to be "very strict, but very clear." *Id.* Here, the Respondent's representation of Mr. Riley within one (1) year of his leaving office falls within this blanket prohibition of the "revolving door" language.

The standard for proving a violation of the Code is "knowing and willful." R.I. GEN. LAWS § 36-24-3(a)(8); *DiPrete v. Morsilli,* 635 A.2d 1155, 1163-64; and *Carmody v. Rhode Island Conflict of Interest Commission,* 509 A.2d 453 (R.I.1986). The Commission is guided by *Carmody* in its definition of what is a "knowing and willful" violation of the Code, as the Code

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[2] The Code explains that a person "represents" another person before a state or municipal agency "if he or she is authorized by that other person to act, and does in fact act, as the other person's attorney at law or his or her attorney in fact in the presentation of evidence or arguments before that agency for the purpose of influencing the judgment of the agency in favor of that other person." R. I. GEN. LAWS § 36-14-2(13).

itself does not specifically define the phrase. In *Carmody,* the Rhode Island Supreme Court explained that a public official commits a "knowing and willful" violation of the Code when the Commission finds that the public official was "cognizant of an appreciable possibility that he may be subject to the statutory requirements and fails to take steps reasonably calculated to resolve the doubt ... and voluntarily charts a course which turns out to be wrong". *Id.* at 460; *see also Anderson v. Rhode Island Ethics Commission,* 1989 WL 1110233 (R.I. Super. 1989).

By this standard, the record before the Commission is clear and also uncontroverted. The Respondent, as former Governor Lincoln Almond's executive counsel for over six years, acted as that Administration's "ethics officer." The Respondent admits that as part of his duties he reviewed and was familiar with the Code, Commission Regulations and various advisory opinions. He provided ethics advice to state employees, particularly cabinet directors. He also coordinated ethics training seminars with the Commission. Accordingly, the Respondent was certainly cognizant of the fact that he, as a member of the Council, was subject to the statutory requirements of the Code. The Respondent also believed and understood that he was subject to the Code. However, the Respondent formed an opinion, concerning the interpretation of the Code which "turned out to be wrong". *Caromody, supra,* 509 A.2d at 460. The Respondent's opinion that he could represent Mr. Riley *pro bono* and not violate the Code is unfounded and not supported by the plain language of the Code itself.

Moreover, and of equal importance, the Respondent failed to take steps "reasonably calculated" to confirm and/or support his interpretation of the Code. He never made a review of the Code immediately prior to representing Mr. Riley. He never called the Commission to request an opinion from the Commission, a procedure he knew existed. Nor did he contact an

attorney of his own. As such, his conduct amounts to a knowing and willful violation of R.I. GEN LAWS § 36-14(e)(4).

Finally, the Respondent argues that his *pro bono* relationship with Mr. Riley somehow excuses his knowing and willful violation of the Code.[3] Such argument, however, is not well founded. Revolving door regulations are intended to prevent more than profiteering; they also seek to avoid improper appearances and the use of undue influence. The blanket prohibition against appearing within a one-year period avoids the problems inherent in making case-by-case determinations about whether particular actions create particular harms. While the Respondent also argues that his appearance was motivated by concerns for the public interest, the rule contains no such exception. Most political action is cloaked in terms of the public interest. Those seeking to discipline Mr. Reilly likely believed that they too were acting in the public interest. The revolving door prohibition does not contemplate that the Commission will make case-by-case determinations as to which appearances within the one-year period should be allowed. It is a blanket prohibition specifically designed to prevent specific limited conduct for a discrete period of time. The Respondent's actions before the Council violated such prohibitions.

II. Commission Regulation 36-14-5008 does not apply as an exception to the prohibitions of R.I. GEN. LAWS § 36-14-5 in this matter.

