

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

**In re: Pamela Fontaine,
Respondent**

Complaint No. 2012-2

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**PROSECUTION'S MOTION TO DISMISS
AND MEMORANDUM IN SUPPORT THEREOF**

I. FACTS AND TRAVEL

The Complaint, filed on December 17, 2012, by Gordon Rogers, alleges that the Respondent, a member of the Foster Town Council ("Town Council"), a municipal elected position, violated the Code of Ethics by voting to appoint Renee M. Bevilacqua, Esq. to the position of Foster Town Solicitor at the December 6, 2012, Town Council meeting. The Complaint states that the Respondent is a member of Country Title, LLC, which has a business relationship with John J. Bevilacqua, Esq., Renee M. Bevilacqua's spouse. The Complaint states that business listings for Renee M. Bevilacqua reflect the address and telephone number of her spouse's law firm, Bevilacqua & Bevilacqua, LLC, located at 380 Broadway, Providence, RI. The allegation is premised upon the existence of a business relationship between Renee M. Bevilacqua and her spouse, as suggested in the Complaint and supporting documentation attached thereto.

Accordingly, on January 8, 2013, the Commission initially determined that the Complaint alleges sufficient facts that, if true, would constitute a knowing and willful violation of the Code of Ethics and authorized a full investigation. However, as set forth below, the investigation has adduced key facts relative to the nature of Renee M. Bevilacqua's law practice that are dispositive of the underlying allegation.

For clarity purposes, the Prosecution will hereafter refer to John J. Bevilacqua and Renee M. Bevilacqua as "John" and "Renee," respectively.

A. Renee M. Bevilacqua's Individual Law Practice

Based upon a review of sworn affidavits, RI Bar Association listings, Financial Disclosure Statements filed with the Commission, and confirmation provided by the Clerk of the Rhode Island Supreme Court, at all times hereto relevant Renee has been a solo practitioner who is not associated in the practice of law with either her spouse or the law firm of Bevilacqua & Bevilacqua.

In affidavits appended to the Respondent's Answer, filed on January 13, 2013, John and Renee both attest to the fact that they each maintain their own law practices, including individual business and IOLTA accounts. John states that he established Bevilacqua & Bevilacqua for his son, John J. Bevilacqua, Jr., Esq., in 2009. He states that Renee's practice has always been separate and apart from his own, and he further represents that they do not share business accounts or professional income. Renee attests that she is a solo practitioner, having maintained her own law practice since approximately 1993.¹

Both John and Renee state that the office space at 380 Broadway, Providence, RI was shared by several independent attorneys, including: William A. Gosz, Esq.; Angelica B. Gosz, Esq.; John J. Bevilacqua, Jr., Esq; John; and Renee. These attorneys shared phone, facsimile and internet systems.

¹ Prior to her marriage to John, Renee practiced under her maiden name of Renee S. Menard, the name appearing on a sign listing the attorneys located at 380 Broadway, Providence, as detailed in the Complaint.

The 380 Broadway property was owned by John's sister, Angelica B. Gosz, to whom Renee represented that she paid rent until 2002.² Thereafter, Renee informed that she effectively stopped using the 380 Broadway office, although she continued to have a mailbox there, and operated out of her Foster residential office where she maintains her practice to date.

Further, both John and Renee's individual annual Financial Disclosure Statements filed with the Commission reflect that Renee has been a solo practitioner at all times hereto relevant. In particular, all Statements filed from 2005 to date indicate that Renee and John are each self-employed attorneys with offices at 380 Broadway, Providence.³ Additionally, the Rhode Island Bar Association listings for John and Renee support the assertions set forth by affidavit that each maintains his or her own law practice.

Significantly, the Clerk of the Rhode Island Supreme Court confirmed that, as part of the annual attorney registration process, Renee has not registered with the Court as being affiliated with any law firm. Additionally, John and Renee each provide the Court with different business and IOLTA account numbers as part of the annual registration process. According to Court records, John and John J. Bevilacqua, Jr. are the only attorneys practicing law on behalf of Bevilacqua & Bevilacqua.

Lastly, records obtained from the Town of Foster reflect that Renee's application for consideration as the Town Solicitor was submitted in her capacity as a solo practitioner. The letterhead, resume and business cards utilized by Renee are in her individual name and capacity. Town records further reflect that payments made to Renee

² As of March 2013, all of the attorneys previously located at 380 Broadway have relocated their practices. John and his son have relocated to a Warwick office, and Renee continues to maintain a private practice from her Foster residential office.

³ Statements filed prior to 2005 were not obtained from archives and reviewed given the limited time period under consideration for purposes of this Complaint.

as the Solicitor have been made to her individually and forwarded to her at her residential address.

