



TEXAS ETHICS COMMISSION MEETING MINUTES

December 7, 2010, 10:01 a.m.

Capitol Extension, Room E1.014, Austin, Texas 78701



COMMISSIONERS PRESENT: Paula M. Mendoza, Chair; Jim Clancy, Wilhelmina Delco, Tom Harrison, George H. "Trey" Henderson, III, Tom Ramsay, and Chase Untermeyer.

COMMISSIONERS ABSENT: Jim Graham, Vice Chair.

STAFF PRESENT: Natalie Adelaja, Natalia L. Ashley, Amy Barden, Margie Castellanos, Homer Diaz, Robbie Douglas, Susana Esparza, Ginger Hunter, Brad Johnson, Becky Levy, Bobby Mannas, Mike McElhaney, David A. Reisman, Nadina Rose, Tim Sorrells, Ian Steusloff, and Mary Young.

MINUTES

This meeting was recorded. These minutes are a summary record of the Commission's actions at the meeting. For a detailed record of discussions and statements made by persons speaking at the meeting, please consult the audio recordings on file at the Commission's office.

Agenda Item 1: Call to order; roll call.

The meeting was called to order by Chair Mendoza. David A. Reisman, Executive Director, called the roll. All Commissioners were present, except Vice Chair Graham.

Agenda Item 2: Communication to the Commission from the public.

None.

Agenda Item 3: Comments by the Commissioners.

Chair Mendoza stated that this was her last meeting as Chair of the Ethics Commission, but she will continue as Commissioner. She thanked the Commission for their support. Chair Mendoza spoke regarding the decorum on speaking before the Commission.

Agenda Item 4: Comments by the executive director.

David A. Reisman, Executive Director, made the following comments:

1. Mr. Reisman discussed the legislative appropriations request and the effects of the budget cuts on the Commission. He also discussed the changes made within the agency.
2. Mr. Reisman stated that 424 sworn complaints had been filed as of December 6, 2010. In 2008, the Commission had 388 sworn complaints filed, the most in any year until 2010. He stated that due to workload increases, the time to process sworn complaints would increase.

3. Mr. Reisman stated that services of the Commission would be streamlined; however, there would probably be a reduction in customer services to the regulated community.

Agenda Item 5: Approve minutes of the October 21, 2010, commission meeting.

Motion by Commissioner Henderson to adopt the October 21, 2010, Commission meeting minutes, second by Commissioner Delco. **Motion passed by a vote of six ayes.** Commissioner Ramsay was off the dais.

For Agenda Items 6, the following represents the actions taken by the Ethics Commission in the order they occurred during the meeting.

Agenda Item 6: Briefing, discussion, and possible action to waive or reduce certain penalties assessed for late filing of campaign finance reports, lobby reports, or personal financial statements.

**26. Robert C. "Rob" Werstler (00017209)
Treasurer, "TQHA/PAC" Texas Quarter Horse Assn. PAC**

Report: 8-day pre-election report due October 25, 2010
Penalty: \$600
Staff recommendation: no waiver of late-filing penalty

Robert Werstler spoke before the Commission. Motion by Commissioner Harrison to reduce the \$600 late-filing penalty to \$300 on Agenda Item 6, number 26; second by Commissioner Henderson. Motion passed by a vote of six ayes on Agenda Item 6, number 26. Commissioner Ramsay was off the dais. **The reduction of the late-filing penalty to \$300 is adopted on Agenda Item 6, number 26.**

**28. Marc Katz (00065974)
Candidate, Lieutenant Governor**

Report: semiannual report due July 15, 2010
Penalty: \$2,600
Staff recommendation: reduction of late-filing penalty to \$500

Marc Katz spoke before the Commission. Motion by Commissioner Clancy to waive the \$2,600 late-filing penalty on Agenda Item 6, number 28; second by Commissioner Delco. Motion passed by a vote of six ayes on Agenda Item 6, number 28. Commissioner Ramsay was off the dais. **The waiver of the late-filing penalty is adopted on Agenda Item 6, number 28.**

**1. James H. "Brud" Adams, Jr. (00066896)
Candidate, State Representative**

Report: personal financial statement due September 28, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

2. Mae C. Jemison, M.D. (00056114)
Presiding Officer, Product Development and Small Business Incubator Board

Report: personal financial statement due April 30, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

Motion by Commissioner Henderson to adopt staff's recommendations on Agenda Item 6, numbers 1 and 2; second by Commissioner Harrison. Motion passed by a vote of six ayes on Agenda Item 6, numbers 1 and 2. Commissioner Ramsay was off the dais. **Staff's recommendations are adopted on Agenda Item 6, numbers 1 and 2.**

3. Cynthia Phillips "Cindy" Finley (00065101)
Member, Texas School for the Blind & Visually Impaired

Report: personal financial statement due June 29, 2010
Penalty: \$500
Staff recommendation: reduction of the late-filing penalty to \$250