The Respondent argues that Regulation 36-14-5008 entitled "Acting as Agent or Attorney for Other than State or Municipality" ("Regulation 5008") applies as an exception to the blanket prohibition of R.I. GEN. LAWS § 36-14-5(e). Regulation 5008(b) provides:

> (b) No municipal appointed or elected official or employee, who exercises fiscal or jurisdictional control over any municipal agency, board, Commission

[3] The lack of compensation does not necessarily mean that no benefits accrued to the Respondent. This was a high-profile case and representing Mr. O'Reilly might have offered benefits in terms of publicity and future employment. It might also have conferred political benefits as the Respondent is running in the November 2008 election.

or governmental entity, shall act, for compensation, as an agent or attorney before such agency, board, Commission or governmental entity for any person or organization in any particular matter in which the municipality has an interest or is a party, unless:

(1) such representation is in the proper discharge of official duties; or

(2) such official or employee is acting as a representative of a duly certified bargaining unit of state or municipal employees, or

(3) such appearance is before a state court of public record; or

(4) the particular matter before the municipal agency requires only ministerial acts, duties or functions involving neither adversarial hearings nor the authority of the agency to exercise discretion or render decisions.

The ordinary and plain meaning of the language of Regulation 5008 reveals that this Regulation is inapplicable here for several reasons. First, the Respondent is no longer a sitting municipal "elected official." Additionally, the Respondent does not exercise "fiscal" control over any municipal agency, board, Commission or governmental entity." Nor does the Respondent exercise "jurisdictional control" over any municipal agency, board, Commission or governmental entity.[4] Thus, Regulation 5008 is simply not applicable to the conduct of a former member of a City Council representing a private individual *pro bono* within one (1) year after leaving office.

Moreover, the Commission has previously addressed this Regulation in past Advisory Opinions. At such times, the Commission has consistently explained that Regulation 5008 prohibits a sitting public official from acting as an attorney or agent for compensation before municipal entities over which that public official exercises fiscal or jurisdictional control in any matter in which the municipality has an interest or is a party. *See for e.g.,* A.O. 2006-

[4] The Regulation defines "fiscal control" to include, but not necessarily limited to, authority to approve or allocate funds or benefits for the applicable state or municipal entity. Regulation 5008(c). It also defines "jurisdictional control" to include, but is not necessarily limited to, appointing authority, appellate review, or other substantive control in connection with the operation of the applicable state or municipal entity. Regulation 5008(d).

51(Regulation5008 does not apply if there is no appointment authority, fiscal or jurisdiction control over any agency board or other entity of municipal or state government.); and A.O. 2005-51. In Advisory Opinion No. 2003-6, a matter substantially similar to the present one, a Cranston City Councilor, a municipal elected position, requested an advisory opinion as to whether he may represent private clients before boards and commissions within the City of Cranston upon the expiration of his office. The Commission specifically explained that Regulation 5008 does not apply after a public official leaves office.[5] Thus, because the Respondent was no longer in office at the time of his representation of Mr. Riley, Regulation 5008 does not apply.

Furthermore, the Respondent's argument that Regulation 5008 when read in combination with R.I. GEN. LAWS § 36-14-5(e) does not give an attorney who is a member of a city council fair notice that providing *pro bono* legal services, either while in office or within a year of leaving office, is prohibited is not well founded. To follow the Respondent's argument would require the Commission to disregard the plain language of R.I GEN. LAWS § 36-14-5(e). Ignoring the plain language of a statute is "perhaps the ultimate error of law." *See for e.g., Town of Smithfield v. Churchill & Banks Companies, LLC,* 924 A.2d 796, 805(R.I. 2007). There is no ambiguity in the controlling statutory provision here. The provision is a blanket prohibition. It is well settled that when the language of a statute is clear and unambiguous, the statute must be interpreted literally and the interpretation must give the words of the statute their plain and ordinary meanings." *Moore v. Ballard,* 914 A.2d 487, 490 (R.I. 2007); *Accent Store Design, Inc.*

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[5] The Commission also explained that R.I. GEN. LAWS § 36-14-5(e) prohibits his appearance before the Cranston City Council, but its prohibitions are inapplicable with respect to other municipal agencies of which he was not a member.

v. Marathon House, Inc., 674 A.2d 1223, 1224 (R.I. 1996). Thus, it is clear that the language of R.I. GEN. LAWS § 36-14-5(e) prohibits the activities engaged in by the Respondent.