B. Respondent's Business Relationship with John J. Bevilacqua, Esq.

In March 2012, Kathleen Bridget Williams ("Williams") and Arthur M. Read, III, Esq. ("Read"), formed Williams Tax Titles, Inc., located at 26 Hartford Pike, North Scituate, RI. Official corporate records reflect that the Respondent is a forty-five (45) percent shareholder in Williams Tax Titles. Both the original corporate records and records on file with the Secretary of State reflect that the Williams Tax Titles' corporate officers are as follows: Williams, President and Treasurer; Read, Secretary; (Vacant), Vice President. The Respondent is not listed as a corporate officer.⁴

Subsequently, in May 2012, Williams Tax Titles entered into a business venture with Read and Bevilacqua & Bevilacqua and formed Country Title, LLC. Country Title provides support services to taxing entities relative to the conduct of tax sales. The original corporate records reflect that the members of Country Title are as follows: Williams Tax Titles (50%); Read (25%); and Bevilacqua & Bevilacqua (25%). John serves as Country Title's Chief Operating Member.

Williams informed Investigator Gary V. Petrarca that the Respondent presently has no position or responsibilities with either Williams Tax Titles or Country Title and that she is performing all of the work herself. However, Williams represented that in the future, when business picks up, the Respondent will serve as her assistant.

⁴ Although the Respondent's affidavit, appended to her Answer, states that she is an officer of Williams Tax Titles, the Prosecution has examined Williams Tax Titles' original corporate books which establish that the Respondent is only a shareholder. Assuming, *arguendo*, that the Respondent was a corporate officer, it nonetheless would not alter the analysis set forth herein.

II. DISCUSSION

As a municipal elected official, the Respondent is a person subject to the Code of Ethics. R.I. Gen Laws § 36-14-4(1). No person subject to the Code of Ethics shall have any interest or engage in any business, employment or professional activity that is in substantial conflict with the proper discharge of her duties in the public interest. Section 36-14-5(a). A person subject to the Code has an interest in substantial conflict with the proper discharge of her duties or employment in the public interest if she has reason to believe or expect that she, any person within her family, any business associate or any business by which she is employed or represents will derive a direct financial gain or suffer a direct financial loss by reason of her official activity. Section 36-14-7(a).

Further, a person subject to the Code shall not use her office for pecuniary gain, other than provided by law, for herself, her family, a business associate, or any business by which she is employed or represents. Section 36-14-5(d). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14-2(3).

The instant Complaint alleges that the Respondent violated the Code of Ethics by appointing Renee as the Town Solicitor based upon the fact that Renee is the spouse and business associate of John, with whom it is alleged that the Respondent has a business relationship through Country Title. Corporate records reflect that the Respondent is not a member of Country Title. Rather, the Respondent is a minority shareholder in Williams Tax Titles, a limited liability corporation which, along with Read and Bevilacqua & Bevilacqua, is a member of Country Title. As such, the Respondent is a minority shareholder in a corporate entity (Williams Tax Titles) that, through its membership in

another corporate entity (Country Title) is the business associate of Bevilacqua & Bevilacqua and/or John under the Code of Ethics.

To the extent that the Commission could impute a business association under the Code of Ethics between the Respondent and John through Country Title, that relationship is not further attributed to John's spouse, his family members, or his other business associates, absent the existence of an independent financial nexus between those parties. Significantly absent here is any connection to Renee. Renee is not a member of her spouse's law firm and at all times has maintained her own law practice. There is no relationship between the Respondent and Renee. Therefore, the Respondent's participation in the Town Council's appointment of Renee to the position of Town Solicitor does not implicate the prohibitions set forth in sections 5(a) and (d) of the Code of Ethics.

III. CONCLUSION

Based upon the foregoing, the Prosecution respectfully requests that Complaint No. 2012-2 be dismissed.

Dated: 5/16/2013

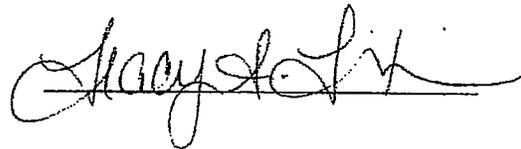
Respectfully submitted,



Katherine D'Arezzo (Bar No. 5710)
Commission Prosecutor

CERTIFICATION

I hereby certify that on the 16th day of May 2013, I forwarded a copy of the within document via email and US mail, postage prepaid, to: amr@amresq.com and Arthur M. Read, II., Esq., Arthur M. Read, II, Esq., LTD., Jefferson Place, One Hundred Jefferson Blvd., Suite 200, Warwick, RI, 02888



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ORDER

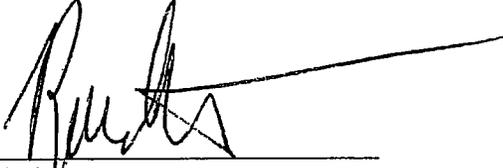
This matter came for hearing before the Rhode Island Ethics Commission on May 21, 2013, on the Prosecution's Motion to Dismiss the Complaint with prejudice. After hearing thereon, it is hereby

ORDERED, ADJUDGED AND DECREED

THAT,

The Prosecution's Motion to Dismiss the Complaint with prejudice is granted.

Entered as an Order of this Commission this 21st day of May 21, 2013.



Chairperson