Motion by Commissioner Henderson to adopt staff's recommendation on Agenda Item 6, number 3; second by Commissioner Harrison. Motion passed by a vote of six ayes on Agenda Item 6, number 3. Commissioner Ramsay was off the dais. **Staff's recommendation is adopted on Agenda Item 6, number 3.**

4. Elena Blake (00017262)
Treasurer, "IRWC" Irving Republican Women's Club

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

5. Barbara Effenberger (00056435)
Treasurer, Guadalupe County Democratic Club

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

6. Charlie C. Gustin (00064086)
Treasurer, "HPAC" HPAC

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

**7. Wesley G. "Wes" Johnson (00066170)
Candidate, District Judge**

Report: 8-day pre-election report due October 25, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

**8. Dave Marcinkowski (00016535)
Treasurer, Lubbock Apartment Assn. PAC**

Report: monthly report due October 5, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

**9. Mary E. Tucker (00016929)
Treasurer, Texas Waterways Operators PAC**

Report: 8-day pre-election report due October 25, 2010
Penalty: \$1,500
Staff recommendation: waiver of late-filing penalty

**10. Helene W. Webster (00040849)
Treasurer, "IEC Texas Gulf Coast PAC" Independent Electrical Contractors Texas Gulf Coast PAC**

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

Motion by Commissioner Harrison to adopt staff's recommendations on Agenda Item 6, numbers 4 through 10; second by Commissioner Delco. Motion passed by a vote of six ayes on Agenda Item 6, numbers 4 through 10. Commissioner Ramsay was off the dais. **Staff's recommendations are adopted on Agenda Item 6, numbers 4 through 10.**

**11. Felix Botello (00065793)
Candidate, District Judge**

Report: semiannual report due July 15, 2010
Penalty: \$7,100
Staff recommendation: waiver of late-filing penalty

**12. Susie M. Infante (00055130)
Treasurer, Nueces County Republican Executive Committee (CEC)**

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

13. Jessica R. Hornsby (00066228)
Candidate, State Representative

(a) Report: semiannual report due January 15, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

(b) Report: semiannual report due July 15, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

Total penalties: \$1,000

14. Mohammed K. Nasrullah (00040715)
Treasurer, "BAND" Bay Area New Democrats

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: waiver of late-filing penalty

Motion by Commissioner Henderson to adopt staff's recommendations on Agenda Item 6, numbers 11 through 14; second by Commissioner Harrison. Motion passed by a vote of five ayes on Agenda Item 6, number 12. Commissioner Clancy recused himself on Agenda Item 6, number 12. Motion passed by a vote of six ayes on Agenda Item 6, numbers 11, 13, and 14. Commissioner Ramsay was off the dais. **Staff's recommendations are adopted on Agenda Item 6, numbers 11 through 14.**

15. Jennifer K. Ahrens (00064055)
Lobbyist

Report: lobby activities report due September 10, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

16. Blake H. Bailey (00066035)
Candidate, Supreme Court Justice

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

17. Lawrence Collins (00063437)
Treasurer, "TxMPA PAC" Texas Motion Picture Alliance PAC

Report: semiannual report due January 15, 2009
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

18. Teresa M. Doyle (00016515)
Treasurer, Texas Right to Life PAC

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

19. Nancy Hall (00062475)
Treasurer, Terri Hodge Defense Fund

Report: semiannual report due July 15, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

20. Casetra Lee "Casey" McKinney (00054736)
Candidate, State Representative

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

21. Robert McCreary (00066721)
Lobbyist

Report: lobby activities report due October 12, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

22. Michael L. "Mike" Oldham (00053061)
Treasurer, "F.F.U. PAC" Texas Farmers Union Family Farmers United PAC

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

23. Michael Kumar Sinha (00066797)
Family District Judge

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

24. Dale B. Tillery (00026547)
District Judge Elect

Report: special pre-election report due November 1, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

25. Kirk Tiner (00015783)
Treasurer, "TUCVFC" Texas United Auto Workers CAP Voluntary Fund

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: no waiver of late-filing penalty

Motion by Commissioner Delco to adopt staff's recommendations on Agenda Item 6, numbers 15 through 25; second by Commissioner Harrison. Motion passed by a vote of six ayes on Agenda Item 6, numbers 15 through 25. Commissioner Ramsay was off the dais. **Staff's recommendations are adopted on Agenda Item 6, numbers 15 through 25.**

27. John R. Coppedge (00016490)
Treasurer, Texas Bipartisan Justice Committee

Report: 8-day pre-election report due October 25, 2010
Penalty: \$500
Staff recommendation: reduction of late-filing penalty to \$250