III. Regulation 36-14-7003 does not apply here to give the Respondent safe harbor to represent individuals *pro bono* before the Council at a pre-disciplinary hearing.

Respondent also argues that Regulation 36-14-7003, entitled "The Public Forum Exemption" ("Regulation 7003" or "the Public Forum Exemption") applies to provide a safe harbor for the Respondent to represent Mr. Riley before the Council during the Hearing. The Public Forum exemption provides:

> No violation of this Chapter or regulations shall result by virtue of any person publicly expressing his or her own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual or his or her spouse or dependent child.

Again, the plain language of this regulation does not apply to the facts before the Commission.

Moreover, the Commission has previously addressed Regulation 7003 in past Advisory Opinions. At such times, the Commission has consistently explained that pursuant to the Public Forum Exemption, a public official *may* publicly express his or her own viewpoint in a *public forum* on any matter of general public interest or which directly affects him or her, a spouse or dependent children. However, he or she may *not* receive special access or priority not available to any other member of the public. *See for e.g.*, A.O. 2006-37(Town Council member may attend a Town Council meeting and provide public comment as an abutter regarding a zone change as long as he does not receive access or priority not available to any member of the public) and A.O. 2002-65 (advising that a member of the Lincoln Planning Board may address the Board regarding a proposed condominium development at a public meeting at which

members of the public are invited to speak provided that he does not receive special access or priority not available to any other member of the public.).

Applying the rational of these prior opinions to the present case demonstrates that the Public Forum Exemption simply does not permit the Respondent's representation of Mr. Riley before the Council. First, the Hearing was a "pre-disciplinary hearing," not a public meeting where members of the public were invited to provide public comment. In fact, members of the public were not invited to provide public comment, although they were permitted to attend the Hearing. The Respondent's presence during the Hearing was not to express his own view points, but to represent Mr. Riley's. By participating in the Hearing through his representation of Mr. Riley, the Respondent was receiving "special access or priority not available to any other member of the public." Acting as an attorney for a private individual during a pre-disciplinary hearing before a City Council does not qualify as a person "expressing his or her own viewpoints in a public forum on any matter of general interest or on any matter which directly affects said individual or his or her spouse or dependent child." Even if members of the public were interested in the outcome of the Hearing, and the Hearing may have addressed matters of general public interest, the Hearing was not a "public meeting." Thus, the public forum section does not apply.[6]

Conclusion

For the foregoing reasons, the Commission found that the Respondent Joseph S. Larisa, Jr. Esq., a former member of the East Providence City Council, committed a knowing and willful violation of R.I. GEN. LAWS § 36-14-5(e)(4) when he represented Thomas C. Riley before the

[6] The Respondent also argues, without citing legal authority, that the First Amendment somehow permits his representation of Mr. Riley. Such argument, however, is similarly not well founded as the actions of the Respondent are in clear violation of the blanket prohibitions of the Code.

East Providence City Council on July 12, 2007, which was less than one (1) year prior to his severance from the East Providence City Council. The Commission instituted a $500.00 fine for such violation.

10/21/2008
Date

Acting Chairperson, Rhode Island Ethics Commission
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PURSUANT TO THE PROVISIONS OF R.I.G.L. § 42-35-15 ANY PERSON WHO IS AGGRIEVED BY THIS DECISION AND ORDER IS ENTITLED TO JUDICIAL REVIEW. PROCEEDINGS FOR SUCH REVIEW ARE INSTITUTED BY FILING A COMPLAINT IN THE SUPERIOR COURT FOR PROVIDENCE COUNTY WITHIN THIRTY DAYS AFTER MAILING NOTICE OF THIS DECISION AND ORDER BY THE ETHICS COMMISSION. A COPY OF THE COMPLAINT MUST BE SERVED UPON THE ETHICS COMMISSION WITHIN TEN DAYS AFTER IT IS FILED IN COURT, PROVIDED HOWEVER THAT THE TIME FOR SERVICE OF THE COMPLAINT MAY BE EXTENDED BY ORDER OF THE COURT FOR GOOD CAUSE.