29. P. Allan Port (00024835)
Treasurer, Amegy Bank Political Action Committee

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: reduction of late-filing penalty to \$250

30. David Webb (00017302)
Treasurer, "ABC GHPAC" Associated Builders & Contractors of Greater Houston PAC

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: reduction of late-filing penalty to \$250

Motion by Commissioner Harrison to adopt staff's recommendations on Agenda Item 6, numbers 27, 29, and 30; second by Commissioner Henderson. Motion passed by a vote of six ayes on Agenda Item 6, numbers 27, 29, and 30. Commissioner Ramsay was off the dais. **Staff's recommendations are adopted on Agenda Item 6, numbers 27, 29, and 30.**

31. Kenneth F. Sheets (00066290)
Candidate, State Representative

Report: 30-day pre-election report due October 4, 2010
Penalty: \$500
Staff recommendation: reduction of late-filing penalty to \$100

Motion by Commissioner Delco to adopt staff's recommendation on Agenda Item 6, number 31; second by Commissioner Harrison. Motion passed by a vote of six ayes on Agenda Item 6, number 31. Commissioner Ramsay was off the dais. **Staff's recommendation is adopted on Agenda Item 6, number 31.**

32. Oscar J. Palma, Jr. (00058874)
Candidate, State Representative

Report: semiannual report due January 15, 2010
Penalty: \$500
Staff recommendation: At the April 2010 meeting, the Commission voted not to waive the late-filing penalty.

The filer requested that Agenda Item 6, number 32 be postponed until the next meeting. Motion by Commissioner Harrison to accept postponement of Agenda Item 6, number 32; second by Commissioner Delco. Motion passed by a vote of six ayes on Agenda Item 6, number 32. Commissioner Ramsay was off the dais. **Agenda Item 6, number 32 is postponed.**

33. Kiran H. Shah (00066172)
Treasurer, Indo American Physician PAC

Report: semiannual report due July 15, 2010
Penalty: \$500
Staff recommendation: At the October 2010 meeting, the Commission voted not to waive the late-filing penalty.

There was no motion on Agenda Item 6, number 33. **The late-filing penalty stands on Agenda Item 6, number 33.**

34. Brian W. Holk (00058917)
Candidate, State Representative

Report: semiannual report due July 15, 2010
Penalty: \$500
Staff recommendation: At the October 2010 meeting, the Commission voted not to waive the late-filing penalty.

There was no motion on Agenda Item 6, number 34. **The late-filing penalty stands on Agenda Item 6, number 34.**

**35. Sylvia Barnes (00063774)
Member, Harris County – Houston Sports Authority**

Report: personal financial statement due April 30, 2010

Penalty: \$500

Staff recommendation: At the August 2010 meeting, the Commission voted not to waive the late-filing penalty. At the October 2010 meeting, the Commission let their previous decision stand to not waive the late-filing penalty.

There was no motion on Agenda Item 6, number 35. **The late-filing penalty stands on Agenda Item 6, number 35.**

Agenda Item 7: Briefing, discussion, and possible action to waive or reduce late-filing penalties in connection with certain corrected reports or to determine whether certain corrected reports as originally filed substantially complied with the applicable law.

**1. Patricia L. “Lynn” Cherry (00058102)
Family District Judge**

Report: 8-day pre-election report due October 25, 2010

Penalty: \$600

Staff recommendation: that the original report substantially complied with the applicable law

**2. Dora Elia Galvan (00066828)
Treasurer, Mission Democrats of Bexar County**

Report: 8-day pre-election report due October 25, 2010

Penalty: \$500

Staff recommendation: that the original report substantially complied with the applicable law

**3. Fritz Lanham Lyne, Jr. (00065964)
State Representative Elect**

Report: 8-day pre-election report due October 25, 2010

Penalty: \$500

Staff recommendation: that the original report substantially complied with the applicable law

**4. Lisa A. Millard (00026758)
District Judge**

Report: 8-day pre-election report due February 22, 2010

Penalty: \$10,000

Staff recommendation: that the original report substantially complied with the applicable law

**5. Ralph E. "Gene" Roberts, Jr. (00066405)
Candidate, District Judge**

Report: 8-day pre-election report due October 25, 2010

Penalty: \$600

Staff recommendation: that the original report substantially complied with the applicable law

**6. Steven J. Schultz (00016700)
Treasurer, "ABC-PAC" South Texas Associated Builders & Contractors, Inc. PAC**

Report: 8-day pre-election report due October 25, 2010

Penalty: \$800

Staff recommendation: that the original report substantially complied with the applicable law

Motion by Commissioner Untermeyer to adopt staff's recommendations on Agenda Item 7, numbers 1 through 6; second by Commissioner Henderson. Motion passed by a vote of six ayes on Agenda Item 7, numbers 1 through 6. Commissioner Ramsay was off the dais. **Staff's recommendations are adopted on Agenda Item 7, numbers 1 through 6.**

**7. Thomas R. Phillips (00042205)
Treasurer, Justice Eva Guzman for Supreme Court**

Report: 8-day pre-election report due October 25, 2010

Penalty: \$800

Staff recommendation: no waiver of the late-filing penalty

Motion by Commissioner Delco to adopt staff's recommendation on Agenda Item 7, number 7; second by Commissioner Henderson. Motion passed by a vote of six ayes on Agenda Item 7, number 7. Commissioner Ramsay was off the dais. **Staff's recommendation is adopted on Agenda Item 7, number 7.**

**8. Patricia F. Botello (00015973)
Treasurer, "SARPAC" San Antonio Board of Realtors PAC**

Report: 8-day pre-election report due April 30, 2010

Penalty: \$10,000

Staff recommendation: reduction of the late-filing penalty to \$1,000

Agenda Item 7, number 8, is postponed at the filer's request.

**9. Edward McSpedon (00063418)
Treasurer, "HNTB PAC" HNTB Holdings Ltd. Political Action Committee**

Report: 8-day pre-election report due February 22, 2010

Penalty: \$10,000

Staff recommendation: reduction of the late-filing penalty to \$500

Motion by Commissioner Delco to adopt staff's recommendation on Agenda Item 7, number 9; second by Commissioner Harrison. Motion passed by a vote of six ayes on Agenda Item 7, number 9. Commissioner Ramsay was off the dais. **Staff's recommendation is adopted on Agenda Item 7, number 9.**

Agenda Item 8: AOR-555: Whether a conclusion that an expense is "reimbursable with public money" for purposes of sections 251.001(4) and (9) of the Election Code requires that public funds be appropriated or otherwise available to cover the expense.

Natalia L. Ashley, General Counsel, briefed the Commission on this agenda item. Motion by Commissioner Untermeyer to amend the opinion; second by Commissioner Clancy. Motion passed by a vote of seven ayes. Craig Enoch, attorney, spoke before the Commission. Motion by Commissioner Harrison to adopt the opinion as amended; second by Commissioner Clancy. Motion passed by a vote of seven ayes. **AOR-555 is adopted.**

Agenda Item 9: Public discussion and possible action on Ethics Advisory Opinion No. 484 (issued August 2009).

Commissioner Clancy discussed Ethics Advisory Opinion No. 484 and his concerns with the opinion. Craig Enoch, attorney, spoke before the Commission. Ed Shack, attorney, spoke before the Commission. Motion by Commissioner Clancy to withdraw Ethics Advisory Opinion No. 484; second by Commissioner Untermeyer. Motion passed by a vote of five ayes. Chair Mendoza and Commissioner Ramsay voted no. **Ethics Advisory Opinion No. 484 is withdrawn.**

Agenda Item 10: Report from the subcommittee of commissioners and possible action on recommendations for statutory changes to the 82nd Legislature as required by section 571.073 of the Government Code.

Commissioner Clancy briefed the Commission on this agenda item. Motion by Commissioner Untermeyer to adopt the recommendations for statutory changes; second by Commissioner Delco. Motion passed by a vote of seven ayes. **The recommendations for statutory changes to the 82nd Legislature are adopted.**

Agenda Item 11: Public discussion and possible action on the proposal or adoption and publication in the Texas Register of an amendment to Ethics Commission Rule § 50.1 (Legislative Per Diem) relating to the legislative per diem required to be set under Article III, Section 24a, of the Texas Constitution.

David A. Reisman, Executive Director, briefed the Commission on this agenda item. Motion by Commissioner Henderson to propose for publication the option in Exhibit B of the Ethics Commission Rules; second by Commissioner Untermeyer. Motion passed by a vote of five ayes. Commissioners Clancy and Delco voted no. **The option in Exhibit B to amend section 50.1 of the Ethics Commission Rules is proposed for publication in the Texas Register for comment.** Jack Gullahorn, President, Professional Advocacy Association of Texas, spoke before the Commission.

Agenda Item 12. Presentation of the Nominating Committee report regarding the positions of Chair and Vice Chair of the Texas Ethics Commission. Election of Chair and Vice Chair of the Texas Ethics Commission.

Chair Mendoza stated that the nominating committee named Vice Chair Jim Graham for Chair and Commissioner Wilhelmina Delco for Vice Chair. Motion by Commissioner Harrison to appoint Vice Chair Graham as Chair and Commissioner Delco as Vice Chair; second by Commissioner Henderson. Motion passed by a vote of seven ayes.

The next Commission meeting is tentatively scheduled for February 3, 2011.

Agenda Item 13: Adjourn.

Motion by Commissioner Delco to adjourn the Commission meeting; second by Commissioner Henderson. Motion passed by unanimous vote.